

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94151; File No. SR-NYSEArca-2021-90)

February 4, 2022

Self-Regulatory Organizations; NYSE Arca, Inc.; 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

On October 19, 2021, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of Grayscale Bitcoin Trust (BTC) (“Trust”) under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the Federal Register on November 8, 2021.<sup>3</sup>

On December 15, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 93504 (Nov. 2, 2021), 86 FR 61804 (“Notice”). Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 93788, 86 FR 72291 (Dec. 21, 2021). The Commission designated February 6, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

I. Summary of the Proposal

As described in more detail in the Notice,<sup>7</sup> the Exchange proposes to list and trade the Shares of the Trust under NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is for the value of the Shares (based on bitcoin per Share) to reflect the value of the bitcoins held by the Trust, as determined by reference to the “Index Price,” less the Trust’s expenses and other liabilities.<sup>8</sup> The “Index Price” is the U.S. dollar value of a bitcoin as represented by the “Index,” calculated at 4:00 p.m., New York time, on each business day.<sup>9</sup> According to the Exchange, the Index Provider develops, calculates, and publishes the Index on a continuous basis using the volume-weighted price at certain bitcoin spot trading platforms selected by the Index Provider. As of June 30, 2021, the bitcoin spot trading platforms included in the Index were: Coinbase Pro, Bitstamp, Kraken, and LMAX Digital (“Constituent Platforms”). The Index applies an algorithm to the 24-hour volume-weighted average price of bitcoin on the Constituent Platforms calculated on a per second basis.<sup>10</sup> To calculate volume weighted price, the weighting algorithm is applied to the price and volume of all inputs for the

---

<sup>7</sup> See Notice, supra note 3.

<sup>8</sup> See id. at 61805. Grayscale Investments, LLC (“Sponsor”) is the sponsor of the Trust and is a wholly-owned subsidiary of Digital Currency Group, Inc. Delaware Trust Company (“Trustee”) is the trustee of the Trust, the custodian for the Trust is Coinbase Custody Trust Company, LLC (“Custodian”), and the distribution and marketing agent for the Trust is Genesis. The Trust operates pursuant to a trust agreement (“Trust Agreement”) between the Sponsor and the Trustee. See id.

<sup>9</sup> See id. at 61810. The index provider for the Trust is TradeBlock, Inc. (“Index Provider”). See id. at 61805. While the Exchange does not name the Index that the Trust would use to value the bitcoin held by the Trust, the Exchange provides that the value of the Index, as well as additional information regarding the Index, may be found at: <https://tradeblock.com/markets/index/xbx>. See id. at 61817.

<sup>10</sup> See id. at 61809.

immediately preceding 24-hour period at 4:00 p.m., New York time, on the trade date.<sup>11</sup> The Trust’s assets will consist solely of bitcoins; Incidental Rights;<sup>12</sup> IR Virtual Currency;<sup>13</sup> proceeds from the sale of bitcoins, Incidental Rights, and IR Virtual Currency pending use of such cash for payment of Additional Trust Expenses<sup>14</sup> or distribution to the shareholders; and any rights of the Trust pursuant to any agreements, other than the Trust Agreement, to which the Trust is a party. Each Share represents a proportional interest, based on the total number of Shares outstanding, in each of the Trust’s assets as determined in the case of bitcoin by reference to the Index Price, less the Trust’s expenses and other liabilities (which include accrued but unpaid fees and expenses).<sup>15</sup>

On each business day at 4:00 p.m., New York time, or as soon thereafter as practicable, the Sponsor will evaluate the bitcoin held by the Trust and calculate and publish the “Digital Asset Holdings”<sup>16</sup> of the Trust. The Trust’s website, as well as one or more major market data vendors, will provide an intra-day indicative value (“IIV”) per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange’s

---

<sup>11</sup> See id.

<sup>12</sup> “Incidental Rights” are rights to acquire, or otherwise establish dominion and control over, any virtual currency or other asset or right, which rights are incident to the Trust’s ownership of bitcoins and arise without any action of the Trust, or of the Sponsor or Trustee on behalf of the Trust. See id. at 61805 n.9.

<sup>13</sup> “IR Virtual Currency” is any virtual currency tokens, or other asset or right, acquired by the Trust through the exercise (subject to the applicable provisions of the Trust Agreement) of any Incidental Right. See id. at 61805 n.10.

<sup>14</sup> “Additional Trust Expenses” are any expenses incurred by the Trust in addition to the Sponsor’s fee that are not Sponsor-paid expenses. See id. at 61805 n.11.

<sup>15</sup> See id. at 61805, 61807.

<sup>16</sup> The Exchange does not define this term in the proposed rule change. Additional information about the calculation of the Digital Asset Holdings can be found in the Notice. See id. at 61807.

Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.). The IIV will be calculated using the same methodology as the Digital Asset Holdings of the Trust, specifically by using the prior day's closing Digital Asset Holdings per Share as a base and updating that value during the NYSE Arca Core Trading Session to reflect changes in the value of the Trust's Digital Asset Holdings during the trading day.<sup>17</sup> In addition, according to the Exchange, "each investor will have access to the current Digital Asset Holdings of the Trust through the Trust's website, as well as from one or more major market data vendors."<sup>18</sup>

The Trust will issue Shares to authorized participants from time to time, but only in one or more Baskets (each "Basket" being a block of 100 Shares).<sup>19</sup> The creation of Baskets will be made only in exchange for the delivery to the Trust of the number of whole and fractional bitcoins represented by each Basket being created. The Trust may redeem Shares from time to time but only in Baskets. The redemption of Baskets requires the distribution by the Trust of the number of bitcoins represented by the Baskets being redeemed. The redemption of a Basket will be made only in exchange for the distribution by the Trust of the number of whole and fractional bitcoins represented by each Basket being redeemed.<sup>20</sup>

## II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2021-90 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>21</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of

---

<sup>17</sup> See id. at 61817.

<sup>18</sup> See id.

<sup>19</sup> See id. at 61815.

<sup>20</sup> See id. at 61816.

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>22</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices" and "to protect investors and the public interest."<sup>23</sup>

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>24</sup> in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin

---

<sup>22</sup> Id.

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> See Notice, supra note 3.

markets, the bitcoin markets' susceptibility to manipulation, and thus the suitability of bitcoin as an underlying asset for an exchange-traded product?

2. The Exchange asserts that “the Index represents a novel means to prevent fraud and manipulation from impacting a reference price for [b]itcoin and that it offers protections beyond those that exist in traditional commodity markets or equity markets.”<sup>25</sup> Specifically, the Exchange states that the Index Price is determined through a process in which trade data is cleansed and compiled “in such a manner as to algorithmically reduce the impact of anomalous or manipulative trading . . . by adjusting the weight of each data input based on price deviation relative to the observable set, as well as recent and long-term trading volume at each venue relative to the observable set”<sup>26</sup> and that the Index Price only includes data from executed trades on Constituent [Platforms] that charge trading fees to its users “in order to attach a real, quantifiable cost to any manipulation attempts.”<sup>27</sup> The Exchange concludes that, “[b]y referencing multiple trading venues and weighting them based on trade activity, . . . the impact of any potential fraud, manipulation or anomalous trading activity occurring on any single venue is reduced.”<sup>28</sup> What are commenters' views of these assertions and conclusion?

3. The Exchange also asserts that, although the global spot bitcoin market “is not inherently resistant to fraud and manipulation, the Index serves as a means sufficient to mitigate the impact of instances of fraud and manipulation on a reference price for [b]itcoin.”<sup>29</sup> Are the characteristics of the Index that the Exchange identifies sufficient to support a determination that

---

<sup>25</sup> See id. at 61812.

<sup>26</sup> See id. at 61808-09.

<sup>27</sup> See id. at 61809-10.

<sup>28</sup> See id.

<sup>29</sup> See id. at 61818.

the proposal to list and trade the Shares is designed to protect investors and the public interest and is consistent with the other applicable requirements of Section 6(b)(5) of the Act?

4. The Exchange asserts that the Sponsor “conducted a lead/lag analysis of per minute data comparing the [b]itcoin futures maker, as represented by the [Chicago Mercantile Exchange (“CME”)] futures market, to the [b]itcoin spot market, as represented by the Index” and that “[b]ased on this analysis, the Sponsor has concluded that there does not appear to be a significant lead/lag relationship between the two instruments for the period of November 1, 2019 to August 31, 2021.”<sup>30</sup> What are commenters’ views on this assertion?

5. The Exchange states that, “[a]lthough there is no significant lead/lag relationship” between the bitcoin futures and the bitcoin spot market, “the CME futures market represents a large, surveilled and regulated market.”<sup>31</sup> The Exchange also asserts that “[g]iven the significant size of the CME futures markets...there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, since arbitrage between the derivative and spot markets would tend to counter an attempt to manipulate the spot market alone.”<sup>32</sup> What are commenters’ views regarding these assertions? Do these assertions provide an appropriate basis for determining that the proposal is consistent with the applicable requirements of Section 6(b)(5) of the Act? Based on data provided by the Exchange, do commenters agree that the CME bitcoin futures market now represents a regulated market of significant size?<sup>33</sup> What are commenters’ views on whether there is a reasonable

---

<sup>30</sup> See id. at 61814.

<sup>31</sup> See id.

<sup>32</sup> See id. at 61815.

<sup>33</sup> See id. at 61814-15..

likelihood that a person attempting to manipulate the Shares would also have to trade on CME to manipulate the Shares?

6. The Exchange states that, if “the Commission is open to reviewing and potentially approving proposals for [b]itcoin-based ETPs registered under the [Investment Act of 1940], then it should take a similar view towards proposals for [b]itcoin based ETPs registered under the [Securities Act of 1933], given that both products would be reliant on [b]itcoin’s underlying price in the spot markets.”<sup>34</sup> The Exchange further states that “any potential fraud or manipulation in the underlying [bitcoin spot market] would impact both types of ETP proposals”<sup>35</sup> What are commenters’ views on such assertions?

### III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>36</sup>

---

<sup>34</sup> See id. at 61815.

<sup>35</sup> See id.

<sup>36</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).



Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-90 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2021-90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-90 and should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

J. Matthew DeLesDernier

Assistant Secretary

---

<sup>37</sup> 17 CFR 200.30-3(a)(57).