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VIA ECF

Mr. Mark Langer  
Clerk of Court

U.S. Court of Appeals for the District of Columbia Circuit  
333 Constitution Avenue, NW  
Washington, D.C. 20001-2866

Re: *Grayscale Investments, LLC v. Securities and Exchange Commission*, No. 22-1142

Dear Mr. Langer:

Pursuant to Federal Rule of Appellate Procedure 28(j), Petitioner Grayscale Investments, LLC writes to notify the Court that the Securities and Exchange Commission recently allowed the first leveraged cryptocurrency exchange-traded fund ("ETF"), Volatility Shares' 2x Bitcoin Strategy ETF (BITX), to begin trading on June 27, 2023.

The 2x Bitcoin Strategy ETF, which seeks to double the performance of the S&P CME Bitcoin Futures Daily Roll Index each day, is leveraged. As a result, it exposes investors to an even riskier investment product than traditional bitcoin futures exchange-traded products ("ETPs"), which encompass risks related to both the futures and spot bitcoin markets. *See, e.g., Bloomberg, Tiny Issuer to Debut the Only US Double-Bitcoin Futures ETF* (June 23, 2023). According to the ETF's registration statement, the Fund "may only be suitable for knowledgeable investors" who "actively manage and monitor their investments," as "[a]n

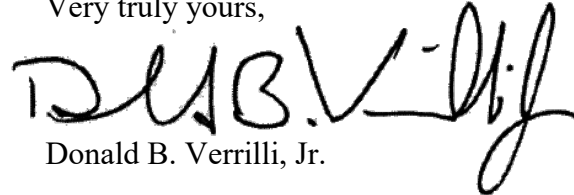
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investor in the Fund could potentially lose the full value of their investment within a single day.” Volatility Shares Trust, Registration Statement (Form N-1A), at 1 (Mar. 29, 2023).<sup>1</sup>

The fact that the Commission has allowed a leveraged bitcoin futures ETP to begin trading demonstrates that the Commission continues to arbitrarily treat spot bitcoin ETPs differently than bitcoin futures ETPs. *See* Opening Br. 23-39; Reply Br. 4-21. The 2x Bitcoin Strategy ETF invests in CME bitcoin futures contracts, “the value of which depends on, or is derived from, the underlying reference asset”—*i.e.*, “bitcoin.” Registration Statement, at 18. The 2x Bitcoin Strategy ETF is therefore exposed to even more risks of the bitcoin markets than Grayscale’s proposed spot bitcoin ETP.

While the Commission could theoretically correct its discriminatory treatment of spot bitcoin ETPs by rescinding its approval of *all* bitcoin-based ETPs, *see* Oral Arg. Rec. 6:55-8:40 (Mar. 7, 2023), the Commission’s apparent willingness to permit even a leveraged bitcoin futures ETP—a particularly high-risk version of a bitcoin futures product—makes clear that the Commission has no intention of doing so. Thus, the only way to eliminate the Commission’s unequal treatment of bitcoin-based ETPs is to allow proposed spot bitcoin ETPs like Grayscale’s to begin trading.

Very truly yours,

A handwritten signature in black ink, appearing to read "D.B.V. Jr.", written in a cursive style.

Donald B. Verrilli, Jr.

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<sup>1</sup> [https://www.sec.gov/Archives/edgar/data/1884021/000138713123004119/btix-485apos\\_032323.htm](https://www.sec.gov/Archives/edgar/data/1884021/000138713123004119/btix-485apos_032323.htm).