



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

FIR TREE VALUE MASTER FUND, L.P.,)
FIR TREE CAPITAL OPPORTUNITY)
MASTER FUND, L.P., AND FIR TREE)
CAPITAL OPPORTUNITY MASTER)
FUND III, L.P.,)

Plaintiffs,)

v.)

C.A. No. 2022-_____-____

GRAYSCALE INVESTMENTS, LLC, AND)
GRAYSCALE BITCOIN TRUST (BTC),)

Defendants.)

VERIFIED COMPLAINT

Fir Tree Value Master Fund, L.P. ("FT Value Fund"), Fir Tree Capital Opportunity Master Fund, L.P. ("FT COF"), and Fir Tree Capital Opportunity Master Fund III, L.P. ("FT COF III") and, together with FT Value Fund and FT COF, the "Plaintiffs"), by and through their undersigned counsel, hereby bring this Verified Complaint against Grayscale Investments, LLC (f/k/a Alternative Currency Asset Management, LLC), a Delaware limited liability company ("Grayscale"), and the Grayscale Bitcoin Trust (BTC) (f/k/a Bitcoin Investment Trust), a Delaware statutory trust (the "Trust" and, together with Grayscale, the "Defendants"), pleading knowledge as to themselves, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. The age of unaccountability in digital asset markets is over. Plaintiffs have now sought twice to exercise their clear and unambiguous information rights under the operative agreement of the Grayscale Bitcoin Trust and Delaware law, only to be stonewalled. Plaintiffs have serious questions about Grayscale’s mismanagement of the Trust and the troubling reports about liquidity issues within Digital Currency Group and its corporate affiliates, which have been exacerbated by a recent raft of bankruptcy filings in the digital assets market. Plaintiffs are entitled to answers, but Grayscale has offered none. What is Grayscale hiding?

2. Plaintiffs bring this action to enforce their information rights under Sections 7.2(a) and 8.1 of the Fifth Amended and Restated Declaration of Trust and Trust Agreement of Bitcoin Investment Trust, dated September 12, 2018, as amended from time to time (the “Fifth Trust Agreement”), and Section 3819 of the Delaware Statutory Trust Act, 12 Del. C. § 3819 (“Section 3819”).

3. The Grayscale Bitcoin Trust has gone wildly off the rails. The Trust was founded in 2013 to provide institutional and accredited individual investors—not retail investors—with exposure to Bitcoin without the challenges and risks of trading and holding Bitcoin directly. The Trust’s purpose was simple: to hold

Bitcoin, create Shares¹ representing ownership of Bitcoin, and redeem Shares in response to Shareholders' requests. The Trust's investment objective was "for the Shares to reflect the performance of the market price of bitcoin, less the Trust's expenses."²

4. Nearly a decade later, the Trust has flagrantly disregarded its purpose and utterly failed to achieve its stated objectives. In fact, the opposite has occurred. Grayscale, the Trust's Sponsor since inception, prohibits investors from redeeming their Shares. The Trust's Share price has collapsed by 80% within the past year alone. Shares now trade at a steep 40-45% discount to net asset value ("NAV"). This means that for every dollar of Bitcoin owned by the Trust, its corresponding Shares are worth only 55 cents.

5. In the absence of any legal prohibition that would restrict the Trust from accommodating redemptions, Grayscale appears to be maintaining this untenable status quo to enrich itself, its management, and its affiliates. For administering the Trust's day-to-day operations, Grayscale collects a 2.00% Sponsor's Fee calculated by reference to the market value of the Trust's Bitcoin holdings—rather than the market price of the Trust's Shares. This means that for that same 55 cents, Grayscale

¹ Capitalized terms that are not defined in this preliminary statement are defined below.

² See Financial Statements of the Bitcoin Investment Trust for the period ending December 31, 2013.

collects its fees on the basis of a whole dollar. As a result, Grayscale has collected hundreds of millions of dollars in excessive fees—siphoning off the Trust’s assets while failing to do its job. In 2021 alone, Grayscale collected a whopping ***\$615.42 million*** in fees from the Trust.³

6. Grayscale has kept its cash machine running by relying almost exclusively on affiliates and insiders. Grayscale is a wholly owned subsidiary of Digital Currency Group, Inc. (“DCG”), a holding company founded by Barry E. Silbert for hundreds of digital-currency focused investments. Mr. Silbert is also the founder of Grayscale, the Trust, and their affiliated broker-dealer, Genesis Global Trading, Inc. (f/k/a SecondMarket, Inc.) (“Genesis”). Until recently, Genesis was the sole entity that could accept orders to create or redeem Shares. That role is now fulfilled by Grayscale’s own wholly owned broker-dealer, Grayscale Securities, LLC (“Grayscale Securities”). Genesis remains the sole entity that can source Bitcoin for the creation of Shares.

7. Grayscale is deeply interconnected with these and other entities in Mr. Silbert’s cryptocurrency empire. In particular, Grayscale has continuously relied on DCG’s wholly owned subsidiaries to (i) create Shares, (ii) distribute and market Shares, (iii) source Bitcoin for the creation of Shares, and (iv) calculate the value of

³ Form 10-K at 71 & F-7, Grayscale Bitcoin Trust (Dec. 31, 2021) (“2021 Form 10-K”).

the Trust’s Bitcoin holdings and, therefore, the Sponsor’s Fee. This interdependence among related parties is especially troubling given recent events in the crypto ecosystem, including the rapid collapse of FTX and Three Arrows Capital (“3AC”).

8. Despite these substantial conflicts of interest, Grayscale and the Trust appear to have no independent oversight. Until last year, Mr. Silbert served as the Chairman and Chief Executive Officer of both DCG and Grayscale, as well as a member of Grayscale’s Audit Committee.⁴ Grayscale’s Board of Directors and Audit Committee, to this day, consist entirely of insiders, including Grayscale’s CEO, COO, and CFO, and DCG’s President.⁵ The Trust has no independent Board of Directors and has stripped its Delaware trustee of nearly all oversight authority. Grayscale itself admits that it does not have formal procedures to “resolve all potential conflicts of interest,”⁶ leaving shareholders to rely on Grayscale’s management team to act in good faith with no checks and balances.

9. Exploiting this limited oversight, Grayscale has consistently entrenched and enriched itself (and affiliates) at Shareholders’ expense over many years. In October 2017, for example, Grayscale amended the Trust Agreement to limit the Shareholders’ power to remove Grayscale and to provide itself with power to

⁴ 2021 Form 10-K at 78.

⁵ *Id.*; Form 10-Q at 23, Grayscale Bitcoin Trust (Sept. 30, 2022) (“Q3 2022 Form 10-Q”).

⁶ 2021 Form 10-K at 80.

unilaterally “suspend or refuse creation orders and redemption orders for any reason.” Less than a year later, Grayscale amended the Trust Agreement again, to “*prohibit* the Trust from operating a redemption program for the Shares unless otherwise determined by the Sponsor following receipt of regulatory approval therefor, which the Trust may, but shall not be required to, seek[.]”

10. Grayscale self-imposed this redemption prohibition despite there being no actual regulatory bar to redemptions. Provided the Trust complies with Regulation M, 17 C.F.R. § 242.100, *et seq.*, (“Reg M”) by not selling new Trust shares at the same time it permits Share redemptions, Share redemptions are permissible. That is why Grayscale emphasizes in SEC filings that it cannot offer an “*ongoing* redemption program”⁷ and in correspondence with Plaintiffs says that it is “legally prohibited from resuming the *original redemption program*.” (Ex. C at 2.) Neither statement means that Grayscale is actually prohibited from allowing redemptions. As such, Grayscale has characterized Plaintiffs’ position as “a disagreement with Grayscale’s business judgement regarding how to implement a regulatorily-compliant [sic] means for redemptions.” (*Id.*)

11. Between 2018 and 2021, the Trust sold an immense number of new Shares to accredited investors and “flood[ed] the market with supply.”⁸ Grayscale

⁷ 2021 Form 10-K at 1-2, 22.

⁸ Our Head of Investor Relations Explains Fund Discounts and Premiums, YouTube.com – Grayscale Investments (Apr. 7, 2022),

also began marketing its investment products (and the Trust’s Shares in particular) to individual investors who were unable to acquire Shares directly from the Trust, resulting in many more investors acquiring Shares. For example, Grayscale ran advertisements across several major TV networks as part of its #DropGold campaign, which described Bitcoin as “secure, borderless, and, unlike gold,” an investment that “actually has utility.”⁹ Mr. Silbert and Michael Sonnenshein, Grayscale’s Chairman and Chief Executive Officer, personally promoted that ad campaign on social media.¹⁰ The value of the Trust’s Bitcoin under management increased by tens of billions of dollars during Grayscale’s push to issue new shares, triggering an over 2,000% increase in the U.S. dollar value of Grayscale’s annual Sponsor’s Fee.

12. Because the Trust continued to prohibit redemptions, the Shares began trading at a significant discount to NAV. To justify its continued refusal to allow redemptions while cratering its premium, Grayscale launched a new campaign to convert the Trust into an exchange-traded fund (ETF) that tracks the actual market

<https://youtu.be/m6a6uzcGYQ0?t=34>.

⁹ See “Grayscale dusts off its #dropgold campaign with fresh ad push,” Cointelegraph.com (Dec. 1, 2020), <https://cointelegraph.com/news/grayscale-dusts-off-their-dropgold-campaign-with-fresh-ad-push> (last accessed Dec. 2, 2022).

¹⁰ See Barry Silbert (@BarrySilbert), Twitter (Dec. 1, 2020), <https://twitter.com/BarrySilbert/status/1333781962394394624> (Silbert and Sonnenshein sharing the #DropGold advertisement on Twitter) (last accessed Dec. 2, 2022)

price of Bitcoin, arguing it would obtain Reg M relief as part of its application. The SEC recently rejected that application to convert the Trust into an ETF, along with over a dozen applications related to spot Bitcoin ETFs offered by other issuers.

13. Despite this, Grayscale has continued its wasteful ETF conversion campaign, including by appealing the SEC's administrative decision. That strategy will likely cost years of litigation, millions of dollars in legal fees, countless hours of lost management time, and goodwill with regulators. All the while, Grayscale will continue to collect fees from the Trust's dwindling assets.

14. Plaintiffs are private funds managed by Fir Tree Capital Management, L.P. ("Fir Tree Partners") and Shareholders of the Trust. Fir Tree Partners is an investment firm that manages over \$3 billion in assets primarily for large pensions and government retirement programs. Plaintiffs' ultimate investors are teachers, firefighters, police officers, and other civil servants who provide vital services to American society.

15. Earlier this year, Fir Tree Partners realized that many of its ultimate investors had become Shareholders of the Trust and had been harmed by Grayscale's Shareholder-unfriendly actions. As such, Fir Tree Partners decided to approach Grayscale to address its concerns about the Trust's structure and redemption prohibition. Since then, Plaintiffs have submitted two information requests to Grayscale and the Trust to, among other things, further investigate Grayscale's

mismanagement of the Trust, evaluate troubling reports about DCG's and its affiliates' liquidity issues, and organize with other Shareholders. Grayscale has not provided a substantive response to any of Plaintiffs' information requests.

16. Accordingly, Plaintiffs now bring this action to enforce their information rights under Sections 7.2(a) and 8.1 of the Fifth Trust Agreement and Section 3819. Plaintiffs respectfully submit that Grayscale and the Trust should be compelled to comply with the Plaintiffs' information requests attached hereto as Exhibit A.

THE PARTIES

17. Plaintiff FT Value Fund is a Cayman Islands exempted limited partnership and private investment fund. FT Value Fund is a beneficial owner of 1,265,313 shares of the Trust.

18. Plaintiff FT COF is a Cayman Islands exempted limited partnership and private investment fund. FT COF is the beneficial owner of 753,402 shares of the Trust.

19. Plaintiff FT COF III is a Cayman Islands exempted limited partnership and private investment fund. FT COF III is the beneficial owner of 1,230,945 shares of the Trust.

20. Non-party Fir Tree Capital Management L.P. ("Fir Tree Partners") is a Delaware limited partnership, a private investment firm, and an SEC-registered

investment adviser. Fir Tree Partners serves as the sole investment adviser to the Plaintiffs and, as such, has a fiduciary duty to implement their investment strategy and manage their trading activities and investment portfolios in accordance with their best interests.

21. Defendant Grayscale Bitcoin Trust is a Delaware statutory trust. The Trust was formed on September 13, 2013, and commenced operations on September 25, 2013. The Trust is an investment vehicle that holds Bitcoin (BTC) and, in exchange for Bitcoin, issues common units of fractional undivided beneficial interest in the Trust (“Shares”).

22. Defendant Grayscale is a Delaware limited liability company. Grayscale describes itself as the world’s “largest digital currency asset manager” and has been responsible for sponsoring and managing the Trust’s day-to-day activities pursuant to the Trust Agreement since the Trust’s inception. Grayscale was founded by Barry E. Silbert and is a wholly owned subsidiary of non-party DCG.

23. Non-party DCG is a Delaware corporation. DCG is an investment company founded by Barry E. Silbert that is focused on digital asset markets. DCG is the ultimate parent company of several Trust affiliates and their subsidiaries, including Grayscale, Grayscale Securities, Genesis, Genesis Global Capital, LLC (“Genesis Capital”), CoinDesk, Inc. (“CoinDesk”), and CoinDesk Indices, Inc. (“CoinDesk Indices”).

24. Non-party Grayscale Securities is a Delaware limited liability company, an SEC-registered broker-dealer, and a wholly owned subsidiary of Grayscale. Effective October 3, 2022, Grayscale Securities became the Trust’s sole “Authorized Participant” under the Fifth Trust Agreement, and therefore the only entity that can place orders to create or redeem “Baskets” (i.e., blocks of 100 Shares), as well as the Trust’s sole distributor and marketer of Shares.

25. Non-party Genesis is a Delaware corporation, a registered broker-dealer, and a wholly owned subsidiary of DCG. Genesis was the Trust’s sole “Authorized Participant” under the Fifth Trust Agreement, and therefore the only entity that could place orders to create or redeem Baskets, as well as the Trust’s sole distributor and marketer of Shares, until October 3, 2022. Effective October 3, 2022, Genesis is the Trust’s sole “Liquidity Provider,” and therefore the only entity engaged to source Bitcoin in connection with the creation of Shares.

26. Non-party Barry E. Silbert is the Founder and Chairman of the Board of Grayscale, the Founder and Chief Executive Officer of DCG, and the Founder of Genesis.

FACTUAL BACKGROUND

A. Bitcoin and the Grayscale Bitcoin Trust.

27. Bitcoin is an open-source digital asset that exists on a public transaction ledger known as the Blockchain, on which peer-to-peer Bitcoin transactions are

verified through cryptographic means and recorded. An investor can create (or “mine”) new Bitcoin by solving complicated math problems that verify transactions on the Blockchain public ledger. As new Bitcoin have entered circulation, the process of “mining” new Bitcoin has become increasingly time-, capital-, and energy-intensive. As such, investors often purchase Bitcoin already in circulation through peer-to-peer transactions.

28. While the market for Bitcoin has developed substantially over the past decade, acquiring, protecting, and selling Bitcoin remains risky for most individual investors. Bitcoin held by digital currency exchanges or in internet-connected “digital wallets” are attractive targets for thieves. Transactions in Bitcoin are only loosely regulated—deposits are not insured by the Federal Deposit Insurance Corporation (FDIC) or Securities Investor Protection Corporation (SIPC)—and Bitcoin held for the benefit of investors by digital asset exchanges and other entities have proven difficult to recover when lost.

29. The challenges associated with direct Bitcoin trading and ownership have resulted in an array of private investment vehicles that provide exposure to Bitcoin with fewer perceived risks. In September 2013, Mr. Silbert founded Grayscale and established the Trust to provide investors with “access to the bitcoin market without dealing with the sometimes unreliable online exchanges and the

complex security issues involved in storing digital money.”¹¹ The Trust’s investment objective, which it has thus far failed to achieve, was for its “Shares to reflect the performance of the market price of bitcoin, less the Trust’s expenses.”¹²

30. Grayscale has been the Trust’s Sponsor since its inception. The Trust has no independent Board of Directors and its Trustee has limited authority to manage the Trust’s affairs. Grayscale manages all of the Trust’s day-to-day operations pursuant to the Trust Agreement. For example, Grayscale publishes and files the Trust’s quarterly and annual reports, communicates with the Trust’s investors, selects and manages the Trust’s service providers, and pays most of the Trust’s ordinary business expenses. Mr. Silbert remains the Chairman of the Board of Grayscale and, until recently, was its Chief Executive Officer and a member of its Audit Committee.

31. In 2021, Michael Sonnenshein replaced Mr. Silbert as Grayscale’s CEO. Mr. Sonnenshein also sits on Grayscale’s Board of Directors and Audit Committee.

32. The Trust pays to Grayscale on a monthly basis a Sponsor’s Fee that is

¹¹ “Fund to Let Investors Bet on Price of Bitcoins,” N.Y. TIMES (Sept. 25, 2013), available at <https://archive.nytimes.com/dealbook.nytimes.com/2013/09/25/fund-to-let-investors-bet-on-price-of-bitcoins/> (last accessed Dec. 1, 2022).

¹² See Financial Statements of the Bitcoin Investment Trust for the period ending December 31, 2013.

payable in Bitcoins, which accrues daily at an annual rate of 2.00% and is based on the value of the Trust's actual Bitcoin holdings, rather than the market price of the Shares. The Trust calculates the Sponsor's Fee based on the CoinDesk Bitcoin Price Index (XBK) (the "Index") published by CoinDesk Indices, a wholly owned subsidiary of DCG. In 2021, Grayscale collected a Sponsor's Fee of \$615.42 million.

33. The Trust's purpose is to hold Bitcoin and create and redeem Shares. The Trust creates Shares through private placements in which "accredited investors" as defined in Rule 501(a) of Regulation D under the Securities Act cause the Authorized Participant to transfer Bitcoin to the Trust. The Shares are "restricted securities" when they are issued, meaning they cannot be resold unless the resale is exempt from registration under the Securities Act and state securities laws. Once the Shares become unrestricted, they are traded over-the-counter on the OTCQX U.S. Premier marketplace.

34. Grayscale has engaged its own subsidiary, Grayscale Securities, as the Trust's sole "Authorized Participant," meaning that it is the only broker-dealer that can accept orders to create new Shares. Grayscale has also engaged Grayscale Securities as the Trust's sole marketer and distributor of Shares. Until October 3, 2022, the Trust's sole Authorized Participant, marketer, and distributor was Genesis, another wholly owned DCG subsidiary that Mr. Silbert founded in 2013. Grayscale

and the Trust have not permitted Shareholders to redeem their Shares since September 2014.

35. The Trust is not the only private investment vehicle through which investors can obtain access to digital assets. Grayscale has established sixteen additional investment products, most of which are linked to other digital assets. In addition, other investment firms have established Bitcoin and digital asset trusts with structures similar to the Trust.

36. The SEC has also recently approved rule changes that permit the listing of Bitcoin futures ETFs, which are publicly traded investment vehicles with redeemable shares that are designed to track the price of Bitcoin futures contracts. In contrast, the SEC has rejected over a dozen rule change applications that would have permitted the listing of so-called “spot” Bitcoin ETFs—publicly traded investment vehicles with redeemable shares that are designed to track the spot price of Bitcoin—based on concerns about the potential for fraud and manipulation in the spot markets.

B. Grayscale Prohibits Redemptions Based on Self-Serving Pretext to Enrich Itself and Affiliates.

37. The Trust originally created and redeemed Shares on a continuous basis upon the order of an Authorized Participant (*i.e.*, Genesis) and in blocks of 100 Shares called “Baskets.” The Trust created 1,474,600 Shares and permitted the

redemption of 92,200 Shares between 2013 and 2014.¹³ On September 23, 2014, however, Genesis Trading received a letter from the staff of the SEC’s Office of Compliance Inspections and Examinations that concluded the Trust’s then-existing continuous redemption program appeared to violate Reg M because it permitted the Trust to simultaneously create and redeem Shares. The Trust suspended its redemption program the next day.

38. On January 1, 2016, Grayscale amended the Trust Agreement, resulting in the Third Amended and Restated Declaration of Trust and Trust Agreement of Bitcoin Investment Trust (the “Third Trust Agreement”). The Third Trust Agreement continued to provide that one “purpose” of the Trust was “to distribute Bitcoin upon redemptions of Units” and that “[o]n any Business Day, a Participant may submit an order to redeem a Basket (a ‘Redemption Order’) for Redemption Baskets from the Trust that the Participant wishes to redeem” (Third Trust Agr. §§ 1.5 & 6.1.) The Third Trust Agreement further provided that any amendments that “adversely affect” the rights of Shareholders and “any material changes in the Trust’s purpose or structure” would “occur only upon the written approval or affirmative vote of Limited Owners holding Units equal to at least a majority (over 50%) of the Shares.” (*Id.* § 10.1.).

¹³ See Financial Statements of the Bitcoin Investment Trust for the period ending December 31, 2013, at 9; Annual Report of Bitcoin Investment Trust at 83 (2014).

39. In July 2016, the Trust and Genesis entered into an SEC settlement that resolved their prior Reg M violations. The SEC ordered (a) the Trust and Genesis to “cease and desist from committing or causing any violations and any future violations of Rule 102 of Regulation M of the Exchange Act,” and (b) Genesis to pay disgorgement of \$51,650.11 and prejudgment interest of \$2,105.68, for a total of \$53,755.79 to the SEC (the “Cease-and-Desist Order”).

40. The Cease-and-Desist Order did not enjoin the Trust or Genesis from operating a future redemption program that *complies* with Reg M.

41. Grayscale also began to amend its governing documents to further entrench itself as Sponsor and prevent the Trust from allowing redemptions. On October 4, 2017, Grayscale sent a notice to shareholders proposing to amend the Third Trust Agreement to, among other things, provide Grayscale with the power to “suspend or refuse creation orders and redemption orders for any reason.”¹⁴ Grayscale’s proposed amendments also limited shareholders’ “ability to remove the Sponsor except in connection with” certain specified events.¹⁵ While such amendments adversely affected the Shareholders’ rights, Grayscale told Shareholders that they would become effective even absent an affirmative vote of a majority of Shareholders. Grayscale purported to adopt the Fourth Amended and

¹⁴ Notice to Shareholders of Bitcoin Investment Trust at (Oct. 4, 2017).

¹⁵ *Id.*

Restated Declaration of Trust and Trust Agreement of Bitcoin Investment Trust (the “Fourth Trust Agreement”), which included the proposed amendments, on October 24, 2017.

42. On September 12, 2018, Grayscale purported to amend the Trust Agreement again to “*prohibit* the Trust from operating a redemption program for the Shares unless otherwise determined by the Sponsor following receipt of regulatory approval therefor, which the Trust may, but shall not be required to, seek[.]”¹⁶ Section 5.1 of the new Fifth Trust Agreement further stated that “the Trust shall not offer a redemption program for the Shares” unless “otherwise determined by the Sponsor in its sole discretion following the Trust’s receipt of regulatory approval therefor[.]” In short, Grayscale and the Trust unnecessarily tied their own hands to prohibit Shareholder redemptions, with no regulatory obligation to do so.

43. In an apparent attempt to justify this restriction, Grayscale began including the following statement in its SEC filings:¹⁷

Because the Trust does not believe that the SEC would, at this time, entertain an application for the waiver of rules needed in order to operate an ongoing redemption program, the Trust currently has no intention of seeking regulatory approval from the SEC to operate an ongoing redemption program.

¹⁶ 2019 Annual Report of Bitcoin Investment Trust at 21-22.

¹⁷ Form 10-K at 22, Grayscale Bitcoin Trust (Dec. 31, 2019) (“2019 Form 10-K”).

Grayscale’s disclosures failed to acknowledge, however, that it has *never* been required to obtain “regulatory approval” to operate a redemption program, provided that it is not creating and redeeming shares at the same time. The Trust’s public filings indicate that its last reported sale of Shares pursuant to Regulation D was in February 2021, but the Trust has nevertheless maintained that it may be in a period of active distribution such that redemptions are impermissible.¹⁸

44. Grayscale has not only hamstrung existing Shareholders by preventing Shareholders from redeeming their Shares for Bitcoin but, between 2018 and 2020, grew the volume of Shares in the marketplace exponentially and thereby precipitated the steep price discount at which Shares currently trade. While the Trust’s Shares originally sold at a premium to NAV, the Trust’s shares have not traded at a premium since March 2021 and recently traded at a 45% discount to NAV. Grayscale’s Head of Investor Relations has acknowledged that Grayscale “drove the discount” to NAV by “flooding the market with supply[.]”¹⁹

45. Grayscale has profited handsomely by flooding the market with Shares and preventing Shareholders from redeeming the Bitcoin underlying their ever-

¹⁸ The Trust continues to reiterate in its SEC filings that “[t]he redemption of Shares is not currently contemplated,” but it curiously no longer states that the Trust believes the SEC would deny approval for an ongoing redemption program. *Compare* 2019 Form 10-K at 22, *with* Q3 2022 Form 10-Q at 6.

¹⁹ Our Head of Investor Relations Explains Fund Discounts and Premiums, YouTube.com – Grayscale Investments (Apr. 7, 2022), <https://youtu.be/m6a6uzcGYQ0?t=34>.

depreciating asset. The Trust had approximately \$752 million under management as of December 31, 2018, and, as a result, Grayscale collected an annual Sponsor's Fee on those assets of approximately \$28.5 million.²⁰ By December 31, 2021, the Trust's assets had grown to approximately \$29.6 billion and Grayscale's resulting Sponsor's Fee skyrocketed to \$615.42 million, an increase of over 2,000%.²¹

C. Grayscale Is Pursuing An Exploitative and Wasteful Campaign to Convert the Trust Into an ETF At the Expense of Shareholders.

46. Grayscale has justified its ongoing redemption prohibition with a pretextual campaign to convert the Trust into a spot Bitcoin ETF.

47. At its founding, Grayscale stated that the Trust's shares were only suitable for institutional and accredited individual investors because investing in Bitcoin was "a highly risky endeavor."²² Mr. Silbert himself similarly said at the time that "because of the risky nature of bitcoins, they should not be sold to ordinary retail investors who could buy E.T.F.'s," that it was "premature for this kind of product to be in the public market," and that it "should not be available to unsophisticated investors."²³ Another Grayscale executive, Mark Murphy,

²⁰ 2019 Form 10-K at 64.

²¹ 2021 Form 10-K at 71.

²² "SecondMarket launches Bitcoin Investment Trust, invests \$2 Million," CoinDesk.com (Sept. 25, 2013), <https://www.coindesk.com/markets/2013/09/26/secondmarket-launches-bitcoin-investment-trust-invests-2-million/> (last accessed Dec. 1, 2022).

²³ "Fund to Let Investors Bet on Price of Bitcoins," N.Y. TIMES (Sept. 25, 2013), available at

contrasted the Trust with the Winklevoss Bitcoin Trust, which applied to become an ETF the year the Trust launched. Mr. Murphy, who remains a Grayscale director, claimed at the time that the Trust’s shares would be offered only to “accredited investors.”²⁴

48. Grayscale and the Trust adhered to those public statements at first. Between 2013 and 2015, the Trust appears to have targeted only the accredited investors to whom it can sell Shares directly on a private placement basis. In 2016, however, Grayscale began pursuing its first application with the SEC to convert the Trust into a spot Bitcoin ETF, which would be available to a much broader investor population. Grayscale withdrew that application after nearly a year of discussions with the SEC led Grayscale to believe that “the regulatory environment for digital assets had not advanced to the point where such a product could successfully be brought to market.”²⁵

49. Despite these concerns, Grayscale continued to push retail investors to purchase Trust Shares in the secondary market. That push included controversial advertising campaigns like #DropGold, in which Grayscale implied that individuals holding gold in their portfolios were stuck in the past and not forward-looking, while

<https://archive.nytimes.com/dealbook.nytimes.com/2013/09/25/fund-to-let-investors-bet-on-price-of-bitcoins/> (last accessed Dec. 1, 2022).

²⁴ *Id.*

²⁵ Form 8-K (Apr. 5, 2021) (“Grayscale’s Intentions for a Bitcoin ETF”).

also stressing the utility and security of digital assets to investors.²⁶

50. Several years later, Grayscale doubled down on converting the Trust into an ETF and marketing its Shares to individual retail investors. On April 5, 2021, under the leadership of its new CEO, Michael Sonnenshein, Grayscale filed a stunning blog post with the SEC that claimed it was “100% committed to converting GBTC into an ETF” and that its *“intention has always been to convert these products into an ETF when permissible,”*²⁷ despite an early record of its founders saying the exact opposite. That same blog post included a four-step “Lifecycle of a Grayscale Product,” which indicated that Grayscale intended to continue pushing its oversupply of Shares to as many retail investors as possible, as quickly as possible.²⁸

51. Grayscale then launched a mass media advertising blitz including TV advertisements like “How Dad Got Into Bitcoin,” in which a father depicts himself as a “forward-thinking investor” in a dystopian battle for Bitcoin during a family

²⁶ See “Grayscale dusts off its #dropgold campaign with fresh ad push,” Cointelegraph.com (Dec. 1, 2020), <https://cointelegraph.com/news/grayscale-dusts-off-their-dropgold-campaign-with-fresh-ad-push> (last accessed Dec. 2, 2022); see also Barry Silbert (@BarrySilbert), Twitter (Dec. 1, 2020), <https://twitter.com/BarrySilbert/status/1333781962394394624> (Silbert and Sonnenshein sharing the #DropGold advertisement on Twitter) (last accessed Dec. 2, 2022)

²⁷ *Id.*

²⁸ *Id.*; see also “Grayscale’s Chief Legal Officer Explains Our Product Roadmap,” YouTube.com – Grayscale Investments (June 3, 2022), <https://www.youtube.com/watch?v=njiURpGgOjI> (last accessed Dec. 1, 2022).

dinner,²⁹ and “Sunset,” in which an adult daughter cries at a sunset overlook while promising to give Grayscale digital currency funds to her mother because she “deserves the best.”³⁰

52. Over the course of recent months, Grayscale also changed its external messaging to push individual investors towards acquiring Shares—an effort that drove demand and supply of Shares and catalyzed the ever-growing NAV discount. Mr. Sonnenshein, for example, recently gave an interview titled “Making Crypto Accessible to the Masses,” in which he implied that Grayscale products are suitable for retirement accounts and 401Ks and touted that Grayscale had already “allowed a lot of people to invest in these assets for the long term for retirement.”³¹

53. Grayscale further exploited its newfound mass of retail Shareholders to spam the SEC with letters supporting their ETF conversion campaign. Grayscale provided investors with a template letter of support, provided email reminders about submitting comments to the SEC, and invested heavily in advertising that pushed support for converting the Trust into an ETF. For example, Grayscale papered over

²⁹ “How Dad Got Into Bitcoin,” Grayscale Investments LLC, iSpot.tv (Aug. 14, 2021), available at <https://www.ispot.tv/ad/OPoC/grayscale-investments-how-dad-got-into-bitcoin> (last accessed Dec. 1, 2022).

³⁰ “Sunset,” YouTube.com – Grayscale Investments (May 4, 2022), available at <https://www.youtube.com/watch?v=ya87Y4Zmvls> (last accessed Dec. 1, 2022).

³¹ “Making Crypto Accessible to the Masses with Michael Sonnenshein of Grayscale Investments,” YouTube.com – Grayscale Investments (June 23, 2022), https://www.youtube.com/watch?v=3pe-zg_gnOw (last visited Dec. 1, 2022).

New York’s Penn Station and Washington, D.C.’s Union Station with signs exclaiming “[w]e care about crypto investors” and urging commuters to contact the SEC and “advocate for a Bitcoin ETF.”³²

54. Since doubling down on this ETF conversion campaign, the market price of Trust Shares rapidly declined from \$32.13 to approximately \$8.28 per share, or by approximately 74%, and the discount to NAV increased from 14% to approximately 40-45%. Grayscale’s perverse financial incentive to stay the course is obvious: While Shareholders’ investments suffer, Grayscale continues to collect its 2.00% Sponsor’s Fee on Shareholders’ Bitcoin to the tune of hundreds of millions of dollars.

55. On June 29, 2022, the SEC rejected Grayscale’s latest effort to convert the Trust into an ETF. In response, Grayscale sued the SEC in the United States Court of Appeals for the District of Columbia Circuit. Yet Plaintiffs remain unaware of any steps that Grayscale or the Trust have taken to either seek “regulatory approval” of an ongoing redemption program or implement a redemption program that complies with Reg M.

³² “Grayscale launches ad campaign ahead of SEC’s Bitcoin Trust ETF decision,” Axios (May 21, 2022), <https://www.axios.com/2022/05/21/grayscale-ad-campaign-sec-bitcoin-trust-etf-gbtc> (last accessed Dec. 1, 2022).

D. Grayscale Is Abiding Substantial Conflicts of Interest That Put Shareholders' Interests at Risk.

56. Grayscale's conduct has been enabled by its reliance on affiliated service providers within the DCG corporate family. In particular, Grayscale has engaged DCG affiliates for nearly all of its essential services, including (i) Genesis, which is a wholly owned subsidiary of DCG, the sole entity that can source Bitcoin to create Shares, and, until recently, was the only entity that could place orders for, redeem, market, or distribute Shares; (ii) Grayscale Securities, which is a wholly owned subsidiary of Grayscale and currently the only entity that can place orders for, redeem, market, or distribute Shares; and (iii) CoinDesk Indices, which is an indirect subsidiary of DCG that publishes the Index and Index Price that the Trust relies on to calculate its Bitcoin holdings and the Sponsor's Fee.

57. Grayscale also relies on entities within the digital asset ecosystem in which DCG is an investor. For example, Coinbase Global, Inc. ("Coinbase"), in which DCG is an investor, is the parent company of the custodian for the Trust's Bitcoin holdings, holds insurance policies for the Trust's Bitcoin holdings, and operates one of the digital asset exchanges included in the Index. Grayscale and the Trust also rely on Kraken as one of the "Digital Asset Exchanges" that CoinDesk Indices uses to calculate the Index Price. Recent disclosures have demonstrated that Grayscale and the Trust are likely interconnected with the rest of the digital asset ecosystem in additional ways that are yet to be revealed.

58. The Trust has virtually no independent oversight to protect Shareholders against these risks. The Trust has no direct management, no board of directors, and a Delaware trustee whose management authority has been delegated to Grayscale. Grayscale’s Board of Directors, which is ultimately responsible for all business and investment decisions for the Trust, consists of three conflicted insiders: (i) Mr. Silbert, DCG’s Chairman and CEO, (ii) Mr. Murphy, DCG’s President, and (iii) Mr. Sonnenshein, Grayscale’s CEO.

59. Even Grayscale’s Audit Committee, which oversees the Trust’s financial reporting process and exercises “other oversight functions as are typically performed by an audit committee of a public company”³³ is completely beholden to Grayscale’s management and DCG, and consists only of Mr. Sonnenshein (Grayscale’s CEO), Edward McGee (Grayscale’s CFO), and Hugh Ross (Grayscale’s COO).³⁴ Despite these substantial conflicts of interest, Grayscale has not “established formal procedures to resolve all potential conflicts of interest,” which leaves Plaintiffs and other Shareholders dependent on Grayscale to act in good faith without independent checks and balances.³⁵

60. The recent raft of bankruptcy filings affecting digital asset market

³³ 2021 Form 10-K at 78.

³⁴ Until recently, the Audit Committee also included Mr. Silbert, who remains Grayscale’s Chairman of the Board. Q3 2022 Form 10-Q at 23.

³⁵ *Id.* at 80.

intermediaries have demonstrated the dire risks of abiding these conflicts of interest and weak corporate governance. Indeed, public reporting indicates that Grayscale and DCG, through their reliance on and interconnectedness with Genesis and Genesis Capital, may have far more exposure to instability in the cryptocurrency ecosystem than they have let on.

61. Genesis has originated hundreds of billions of dollars of loans related to digital asset markets within the past few years.³⁶ Grayscale and the Trust appear to have been key drivers of those loans. When the Trust's Shares, and those of other Grayscale products, traded at premiums to NAV, Genesis appears to have loaned billions of dollars of the underlying digital assets, such as Bitcoin and Ethereum, to fund Genesis' creation of new Grayscale shares.³⁷ In the process, Genesis' Bitcoin

³⁶ See, e.g., Q4 2021 Market Observations Report at 3 - 22, Genesis, available at <https://info.genestrading.com/hubfs/quarterly-reports/2021/q4-2021-report.pdf> (reflecting \$130.6B in new loan originations).

³⁷ See Q4 2020 Market Observations Report at 8 - 24, Genesis, available at <https://info.genestrading.com/hubfs/quarterly-reports/2020/q4-2020-report.pdf> ("Significant new ETH loan issuance was tied to in-kind borrow/trust creates for Grayscale products and to other new ETH-trusts on the market where the public shares tend to trade higher than the NAV/underlying."); Q1 2021 Market Observations Report at 6 - 25, Genesis, available at <https://info.genestrading.com/hubfs/quarterly-reports/2021/q1-2021-report.pdf> ("There are several reasons why, on a relative basis, there was less BTC lent out to the market in Q1 than over previous quarters. First, the level of demand to borrow BTC to arbitrage products like the Grayscale Bitcoin Trust (GBTC) declined as the premium to Net Asset Value (NAV) shifted and became a discount towards the end of the first quarter. Traders who previously borrowed BTC to contribute in-kind to the private placement or similar securities, with the intent to sell at a premium in the public market after the vesting period, lost the ability to arbitrage this spread.

loans to create Shares would have increased the Trust's assets and Grayscale's Sponsor's Fee calculated on those assets.

62. At the same time, Genesis appears to have accepted the Grayscale shares it created as collateral for U.S. dollar loans, including to some of the same entities to which it loaned the underlying digital assets to create shares. For example, the liquidation proceedings of hedge fund 3AC, the Trust's largest Shareholder until at least late 2020,³⁸ recently revealed that 3AC defaulted on approximately \$2.3 billion in loans to Genesis Capital that were partly collateralized by 3AC's Trust Shares. At least some of those loans carried a 22% "Loan Fee" or "Borrow Fee" payable to Genesis Capital and an 80% collateral level. According to public reporting,³⁹ 3AC disclosed very limited financial information to its lenders during due diligence on such loans.

63. To meet its own loan requirements, Genesis Capital appears to have accepted millions of Trust Shares and the shares of other Grayscale cryptocurrency trusts as collateral, despite that Genesis was the only "Authorized Participant" that could issue Shares in the first place. Put simply, Genesis issued the very Shares that

As a result, less BTC borrow was needed to enable this trade.").

³⁸ See, e.g., Schedule 13G/A, Grayscale Bitcoin Trust / Three Arrows Capital Pte. Ltd. (Jan. 4, 2021) (reflecting 6.1% ownership of the Trust).

³⁹ "How Three Arrows Capital Blew Up and Set Off a Crypto Contagion," Bloomberg (July 12, 2022), <https://www.bloomberg.com/news/features/2022-07-13/how-crypto-hedge-fund-three-arrows-capital-fell-apart-3ac> (last accessed Dec. 2, 2022).

3AC pledged as collateral for billions of U.S. Dollar loans from Genesis Capital.

64. Perhaps most troubling of all to the Plaintiffs, Grayscale itself appears to have signed off on Genesis Capital's highly risky loans to 3AC without disclosing such entanglements in public filings. On May 28, 2020, Grayscale executed a Pledge Agreement with Genesis Capital and 3AC that, among other things, irrevocably consented to 3AC posting Trust Shares as collateral for loans from Genesis Capital and enabled Genesis Capital, its nominees, or any transferee of 3AC's collateral to become Trust shareholders. There is simply no clear reason for Grayscale to provide such a consent except to facilitate affiliate Genesis Capital's origination of highly risky loans to maximize profits for DCG and its affiliates.

65. Stated plainly, DCG, Genesis, and their affiliates are using the Trust and its outstanding Shares to keep their own finances afloat. They have every financial incentive to block the Trust from instituting a redemption program because the more Shares that remain outstanding, the more collateral that is available to secure the loans they offer to their customers, even if doing so harms Shareholders.

66. The Trust's recent public disclosures indicate that DCG has assumed all liability for Genesis Capital's remaining \$1.2 billion claim against 3AC's estate. While DCG claimed several months ago that its' and Genesis' "balance sheets remain strong," information contradicting such statements continues to trickle out.

67. On November 17, 2022, shortly after Genesis Capital halted all

withdrawals and loan originations due to apparent exposure to the collapse of FTX, The Wall Street Journal reported that DCG's liquidity needs are so dire that it is considering selling an ownership stake in Grayscale or DCG itself.⁴⁰ Subsequent reporting has indicated that Genesis Capital has \$2.8 billion in outstanding loans on its balance sheet and that approximately 30% of those loans are with related parties. It has also been reported that Genesis has retained a restructuring advisor and its creditors were organizing with restructuring counsel to avoid a rapid, free-fall bankruptcy filing.

68. DCG's financial condition has apparently continued to deteriorate, and its legal headaches have continued to mount, over the past two weeks.

69. On November 23, 2022, CNBC reported that DCG has over \$2 billion of debt on its balance sheet, including \$575 million owed to Genesis Capital under loans that come due in May 2023. According to a shareholder letter sent by Mr. Silbert, those loans from Genesis Capital were used to "fund investment opportunities and repurchase DCG stock."⁴¹

⁴⁰ See "Crypto Lender Genesis Had Sought Emergency Loan of \$1 Billion," WALL ST. J. (Nov. 17, 2022), available at <https://www.wsj.com/livecoverage/stock-market-news-today-11-17-2022/card/crypto-lender-genesis-sought-emergency-loan-of-1-billion-by-monday-573TThK17Ke15FYwJzLR> (last accessed Dec. 2, 2022).

⁴¹ "DCG's Barry Silbert reveals crypto firm has \$2 billion in debt as he tries to calm investors after FTX," CNBC.com (Nov. 23, 2022), <https://www.cnbc.com/2022/11/23/dcgs-barry-silbert-writes-letter-to-investors-after-ftx-collapse.html> (last accessed Dec. 1, 2022).

70. A few days later, Barron’s reported that multiple “securities regulators are investigating Genesis Global Capital as part of a wide-ranging inquiry into the interconnectedness of crypto firms, Genesis’s connection to retail investors, and whether it or other industry participants might have violated securities laws.”⁴² In connection with that investigation, Alabama Securities Commission Director Joseph Borg stated that the inquiries “generally focus on whether Genesis and other companies enticed residents to invest in crypto-related securities without making the proper registrations.”⁴³

71. On November 30, 2022, Sam Bankman-Fried, the former Chief Executive Officer of the insolvent FTX digital currency exchange, stated that Genesis Capital had provided at least \$2.5 billion in loans to FTX-affiliated Alameda Research LLC (“Alameda”).⁴⁴ According to Mr. Bankman-Fried, Genesis attempted to “call in a large number of loans from Alameda” several months ago, causing Alameda to “close[] down positions that Alameda had opened with Genesis and other trading desks.”⁴⁵ According to public reports, Genesis had accepted FTX’s

⁴² “Crypto Lender Genesis Is Subject of Probe by Regulators,” Barron’s (Nov. 25, 2022), <https://www.barrons.com/articles/crypto-lender-genesis-probe-regulators-51669391920> (last accessed Dec. 1, 2022).

⁴³ *Id.*

⁴⁴ “Transcript of Sam Bankman-Fried’s Interview at the DealBook Summit,” N.Y. Times DealBook (Dec. 1, 2022), available at <https://www.nytimes.com/2022/12/01/business/dealbook/sam-bankman-fried-dealbook-interview-transcript.html> (last accessed Dec. 1, 2022).

⁴⁵ *Id.*

own “FTT tokens,” which declined by approximately 93% in value after FTX’s implosion, as collateral on loans to Alameda, FTX’s affiliated hedge fund.⁴⁶

72. In short, each new day brings troubling new disclosures about misconduct and relationships among the Trust, Grayscale, and their affiliates.

E. Grayscale and the Trust Have Refused to Comply With Plaintiffs’ Broad Information Rights.

73. On August 3, 2022, Plaintiffs sent the Trust an information request pursuant to Sections 7.2(a) and 8.1 of the Fifth Trust Agreement and Section 3819 (the “First Demand”). The First Demand identified the Plaintiffs as current Trust Shareholders. Plaintiffs requested a current list of beneficial owners of the Trust and a limited set of documents concerning the Trust’s prior amendments to the Fifth Trust Agreement for the purposes of evaluating the Plaintiffs’ rights under the Fifth Trust Agreement and communicating with other Shareholders. Defendants’ litigation counsel responded to the First Demand by purporting to identify procedural deficiencies with the request and claiming Plaintiffs’ stated purposes were too “vague” to constitute a proper purpose. Defendants declined to produce any of the requested information.

74. On November 18, 2022, Plaintiffs sent the Trust a second demand for

⁴⁶ “Explainer: Crypto lender Genesis plagued by contagion concern after FTX blowup,” Reuters (Nov. 18, 2022), <https://www.reuters.com/technology/crypto-lender-genesis-plagued-by-contagion-concern-after-ftx-blowup-2022-11-18/> (last accessed Dec. 2, 2022).

information pursuant to their rights under the Fifth Trust Agreement and Section 3819 (the “Second Demand,” attached hereto as Exhibit A). The Second Demand included an extensive description of the Trust’s and Grayscale’s mismanagement of the Trust, shareholder-unfriendly actions, and abiding of conflicts of interest. The Second Demand again stated that Plaintiffs were Shareholders.

75. The Second Demand also identified proper purposes for their information requests, including: (i) to investigate potential mismanagement of the Trust, wrongdoing, and/or breaches of fiduciary duties by Grayscale and others, including the extensive conflicts of interest among the Trust, Grayscale, and their affiliates, (ii) to obtain information regarding the Trust’s prior amendments to the Trust’s governing documents, (iii) to evaluate the Trust’s exposure to under-collateralized loans originated by Genesis, and (iv) to enable the Plaintiffs to communicate with the Trust’s other shareholders concerning potential derivative litigation on behalf of the Trust or other measures to be taken in response to Plaintiffs’ investigation.

76. To achieve these proper purposes, the Second Demand requested necessary categories of information, books, and records, including those related to:

- The Trust’s current beneficial owners and their last known addresses;
- Presentations and other materials concerning the Trust provided to or prepared by Grayscale’s Board of Directors or Audit Committee;
- Agreements related to the Trust between the Trust or Grayscale, on the

one hand, and their affiliates, on the other hand, including DCG, Genesis, CoinDesk, and CoinDesk Indices;

- Agreements related to the Trust between the Trust or Grayscale, on the one hand, and third parties, on the other hand;
- Grayscale’s decision to suspend the Trust’s redemption program and ongoing refusal to permit redemptions;
- Grayscale’s and the Trust’s communications with regulators concerning the Trust’s redemption program;
- The Trust’s or Grayscale’s ratification of amendments to the Third Trust Agreement and Fourth Trust Agreement;
- Grayscale’s and the Trust’s evaluation, assessment, and resolution of conflicts of interest related to the Trust; and
- Genesis’ entry into loan agreements collateralized by Trust Shares, including loan agreements with 3AC, including any pledge agreements that Grayscale signed to permit such loans.

77. On November 28, 2022, Defendants declined to respond to the Second Demand on the basis that it failed to attach documentary evidence that the Plaintiffs are current Shareholders—which is not a requirement under either the Fifth Trust Agreement or Section 3819 (the “November 28 Response” attached hereto as Exhibit B). Plaintiffs nevertheless responded approximately three hours later with documentary evidence of the Plaintiffs’ ownership and requested a substantive response to the Second Demand by November 29, 2022, at 5:00 p.m. ET.

78. On November 30, 2022, Defendants responded that they “are not required to comply with [Shareholders’] unilateral demands on timing.” Defendants

provided a written response later that day in which they refused to produce any information responsive to the Second Demand (attached hereto as Exhibit C). Defendants further stated that they would not respond to the particulars of each of Plaintiffs' information requests but would instead reserve their rights "to contest the appropriateness of each request in future correspondence or litigation."

79. On December 1, 2022, Plaintiffs requested a meet-and-confer with Defendants to discuss their blanket refusal to produce information responsive to the Second Demand. Plaintiffs emphasized that recent public disclosures had amplified their concerns and made their information requests more urgent. Plaintiffs met-and-conferred with Defendants on December 5 and 6, 2022.

80. As of filing, Defendants have not agreed to produce any information responsive to any of Plaintiffs' information requests.

COUNT I
Breach of the Fifth Trust Agreement – Section 7.2(a)

81. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

82. Section 7.2(a) of the Fifth Trust Agreement provides: "The Shareholders shall have the right to obtain from the Sponsor information on all things affecting the Trust, *provided* that such information is for a purpose reasonably related to the Shareholder's interest as a beneficial owner of the Trust."

83. Plaintiffs are Shareholders of the Trust.

84. On November 18, 2022, Plaintiffs made a written demand upon Grayscale and the Trust for the information identified in the Plaintiffs' Second Demand.

85. The Second Demand, like the First Demand, fully complied with all applicable requirements of the Fifth Trust Agreement.

86. Plaintiffs' Second Demand requested information on things affecting the Trust for a purpose reasonably related to their interest as beneficial owners of the Trust, including: (i) to investigate potential mismanagement of the Trust, wrongdoing, and/or breaches of fiduciary duties by Grayscale and others, including the extensive conflicts of interest among the Trust, Grayscale, and their affiliates, (ii) to obtain information regarding the Trust's prior amendments to the Trust's governing documents, (iii) to evaluate the Trust's exposure to under-collateralized loans originated by Genesis, and (iv) to enable the Plaintiffs to communicate with the Trust's other shareholders concerning potential derivative litigation on behalf of the Trust or other measures to be taken in response to Plaintiffs' investigation.

87. Plaintiffs require access to the requested information as soon as possible to achieve these purposes and determine whether further actions must be taken to protect the interests of Shareholders.

88. Grayscale and the Trust have failed to meaningfully respond to the Second Demand and have not provided the Plaintiffs with the information that they

requested by the Second Demand.

89. By reason of the foregoing, Plaintiffs request an order compelling the immediate production of the information identified in the Second Demand.

90. Plaintiffs have no adequate remedy at law.

COUNT II
Breach of the Fifth Trust Agreement – Section 8.1

91. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

92. Section 8.1 of the Fifth Trust Agreement provides that the Shareholders must be permitted “at all times during normal business hours, free access to” the Trust’s “books of account” and the right to “inspect and copy the same for any purpose reasonably related to the Shareholder’s interest as a beneficial owner of the Trust.”

93. Plaintiffs are Shareholders of the Trust.

94. On November 18, 2022, Plaintiffs made a written demand upon Grayscale and the Trust for the information identified in the Plaintiffs’ Second Demand.

95. The Second Demand, like the First Demand, fully complied with all applicable requirements of the Fifth Trust Agreement.

96. Plaintiffs’ Second Demand requested information on things affecting the Trust for a purpose reasonably related to their interest as beneficial owners of the

Trust, including: (i) to investigate potential mismanagement of the Trust, wrongdoing, and/or breaches of fiduciary duties by Grayscale and others, including the extensive conflicts of interest among the Trust, Grayscale, and their affiliates, (ii) to obtain information regarding the Trust's prior amendments to the Trust's governing documents, (iii) to evaluate the Trust's exposure to under-collateralized loans originated by Genesis, and (iv) to enable the Plaintiffs to communicate with the Trust's other shareholders concerning potential derivative litigation on behalf of the Trust or other measures to be taken in response to Plaintiffs' investigation.

97. Plaintiffs require access to the requested information as soon as possible to achieve these purposes and determine whether further actions must be taken to protect the interests of Shareholders.

98. Grayscale and the Trust have failed to meaningfully respond to the Second Demand and have not provided the Plaintiffs with the information that they requested by the Second Demand.

99. By reason of the foregoing, Plaintiffs request an order compelling the immediate production of the information identified in the Second Demand.

100. Plaintiffs have no adequate remedy at law.

COUNT III
(Inspection of Books and Records Under 12 Del. C. § 3819)

101. Plaintiffs repeat and reallege all preceding paragraphs as if fully set forth herein.

102. Section 3819 of the Delaware Statutory Trust Act, 12 Del. C. § 3819, provides the Plaintiffs with a statutory right to “obtain from the statutory trust from time to time upon reasonable demand for any purpose reasonably related to the beneficial owner’s interest as a beneficial owner of the statutory trust:

- (1) A copy of the governing instrument and certificate of trust and all amendments thereto, together with copies of any written powers of attorney pursuant to which the governing instrument and any certificate and any amendments thereto have been executed;
- (2) A current list of the name and last known business, residence or mailing address of each beneficial owner and trustee;
- (3) Information regarding the business and financial condition of the statutory trust; and
- (4) Other information regarding the affairs of the statutory trust as is just and reasonable.”

(12 Del. C. § 3819(a).)

103. Plaintiffs are beneficial owners of the Trust.

104. On November 18, 2022, Plaintiffs made a written demand upon Grayscale and the Trust for the information identified in the Plaintiffs’ Second Demand.

105. The Second Demand, like the First Demand, fully complied with all applicable requirements of Section 3819.

106. Plaintiffs’ Second Demand requested information for proper purposes reasonably relating to the Plaintiffs’ interests as beneficial owners of the Trust, including: (i) to investigate potential mismanagement of the Trust, wrongdoing,

and/or breaches of fiduciary duties by Grayscale and others, including the extensive conflicts of interest among the Trust, Grayscale, and their affiliates, (ii) to obtain information regarding the Trust's prior amendments to the Trust's governing documents, (iii) to evaluate the Trust's exposure to under-collateralized loans originated by Genesis, and (iv) to enable the Plaintiffs to communicate with the Trust's other shareholders concerning potential derivative litigation on behalf of the Trust or other measures to be taken in response to Plaintiffs' investigation.

107. Plaintiffs require access to the requested information as soon as possible to achieve these purposes and determine whether further actions must be taken to protect the interests of Shareholders.

108. Grayscale and the Trust have failed to meaningfully respond to the Second Demand and have not provided the Plaintiffs with the information that they requested by the Second Demand.

109. By reason of the foregoing, Plaintiffs request an order compelling the immediate production of the information identified in the Second Demand.

110. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for the following relief:

- A. An order requiring Grayscale and the Trust to make available to Plaintiffs, for inspection and copying, the books and records of the Trust, and to otherwise provide access to information on all things affecting the Trust that are identified in the Second Demand, which is attached as Exhibit A hereto.
- B. An order requiring the Defendants to pay reasonable attorneys' fees and expenses in connection with this action; and
- C. Such other relief as this Court deems just and appropriate.

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Dated: December 6, 2022