



**Submitted via e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

April 19, 2022

Ms. Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington DC 20549-1090

**Re: File Number SR-NYSEArca-2021-90**

Dear Ms. Countryman:

The Association for Digital Asset Markets (“ADAM”)<sup>1</sup> respectfully writes to support the application of Grayscale Investments, LLC (“Grayscale”), the sponsor of the Grayscale Bitcoin Trust (“GBTC”), to list shares of GBTC under NYSE Arca Rule 8.201-E as an exchange-traded product (“ETP”) pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (as amended, the “Exchange Act”). Approval of the listing by the Securities and Exchange Commission (“Commission”) would: (1) be timely due to recent growth and advancements in the structure of digital asset markets (including the Bitcoin markets); (2) provide the potential for a safer and more transparent regulated product to the public; (3) alleviate burdens of self-custody management and its interactions with the typical American’s investment interface; (4) complement the Commission’s recently approved Bitcoin futures exchange-traded funds (“ETFs”) registered under the Investment Company Act of 1940 (as amended, the “Investment Company Act”) and the Securities Act of 1933 (as amended, the “Securities Act”) and Exchange Act; and (5) facilitate the Commission’s mission of promoting investor protection and capital formation.

### **About ADAM**

ADAM is a private, non-profit, membership-based association of firms operating in the digital asset markets and is a standards-setting body and self-governing association committed to

---

<sup>1</sup> ADAM is a broad-based industry group that includes a wide variety of market participants, including trading platforms, custodians, investors, asset managers, traders, liquidity providers, and brokers. Our members are firms that are active in digital asset markets or seek to participate in those markets. ADAM members include: Anchorage Digital, N.A.; BitGo; BitOoda; BlockFi; BTIG; CMT Digital; CoinFund; Cumberland; Digital Asset Council of Financial Professionals; Dunamis Trading; Eventus Systems; Fireblocks; FTX.com; FTX.us; Hxro Foundation; Galaxy Digital; Genesis; Grayscale; GSR; HRT; Multicoin Capital; Oasis Pro Markets; Parataxis; Paxos; Robinhood Crypto; Sarson Funds; Solidus Capital; Symbiont; Symphony Communications; WisdomTree; and XBTO. ADAM law firm partners include: Anderson Kill; DLA Piper; DLx Law; Mayer Brown LLP; McGonigle, P.C.; and Morgan Lewis.

promoting market integrity and best practices. ADAM works with leading financial firms, entrepreneurs, and regulators to develop industry best practices that facilitate fair and orderly digital asset markets. In this regard, ADAM's objectives are to: (1) protect market participants from fraud and manipulation; (2) provide clear standards for efficient trading, custody, and the clearing and settlement of digital assets; (3) encourage professionalism and ethical conduct by market participants; and (4) increase transparency and provide information to the public and governments about digital asset markets. In furtherance of these objectives, ADAM released a principles-based Code of Conduct (Code)<sup>2</sup> in late 2019 that sets certain standards of professional conduct for ADAM members. In particular, the Code addresses the following areas:

- Compliance and Risk Management
- Market Ethics
- Conflicts of Interest
- Transparency and Fairness
- Market Integrity
- Custody
- Information Security and Business Continuity
- Anti-Money Laundering and Countering the Finance of Terrorism

Every ADAM member agrees to adhere to the Code of Conduct. The goal is to bring professional standards into the nascent but rapidly-growing digital asset markets, and to develop trust in those markets so that they can flourish.

Our members are at the cutting edge of innovation through the use of new technologies, such as blockchain. However, they recognize that proper regulation and conduct are essential to their businesses and to the development of a sustainable marketplace and public trust. They believe that a diverse financial ecosystem is a source of strength, and they aim to use their technology to find new ways of reaching consumers and work within the current financial system to improve efficiencies.

ADAM and its members are committed to working with lawmakers and regulators to promote responsible innovation in the digital asset space in a manner that expands the availability of financial services, and we welcome a clear regulatory picture because our members seek full compliance.

## **Evolution of the Bitcoin Market**

The Bitcoin market has evolved considerably since the 2008 Satoshi White Paper<sup>3</sup> and the initial public software release, and as a result of technological and infrastructure advancements, the Bitcoin market has flourished. The market evolution has been most notable in the last five years as a number of market infrastructure providers have generated a host of services not previously

---

<sup>2</sup> The Code is available at <http://www.theadam.io/code/>.

<sup>3</sup> Bitcoin: A Peer-to-Peer Electronic Cash System <https://bitcoin.org/bitcoin.pdf>.

available.<sup>4</sup> In particular, market surveillance and blockchain analytic firms have utilized the Bitcoin public blockchain to provide real-time trade monitoring solutions and transaction tracing analytic capabilities. Additionally, exchanges require know-your-customer (“KYC”) information, which in combination with market surveillance and blockchain analytics has allowed exchange providers to discover suspicious trades in real-time which was previously cited as a reason for the Commission to deny both Bitcoin futures ETFs and Bitcoin spot ETPs. As such, the development of market surveillance tools has allowed many market structure issues stemming from the initial pseudonymous qualities of the Bitcoin market to be mostly eliminated.

Price discovery in the digital asset markets has also improved in recent years. Sophisticated trading operations utilizing high-speed trading operations have connected disparate Bitcoin exchanges in near real-time. The result has been level pricing across exchanges, which will allow for a stable ETP to be traded.

### **Growing Consumer Demand**

As Bitcoin markets have evolved, so has consumer demand. Recent studies<sup>5</sup> have indicated that 15-20% of Americans own or are interested in having exposure to digital assets, with Bitcoin being one of the most desired digital assets.

A young and diverse consumer interest in digital assets (especially in Bitcoin) provides a unique opportunity, which, if seized, can lead to more Americans gaining financial literacy, being brought into the financial services umbrella, and making prudent investment decisions. Such an opportunity is a long-term goal of the Financial Literacy and Education Commission, of which the Commission is an active member.<sup>6</sup> The demand is evident, as the Commission’s late 2021 approval of a Bitcoin Futures-based ETF saw the largest “natural” day trading volume, despite potential drawbacks of the product to general investors.<sup>7,8</sup>

However, as demand for Bitcoin rises, consumer options to purchase have remained limited as general users’ traditional investment portfolio has yet to fit into the typical American’s

---

<sup>4</sup> Eventus Systems Validus Trade Surveillance, Market Risk, Algo Monitoring, and AML/Transaction Monitoring Tool, available at: <https://www.eventussystems.com/validus-overview/>.

<sup>5</sup> Pew Research, 16% of Americans say they have ever invested in, traded, or used cryptocurrency, available at: <https://www.pewresearch.org/fact-tank/2021/11/11/16-of-americans-say-they-have-ever-invested-in-traded-or-used-cryptocurrency/>. Additionally, Bitcoin users skew younger and Asian, Black and Hispanic adults are more likely than White adults to say they have ever invested in, traded, or used a digital asset. Id.

<sup>6</sup> U.S. Department of the Treasury, Financial Literacy and Education Commission, available at: <https://home.treasury.gov/policy-issues/consumer-policy/financial-literacy-and-education-commission>.

<sup>7</sup> Bitcoin Futures ETF Sees Biggest Ever 'Day One' With \$1B In 'Natural' Volume, available at: <https://markets.businessinsider.com/news/etf/bitcoin-futures-etf-sees-biggest-ever-day-one-with-1-b-in-natural-volume-1030881243>.

<sup>8</sup> Financial Times, What are the drawbacks to investors of holding a bitcoin futures ETF? <https://www.ft.com/content/5c21e984-9acf-4293-8da2-202d125c332a>.

investment accounts. This has led many consumers wishing to access “spot” Bitcoin to hold their Bitcoin on an exchange or self-custody their own Bitcoin, both options which present the threat of theft, hacking, or loss of their Bitcoin. In fact, a recent Economist Intelligence Unit research paper found that lack of knowledge, security considerations, and difficulties in knowing where to buy digital assets were the largest barriers to ownership.<sup>9</sup>

A thoughtful ETP would provide American consumers a safer, more transparent, and regulated product. This product would be managed by professionals and would ease many of the public concerns identified in the Economist article. Such a product connected into a broader investing platform would likely serve as an entry point to financial markets investing and has the potential to incentivize Americans to save more and invest in a broad range of asset classes.

### **Converting GBTC to NYSE**

To date, GBTC has provided an alternate way to gain exposure to Bitcoin.<sup>10</sup> Since September 2013, GBTC has offered direct exposure to the Bitcoin spot market through a familiar and convenient product that does not burden investors with the risk and expense of direct digital asset custody and trading. GBTC is a reporting issuer that has been subject to the requirements of Section 13 of the Exchange Act since January 2020.<sup>11</sup> Despite GBTC’s appeal and wide availability, it is not yet eligible to offer continuous share redemptions and creations, which is the mechanism ETFs employ to align share trading prices with underlying asset prices. As a result, GBTC shares usually trade at discounts below or premiums over the net asset value of the Bitcoin it holds, and these discounts and premiums have at times been substantial.

Demand for a consumer-friendly Bitcoin product has led to the GBTC holding Bitcoin valued at approximately \$24.24 billion as of January 31, 2022,<sup>12</sup> which represents approximately 3.40% of outstanding Bitcoin and makes GBTC the largest Bitcoin investment fund in the world.<sup>1314</sup>

---

<sup>9</sup> The Economist Intelligence Unit *Digitality 202*, available at: <https://digitalcurrency.economist.com/wp-content/uploads/2021/05/Digitality-Crypto-EIU-Final2-1.pdf>.

<sup>10</sup> CoinDesk, *The Grayscale Bitcoin Trust: What It Is and How It Works*, available at: <https://www.coindesk.com/business/2021/02/10/the-grayscale-bitcoin-trust-what-it-is-and-how-it-works/>.

<sup>11</sup> See BTC Fact Sheet at 1; see also Grayscale Bitcoin Trust, Am. No. 1 to Registration Statement on Form 10 (Form 10-12G/A), at 2 (Dec. 31, 2019); Notice of Filing of Proposed Rule Change to List and Trade Shares of Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E, Securities and Exchange Act Release 93504 (Nov. 2, 2021), 86 Fed. Reg. 61,804, 61,805 n.7 (Nov. 8, 2021) (SR-NYSEArca-2021-90) (the “Proposal”).

<sup>12</sup> Grayscale Investments, LLC, *Grayscale Bitcoin Trust Fact Sheet* at 2 (Feb. 2022) (“BTC Fact Sheet”), <https://grayscale.com/wp-content/uploads/2022/02/GBTC-Trust-Fact-Sheet-February-2022.pdf>.

<sup>13</sup> Based on Bloomberg L.P. terminal search for AUM of all “Bitcoin Funds.”

<sup>14</sup> From May 5, 2015 to October 31, 2021, the maximum single-day premium of the closing price of BTC shares quoted on OTCQX over the value of its Bitcoin holdings was 142% and the average of all daily premiums was 37%; the maximum single-day discount below the value of its Bitcoin holdings was 21% and the average of all daily discounts was 12%; and the average of all single-day premiums and discounts was a premium of 32%. See Grayscale Bitcoin Trust, Quarterly Report for the Quarter Ended Oct. 31, 2021 (Form 10-Q), at 19-20 (Nov. 5, 2021).

However, GBTC is currently trading at an approximately 25% discount to its NAV, resulting in billions of dollars of trapped value from existing U.S. investors. Allowing GBTC to convert to an ETP would allow GBTC to track its underlying NAV and allow the general public greater and safer access to a product that has clear demand.

### **An ETP in a Public Policy Framework**

Having an ETP product in a regulated public sector would provide a host of additional benefits, including providing the SEC the option to regulate by contract to protect consumers. This affords the SEC the ability to formally ask for many of the items listed in ADAM's Code. Such requirements could include specific requirements for trade surveillance and blockchain analytics related to underlying Bitcoins that go into or out of GBTC in connection with creations or redemptions, as well as ensuring that any underlying cash markets used to buy or sell Bitcoins in connection with creations or redemptions follow standard surveillance, cybersecurity and insurance requirements to mitigate against a cyber incident, as further described, for example, in the letter from one such underlying cash market that would be used to buy and sell Bitcoins, Coinbase Inc.<sup>15</sup>

Further, an approved GBTC ETP product would be subject to disclosures and trading data storage, not currently required by many other Bitcoin trading venues. These disclosures would require that participating firms identify business structure, conflicts of interest, and other considerations such as proprietary trading. Such disclosures would provide clear consumer protection benefits to the ETP's customers. From a trading data perspective, the ETP market participants (i.e., authorized participants and market makers) and their sourcing firms will provide trading data, which will better help SEC staff pursue its mission of ensuring orderly markets. Such data sharing and cooperation with the regulator is a bedrock that has worked for many asset classes.

Finally, the SEC would not be the first public regulator to address Bitcoin ETPs. Multiple international financial regulators in countries in Europe<sup>16</sup>, Canada<sup>17</sup>, and Brazil<sup>18</sup> have approved Bitcoin ETPs and the SEC can observe the structure and function of such approved Bitcoin ETP products.

### **Capital Formation & Merit Regulation**

---

<sup>15</sup> Letter from Paul Grewal, Chief Legal Officer, Coinbase, Re: File No. SR-NYSEArca-2021-90 (Mar. 3, 2022), <https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-20118548-271429.pdf>

<sup>16</sup> Fidelity Debuts Physically Backed Bitcoin ETP in Europe <https://financefeeds.com/fidelity-debuts-physically-backed-bitcoin-etp-europe/>

<sup>17</sup> Americans Don't Need to Wait, Canada has ETFs that Hold Bitcoin <https://www.yahoo.com/video/americans-dont-need-to-wait-canada-has-etfs-that-hold-bitcoin-183014643.html>

<sup>18</sup> Brazil Stock Exchange Lists First Bitcoin ETF in Latin America <https://www.nasdaq.com/articles/brazil-stock-exchange-lists-first-bitcoin-etf-in-latin-america-2021-06-23>

ADAM welcomed the Commission's late 2021 approval of the futures-based Bitcoin ETF but notes significant issues with the Futures ETF for consumers.<sup>19</sup> As such, ADAM supports the broader industry view that approving futures-based ETFs while continuing to deny spot-based ETPs would further perpetuate these discounts to the detriment of investors and would explicitly undermine the SEC's core mandate to protect investors.

The Commission's mission does not include merit regulation. In assessing Arca's proposal, we believe that the Commission's role is not to evaluate the characteristics and quality of the underlying Bitcoin market but instead to evaluate the ETP and the role that Arca would play in monitoring trading in shares of the ETP. For the reasons outlined above, in other industry comment letters, and in Arca's proposal, we believe that a spot Bitcoin ETP satisfies the criteria set out by the Commission in approving a futures-based ETF. This argument is further strengthened in light of the Commission's recent approval of a futures-based ETF registered under the Securities Act and the Exchange Act, as the Commission can no longer rely on differences between these two acts and the Investment Company Act as being a reason to continue to deny spot Bitcoin ETPs. We are further of the view that the Commission should look to Arca to establish the necessary protocols to protect investors and the public interest. We are of the view that Arca would exercise the responsibilities entrusted to it as a self-regulatory organization consistent with FINRA supervision. In exercising these responsibilities, Arca has powerful regulatory and business incentives to ensure the integrity of the products that it lists for trading on the exchange. Nothing in Arca's proposal suggests that Arca is unwilling or unable to fulfill its responsibilities under the Exchange Act. Furthermore, as a regulated exchange, Arca is subject to the Commission's regulatory oversight. As a result, we believe that Arca would play a critical role in the required regulatory oversight of GBTC and in doing so would satisfy the criteria set out in Section 6(b)(5) of the Exchange Act. In addition to Arca, the Commission should rely on the CFTC to exercise its traditional fraud authority to ensure the underlying Bitcoin market is free of manipulation. As a result, just like with respect to a futures-based ETF, these safeguards should satisfy the Commission in its approval of Arca's proposal. We believe that a disapproval of Arca's proposal would lead to the Commission picking winners based on its preferential treatment of one product over another.<sup>20</sup>

---

<sup>19</sup> Financial Times, What are the drawbacks to investors of holding a bitcoin futures ETF?  
<https://www.ft.com/content/5c21e984-9acf-4293-8da2-202d125c332a>

<sup>20</sup> The Commission previously appeared to signal that it is was comfortable with an ETF registered under the Investment Company Act because it believed that the Investment Company Act provides additional investor protections. See, Gary Gensler, Chair, SEC, Remarks Before the Aspen Security Forum, SEC (Aug. 3, 2021), <https://www.sec.gov/news/public-statement/gensler-aspenssecurityforum-2021-08-03>. We, however, are of the view that in this instance, the Investment Company Act would not afford additional protections to investors in an ETF registered under the Investment Company Act versus an ETP registered under the Securities Act. The reason for this view is because both products ultimately look to the underlying Bitcoin market and the Investment Company Act is not designed to address market manipulation and fraud in the underlying Bitcoin market. Regardless, as described above, in light of the Commission's recent approval of a futures-based ETF registered under the Securities Act and the Exchange Act, the Commission can no longer rely on differences between these two acts and the Investment Company Act as being a reason to continue to deny spot Bitcoin ETPs.

\*\*\*\*\*

ADAM appreciates the SEC's consideration of the comments above. ADAM and its members stand ready to answer any questions you may have, and we look forward to continued collaboration with the SEC.

Respectfully,

A handwritten signature in black ink that reads "Michelle Bond". The signature is written in a cursive, flowing style.

Michelle Bond  
Chief Executive Officer  
Association for Digital Asset Markets (ADAM)