April 25, 2022

Ms. Vanessa Countryman

Secretary

Securities and Exchange Commission

100 F Street NE

Washington, D.C. 20549-0609

Re: Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule\Change to List and Trade Shares of Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E File No. SR-NYSEArca-2021-90, Release No. 34-04151

Dear Ms. Countryman,

Fortress Investment Group LLC ("Fortress") appreciates the opportunity to comment on the rule change proposed by NYSE Arca (the "Exchange") relating to the listing of Grayscale Bitcoin Trust ("**BTC**").

Fortress is a leading, highly diversified global investment manager with approximately $54.2 billion of assets under management as of September 30, 2021. Founded in 1998, Fortress manages assets on behalf of approximately 1,800 institutional clients and private investors worldwide across a range of credit and real estate, private equity and permanent capital investment strategies.

Fortress supports approval of the BTC application. Fortress has followed with interest the Commission's past denials of other applications for rule changes to list exchange-traded spot Bitcoin products (**"Spot ETPs")**. While we understood the Commission's initial caution in addressing exchange-traded products when digital assets were still new, the Commission's current position is to approve some listed Bitcoin products but not others, thereby inadvertently favoring the needs of some investors over others. We urge the Commission to re-consider these distinctions and evaluate the Exchange's application on its own merit. By that standard, we believe that the application and BTC have made significant progress in addressing past concerns of the Commission and that the application should be approved.

I. Fair Competition

BTC is a popular, well-established spot Bitcoin product with a long track record (it was launched in 2013). During that period, we are aware of no regulatory or operational failures on its part. Because the Commission has not been able to approve publicly traded spot Bitcoin products, BTC was originally offered through a private placement. Because of limits on private placements, BTC is unable to offer a redemption program. Despite this limitation, investors have still chosen to invest in BTC and we understand that it is now the world's largest Bitcoin investment vehicle.

The Commission recently undertook the major step of allowing the listing of ETFs focused on Bitcoin futures ("**Futures ETFs**"). As registered investment companies ("**1940 Act-Registered Funds**"), the Futures ETFs are (unlike BTC) allowed to accept both creation and redemption baskets, and investors may purchase and sell shares in Futures ETFs on national exchanges. While pent-up demand for Bitcoin-related products is significant enough that the Futures ETFs have been well-received by the market, they do not yet have the wide appeal of BTC: this may be because Futures ETFs are more expensive due to the costs of rolling futures contracts over on a monthly basis, because they are more complicated than spot products and, because of the increased costs, they are likely to underperform spot products.

The Commission has explained why it allows Futures ETFs while simultaneously denying rule change applications for Spot ETFs: it notes that Section 6(b)(5) of the Securities Exchange Act of 1934 requires that exchanges' rules be designed to prevent fraud and market manipulation, and any rule changes (evaluated through the Rule 19b-4 rule change procedure) must meet this standard. But Futures ETFs, as 1940 Act-Registered Funds, are permitted to list without meeting this standard because the Commission has already approved generic rules and listing standards for that product class. Therefore, the Commission is not bound by Section 6(b)(5) to consider fraud and market manipulation when allowing the listing of Futures ETFs.

But this explanation sheds light only on why the approval process for Futures ETFs and Spot ETFs is different-- not why the result should be. While the Commission has stated that it considered each Spot ETF rule application "on its own merits and under the standards applicable to it", the Commission has itself devised those standards ambiguously and inconsistently. We do not understand why Futures ETFs-- potentially more expensive, more complicated and at risk of underperforming spot products-- are the type of product that the Commission approves in the name of investor protection. Chairman Gensler has stated that he believes that a 1940 Act-Registered Fund provides greater investor protections than products registered under only the Securities Act of 1933.[1] But it is fair to ask what evidence supports this belief. We urge the Commission to consider how investors have voted for BTC with their investment dollars since 2013. In this bear market for Bitcoin and environment of global crisis, if Bitcoin investors truly benefitted from a 1940 Act wrapper, it should have been evident by now.

II. Promoting Investor Protection

Concerns about process aside, we believe the Exchange application is strong and should be approved on its own merits. In past rejections, the Commission has stated that the Section 6(b)(5) standard may be met in one of two ways:

(1) entering into “a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets,” or

(2) showing "that the underlying market inherently possesses a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets” that is "novel and beyond those protections that exist in traditional commodity markets or equity markets[.]"[2]

In our view, BTC has strong links to a regulated market of significant size (*i.e.*, the CME). However, BTC has also created a robust approach to managing the risk of manipulation by relying on an index of Bitcoin prices from various exchanges. The application notes that the index uses a systemic methodology that includes only real, executed trades and relies on exchanges that charge trading fees. The underlying data is transparent enough for other retail products (*i.e.*, the Futures ETFs) because the spot exchanges are transparent and largely the same as the pricing sources relied upon by the Futures ETFs.[3] BTC's index is more liquid and transparent than the Futures ETFs' index, which relies solely on CME activity. CME

[1] Gary Gensler, Chair, SEC, Remarks Before the Aspen Security Forum, SEC (Aug. 3, 2021), *available at* https://www.sec.gov/news/public-statement/gensler-aspensecurity-forum-2021-08-03.
[2] Order Disapproving a Proposed Rule Change to List and Trade Shares of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 Fed. Reg. 64,539, 64,540 (Nov. 18, 2021) (SR–CboeBZX–2021–019)
[3] The CME CF Bitcoin Reference Rate (“BRR”), which determines the settlement price of CME itcoin futures and, therefore, the price of the futures ETFs, uses five spot exchanges: Coinbase, Kraken, Gemini, Bitstamp and itBit.

currently has only one-tenth of the trading volume of Bitcoin futures on Binance alone.[4] Accordingly, Futures ETFs present investors with a more costly and complex means of gaining exposure to Bitcoin while reflecting only a small portion of the actual market for the digital asset. We note the BTC index's use of a 24-hour VWAP should make any attempt at manipulation prohibitively expensive. Further, any attempt to manipulate the price of BTC interests would likely also require manipulation of the CME futures markets. Otherwise, arbitrage between the spot and derivative markets would quickly counteract the attempted manipulation. In that case, the CME would undoubtedly assist in monitoring and stopping the misconduct. But finally, we believe that BTC can itself serve an important price discovery purpose. Because of its size, BTC will create additional liquidity and (if approved) regulated status, it will allow for greater transparency and efficiency in the Bitcoin market.[5] Taken together, approving the application will remove an unfair and arbitrary advantage for certain managers, protect BTC investors and create a more transparent market for Bitcoin.

Further, we note that a number of regulated markets outside the U.S. including Brazil, Canada, Sweden, Germany, and Switzerland have already approved similar products investing in individual crypto currencies or baskets of cryptocurrencies.[6] In the next week, an Australian Bitcoin ETF will join them.[7] From our standpoint as a global firm, it is concerning to observe the U.S. lagging far behind such foreign capital market competitors in offering regulated products for an emerging technology like Blockchain. The large and growing AUM of such foreign listed products shows that investor demand is significant and continuously growing.[8] Furthermore, the smooth functioning of these foreign-listed products, especially during a difficult market environment, shows that the Commission's higher standard for approving a spot Bitcoin ETF is unwarranted.

Fortress is grateful for the opportunity to comment and strongly encourages the approval of the filing. Please feel free to contact the undersigned with any questions you may have on our comments.

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[4] Volume of Bitcoin Futures (accessed on April 22, 2022), *available at* https://www.theblockcrypto.com/data/crypto-markets/futures.

[5] These benefits echo the benefits of past innovations; note, in particular, the salutatory effects driven by the introduction of credit ETFs in a previously less liquid and less transparent market. *See e.g.*, Caitlin D. Dannhauser, The impact of innovation: Evidence from corporate bond exchange-traded funds (ETFs), Journal of Financial Economics, Vol. 125, Issue 3 (Sept. 2017), 537-560 (positing that a "one standard deviation increase in ETF ownership reduces high-yield and investment-grade bond spreads by 20.3 and 9.2 basis points, respectively, implying an average monthly price increase of 1.03% and 0.75%) *available at*https://www.sciencedirect.com/science/article/abs/pii/S0304405X17301198); Kathie O'Donnell "Issuers help turn bond ETFs into 'convenient tools" Pensions & Investments (Mar. 14, 2022**) *available at*** https://www.pionline.com/special-report/issuers-help-turn-bond-etfs-convenient-tools (quoting Adam Schenck, a Chicago-based principal and managing director at Milliman Financial Risk Management LLC "There have been concerns that have had to be allayed related to volumes in volatile periods, liquidity and spreads, but those myths have been debunked by action through ETFs' track records as much as any words[.]")

[6] "Fidelity set to launch physical spot bitcoin ETF", Financial Times (Dec. 2, 2021) *available at* https://www.ft.com/content/f2a6d440-804e-4e32-93f1-a9ee2bbf0715

[7] "Bitcoin ETFs get the green light". Financial Review (Apr. 21, 2022) *available at* https://www.afr.com/chanticleer/bitcoin-etfs-get-the-green-light-20220419-p5aela.

[8] Id. (citing TrackInsight that Canadian ETFs in Bitcoin and Ether had combined assets of $5.6bn; corresponding products in Sweden, Germany, Switzerland, Jersey and Liechtenstein had an additional $11.4bn in assets),

Sincerely,

Peter L. Briger, Jr.

Chief Executive Officer, Fortress Investment Group LLC