EFiled: Mar 06 2023 12:25PM EST
Transaction ID 69272773
Case No. 2023-0276-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ALAMEDA RESEARCH LTD., Plaintiff, v. GRAYSCALE INVESTMENTS, LLC, DIGITAL CURRENCY GROUP, INC., MICHAEL SONNENSHEIN, and BARRY SILBERT, Defendants.	)	C.A. No. ___________

VERIFIED COMPLAINT

Plaintiff Alameda Research Ltd. ("Plaintiff" or "Alameda"), a debtor in possession that has filed a petition for relief under chapter 11 of the United States Bankruptcy Code, by and through its undersigned attorneys, brings this Verified Complaint against Defendants Grayscale Investments, LLC ("Grayscale"), Digital Currency Group, Inc. ("DCG"), Michael Sonnenshein, and Barry Silbert (collectively "Defendants"), and alleges as follows:

NATURE OF THE CASE

1. This action arises out of Defendants' brazen abuse of their control over nearly $19 billion of digital assets held in two trusts to enrich themselves at the expense of trust shareholders. Due to Defendants' malfeasance and refusal to allow redemptions, the only way for shareholders to exit their investments is by selling

their shares in the trusts in the secondary market, where shares are trading at a fraction of their proportionate interest in trust assets. Meanwhile, with investor capital trapped, Defendants have siphoned off over a billion dollars in fee income over the last two years alone. As a significant trust shareholder, Alameda brings this action for the benefit of its chapter 11 bankruptcy estate to recover the hundreds of millions of dollars in harm that it is suffering at Defendants' hands. Remedying the harm to the Alameda debtor will also unlock approximately $9 billion or more in value for over one million other trust shareholders, many of whom are small retail investors that Defendants are continuing to exploit.

2. The Grayscale Bitcoin Trust (the "Bitcoin Trust") and Grayscale Ethereum Trust (the "Ethereum Trust" and, together, the "Trusts"), are two Delaware statutory trusts that Grayscale formed and manages for the ostensible purpose of permitting investors to mimic investments in Bitcoin or Ether, without being burdened by the complexities of holding digital assets themselves. The Trusts were designed to accomplish this goal by issuing shares to investors that are backed by a proportional interest in the Trusts' portfolios, which are comprised entirely of Bitcoin (for the Bitcoin Trust) and Ether (for the Ethereum Trust). As the sponsor of the Trusts, Grayscale compensates itself with an annual "Sponsor's Fee" calculated as a percentage of the net asset value in the Trusts. The Sponsor's Fee

that Grayscale has pocketed at the expense of the Trusts' shareholders has historically been 2% for the Bitcoin Trust and 2.5% for the Ethereum Trust.

3. The fundamental investment objective for each of the Trusts is for the value of issued shares to reflect the value of the Trusts' Bitcoin and Ether holdings. In this respect, the Trusts are similar to other "tracking funds" that allow investors to gain exposure to commodities or other assets through investment in the fund rather than the underlying commodity or assets themselves. These products appeal to investors because they provide exposure to types of assets—such as gold, the entire S&P 500 index, or digital currencies—that are difficult to invest in directly.

4. For years, the Trusts proved to be very popular investments, especially among retail investors seeking to capitalize on the appreciation of Bitcoin and Ether. For much of their history, this popularity resulted in shares of the Trusts being in such demand that they traded in the secondary market at prices reflecting a premium to the value of Bitcoin and Ether in the Trusts' portfolios. Exploiting this pricing premium, Grayscale rapidly grew the Trusts through repeated issuances of new shares backed by ever-expanding portfolios. By the end of 2020, the Bitcoin Trust had grown to hold approximately 3.3% of the world's Bitcoin while the Ethereum Trust had grown to hold approximately 2.6% of the world's Ether. And, as Grayscale intended, its Sponsor's Fees grew exponentially with this increase in the Trusts' holdings, hitting nearly $110 million in 2020.

5. Starting in February 2021, the market for the Trusts started to change. As competing products emerged with more favorable fee structures, demand for the Trusts waned and their shares began trading at a discount to the value of the Trusts' assets. Over the ensuing two years, that discount has widened to about 50%—meaning the shares are trading at a price that is roughly half the value of the Bitcoin and Ether that are backing them. Today, that discount equates to a loss in market capitalization of over $6 billion for investors in the Bitcoin Trust (which presently holds about $14 billion in Bitcoin) and nearly $3 billion for investors in the Ethereum Trust (which presently holds about $5 billion in Ether). For the Alameda debtor alone, the discount equates to a loss in the market value of its holdings in the Trusts of over $250 million.

6. The Trusts have a built-in mechanism to eliminate this discount. Under the Trust Agreements,[1] Grayscale can authorize share redemptions through which

[1] The term "Trust Agreement" as used herein refers to the currently operative Bitcoin Trust agreement. The Bitcoin Trust agreement that Grayscale contends to be currently operative is the Fifth Amended and Restated Trust Agreement, dated September 12, 2018 (the "Fifth Amended Bitcoin Trust Agreement"), which is attached as Exhibit 1 hereto. However, as explained in Section III *infra*, due to Grayscale's failure to obtain contractually required authorizations for certain amendments, the actual currently operative Bitcoin Trust agreement is the Third Amended and Restated Trust Agreement, dated January 1, 2016 (the "Third Amended Bitcoin Trust Agreement"), which is attached as Exhibit 2 hereto. For consistency and clarity, citations herein to provisions of the "Trust Agreement" reference the provisions and language used in the Fifth Amended Bitcoin Trust Agreement. In almost all instances, the Trust Agreement provisions cited herein are

(footnote continued)

Trust investors could exchange their Bitcoin Trust or Ethereum Trust shares for their corresponding interest in the underlying Bitcoin or Ether. By allowing these redemption transactions, the Trusts can effectively tether the price of the Trusts' shares to the value of the assets backing them, because shares trading below net asset value will be purchased by arbitrageurs who will then exchange those shares for their full, proportionate value in digital assets. As for the impact of Grayscale's excessive fee structure on the Trusts' shareholders, the Trust Agreements included a fix for that, too. They require that Grayscale monitor the Trusts' fee structures and negotiate competitive rates.

7. Yet, possessed by self-interest, Defendants have shamelessly operated the Trusts solely to maximize their own fee income, without regard to the impact on the Trusts' investors. Through this disloyal campaign of greed, Defendants have secured over a billion dollars of fees for themselves while driving the trading prices of the Trusts' shares almost nine billion dollars below their intrinsic value. All of

materially identical in relevant respects to provisions in the Third Amended Bitcoin Trust Agreement (though section numbers may differ). Where there are substantive differences between the versions of the agreements—notably in respect of redemptions—they are noted and discussed. Similarly, the term "Trust Agreements" refers to the Trust Agreement together with the currently operative Ethereum Trust agreement, the Amended and Restated Trust Agreement, dated July 3, 2018 (itself the "Ethereum Trust Agreement"), which is attached as Exhibit 3 hereto. Likewise, while the section numbering may differ, the Trust Agreement provisions cited herein are materially identical in relevant respects to provisions in the Ethereum Trust Agreement, unless otherwise indicated.

this conduct is in flagrant breach of Defendants' contractual and fiduciary duties to Alameda and other trust investors.

8. *First*, Grayscale has breached its obligations by failing to reduce the fees it charges to the Trusts' shareholders to commercially competitive levels. The Trust Agreements require Grayscale to "[m]onitor all fees charged to the Trust" in order to ensure that they are at "competitive rates" and, "if necessary, to renegotiate the fee structure to obtain such rates." The fees that Grayscale has been charging are well in excess of "competitive rates." Indeed, over the last two years alone, Grayscale has usuriously charged over ***$1.3 billion*** to "manage" the Trusts' affairs. This amount, which is taken from the pockets of the Trusts' shareholders, is wildly incommensurate with the minimal services that Grayscale provides to the Trusts and many multiples higher than what other managers charge to perform similar functions.

9. *Second*, Defendants have breached their obligations by failing to permit investors to redeem their shares for the corresponding amounts of Bitcoin or Ether that back those shares. Such a redemption program would immediately eliminate the current market discount and is required by numerous obligations under the Trust Agreements, including the requirement that Grayscale do everything "necessary to carry out the purposes of the Trust," one of which is providing for "redemptions of Shares" where permissible. While Defendants have publicly contended that

regulations preclude implementation of a redemption program under current circumstances, that is a false pretense. As Defendants have recently been forced to admit, Regulation M under the federal securities laws provides regulatory approval to implement redemptions in precisely the current context where there is no ongoing share creation (as there has not been for either Trust for over two years). Defendants' true motivation in refusing redemptions is to artificially hold their investors' assets hostage so as to protect Grayscale's Sponsor's Fees, which would be diminished by investor redemptions that reduce the size of the Trusts.

10. Defendants' failure to adjust Grayscale's fees to competitive rates and implement a redemption program places them in flagrant breach of multiple provisions of the Trust Agreements, the implied covenant of good faith and fair dealing, and their fiduciary duties to the Trusts' beneficiaries. The Alameda debtor brings this lawsuit seeking damages and to secure an injunction requiring Grayscale to reduce its fees and offer redemptions and thereby remedy the harm that Alameda and over a million other shareholders have suffered and continue to suffer as a result of Defendants' self-dealing.

PARTIES

11. Plaintiff Alameda Research Ltd. is a corporate entity organized under the laws of the British Virgin Islands and a shareholder in both of the Trusts. As detailed further herein, Alameda and numerous of its affiliates (the "FTX Debtors")

are in chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the District of Delaware before Judge John Dorsey. While Alameda was previously part of the cryptocurrency hedge fund and trading enterprise infamously managed by Sam Bankman-Fried, it is today a chapter 11 debtor in possession managed by an independent CEO and board of directors, acting for the benefit of the FTX Debtors' customers and other creditors, pursuant to the Bankruptcy Code and under the jurisdiction of the Bankruptcy Court.

12. Defendant Grayscale is a limited liability company organized under the laws of the State of Delaware. As detailed further herein, Grayscale established and acts as Sponsor for the Trusts.

13. Non-party Grayscale Bitcoin Trust is a Delaware statutory trust established by Grayscale on September 13, 2013 to hold Bitcoin, issue shares to certain authorized investors, and redeem those shares in certain circumstances as explained more fully below. Shares of the Bitcoin Trust are traded under the ticker symbol "GBTC."

14. Non-party Grayscale Ethereum Trust is a Delaware statutory trust established by Grayscale on December 13, 2017 to hold Ether, issue shares to certain authorized investors, and redeem those shares in certain circumstances as explained

more fully below. Shares of the Ethereum Trust are traded under the ticker symbol "ETHE."[2]

15. Defendant DCG is an investment corporation organized under the laws of the State of Delaware and the parent company of Grayscale. Grayscale describes DCG as sitting "at the epicenter of the blockchain industry." Among other roles, DCG wholly owns and is the sole member of Grayscale and owns non-party Genesis Global Trading, Inc. ("Genesis"). Genesis is a broker-dealer that served, until recently, as the sole "Participant" permitted to engage in creation or redemption transactions for the Trusts.

16. Defendant Michael Sonnenshein is an individual who, on information and belief, is a domiciliary of Connecticut. Mr. Sonnenshein has been employed by Grayscale for nearly a decade. He was Managing Director of Grayscale from 2018 to January 2021 and, since January 2021, has acted as Grayscale's Chief Executive Officer.

17. Defendant Barry Silbert is an individual who, on information and belief, is a domiciliary of Connecticut. Mr. Silbert is the founder and current Chairman of the Board of Grayscale and was its Chief Executive Officer until

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[2] Typically and herein the word "Ethereum" is used to refer to the blockchain on which the digital asset "Ether" is the native currency. Grayscale, however, from time to time uses the word "Ethereum" to refer to the digital asset Ether, including in the name of the Ethereum Trust.

January 2021. He is also the founder and current Chief Executive Officer of DCG and the founder of non-party Genesis.

JURISDICTION AND VENUE

18. Because Plaintiff asserts equitable claims and seeks equitable remedies, this Court has subject matter jurisdiction under 10 *Del. C.* §§ 341 and 342 as Plaintiff has no adequate remedy at law. This Court further has jurisdiction over this matter pursuant to 12 *Del. C.* § 3804(g). This Court has subject matter jurisdiction over Plaintiff's claims for declaratory relief pursuant to 10 *Del. C.* § 6501. Ancillary jurisdiction over Plaintiff's remaining claims is proper because all of Plaintiff's claims arise out of the same controversy.

19. Personal jurisdiction over Defendants is proper. Grayscale is a Delaware limited liability company and DCG is a Delaware corporation. Mr. Sonnenshein is the CEO of Grayscale, and this Court may exercise personal jurisdiction over him pursuant to 6 *Del. C.* § 18-109(a). Mr. Silbert is the CEO of DCG, the Chairman of the Board of Grayscale, and the former CEO of Grayscale, and this Court may exercise personal jurisdiction over him pursuant to 6 *Del. C.* § 18-109(a) and 10 *Del. C.* § 3114(b).

FACTS

I. IN A PERVERSION OF THE TRUST AGREEMENTS, GRAYSCALE CREATES A PERPETUAL ONE-WAY FEE MACHINE

A. Grayscale Creates The Trusts To Offer Tradeable Shares That Track The Price Of Bitcoin And Ether

20. In 2013, when the Bitcoin Trust was founded, investors seeking exposure to Bitcoin and other cryptocurrencies faced a variety of logistical and regulatory hurdles. Acquiring and maintaining custody over Bitcoin involved unique challenges, and the legal status of digital assets remained uncertain.

21. Grayscale established the Bitcoin Trust to address these barriers. Its straightforward idea was to offer investors economic exposure to Bitcoin while sparing them the custody and legal difficulties attendant to direct ownership. Unlike Bitcoin itself, Bitcoin Trust shares can be held directly in brokerage and retirement accounts, or investors can secure indirect exposure to trust shares through mutual funds and exchange traded funds ("ETFs"). In 2017, Grayscale founded the Ethereum Trust to serve the same purpose with respect to Ether, the second-most popular cryptocurrency.

22. From the Bitcoin Trust's inception, Grayscale has repeatedly represented to existing and prospective shareholders that the fundamental investment objective of the Trust "is for the Shares to reflect the performance of the value of [B]itcoin." Likewise, from the Ethereum Trust's inception, Grayscale has repeatedly represented to existing and prospective shareholders that "[t]he Trust's

investment objective is for the Shares (based on [Ether] per share) to reflect the value of [Ether] held by the trust[.]" In other words, the market cap value of all the Bitcoin Trust's shares should track the market value of the Bitcoin Trust's Bitcoin holdings, the Trust's net asset value ("NAV"). Similarly, the Ethereum Trust's market cap value was intended to track the market value of the trust's Ether holdings.

23. The Trusts use a simple model to pursue this objective. Unlike a hedge fund or other investment vehicle that employs professionals to identify and cultivate investments, the Trusts are not actively managed. Instead, they are set up as Delaware statutory trusts designed to do only three things: accept Bitcoin or Ether for shares, hold Bitcoin or Ether as passive investments, and accept shares for Bitcoin or Ether. Trust Agreements § 1.5. Each share the Trusts issue represents a fractional interest in the respective Trust corpus. The Trusts grow when Bitcoin or Ether are deposited in exchange for shares—a "creation" transaction—and shrink when shares are deposited in exchange for Bitcoin or Ether—a "redemption" transaction. Once created, shares are sold on the secondary market to both retail and institutional investors.

24. The management structure of the Trusts has remained relatively constant since inception. The Trusts have a Trustee (Delaware Trust Company), but the Trustee has delegated functionally all of its obligations and responsibilities to

each Trust to a "Sponsor,"[3] which is and always has been Grayscale. Trust Agreements § 2.2 ("the duty and authority to manage the affairs of the Trust is vested in the Sponsor"). The Trustees are thus mere figureheads that have assigned all responsibility for managing the Trusts' affairs to Grayscale. Trust Agreements § 6.1 (vesting authority to manage Trust in Sponsor).

25. The Sponsor's role is to oversee the Trusts, carry out the Trusts' purposes for the benefit of shareholders, and protect Trust shareholders' rights. The Trust Agreements charge the Sponsor with certain general responsibilities, including:

- Managing the Trusts as is "necessary to carry out the purposes of the Trust[s]," Section 6.3(a);
- Always acting "with integrity and good faith" and exercising "due diligence in all activities relating to the Trust[s] and in resolving conflicts of interest[,]" Section 6.3(j);
- Fiduciary responsibility for the "safekeeping and use of the Trust Estate[s]," Section 6.3(h); and
- Not employing "the Trust Estate[s] in any manner except for the benefit of the Trust[s]," including not using the Trust Estates "for the exclusive benefit of the Sponsor[,]" Section 6.3(i).

26. The Trust Agreements also charge the Sponsor with taking certain specific actions including, as also discussed further herein:

[3] Unless otherwise indicated, the term "Sponsor" as used herein means Grayscale as Sponsor of both Trusts.

- Executing and filing all documents and doing "any and all other things as may be appropriate" for the "qualification and operation of the Trust[s] and for the conduct of its affairs[,]" Section 6.3(b);[4] and

- Monitoring the fees that service providers charge the Trusts and renegotiating contracts, if necessary, to ensure that services are provided "at competitive rates and are the best price and services available under the circumstances," Section 6.3(g).

27. Beyond these charges, the Sponsor's day-to-day managerial responsibilities are minimal relative to the role of typical investment fund managers. The Trust Agreements direct the Sponsor to engage service providers such as accountants and attorneys, as well as a Custodian charged with the safekeeping of the assets held in the Trusts. Trust Agreements §§ 6.2, 6.3. The Trusts' present Custodian is third party Coinbase Custody Trust Company, LLC. But the Sponsor has no responsibility for allocating, trading, or investing the Trusts' assets, all of which enter the Trusts in the form of Bitcoin and Ether, and at all times remain invested in Bitcoin and Ether.

28. In exchange for its limited management responsibilities, Grayscale arranged for the Sponsor of the Bitcoin Trust (*i.e.,* itself) to receive a fee that accrues daily at an annual rate of 2.0% (the "Sponsor's Fee"),[5] and is taken from the

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[4] Section 6.3(b) of the Third Amended Trust Agreement is nearly identical, referring to the Trust's "business" rather than its "affairs."

[5] Unless otherwise indicated, the term "Sponsor's Fee" as used herein refers to the 2.0% fee charged by Grayscale on the Bitcoin Trust, and the term "Sponsor's Fees" refers collectively to the Sponsor's Fee and the 2.5% fee charged by Grayscale to the Ethereum Trust.

shareholders monthly. Trust Agreement § 6.8(a)(i). For the Ethereum Trust, that fee is 2.5%. Ethereum Trust Agreement § 6.8(a)(i). Importantly, the Sponsor's Fees are calculated based on the market value of each Trust's *assets* (*i.e.*, the value of the Bitcoin or Ether held by the trust), regardless of the market value of the shares. *Id.* Thus, Grayscale has strong incentives to maximize the amount of assets in the Trusts. In the halcyon days of 2021, when Bitcoin reached over $60,000 per token, Grayscale earned fee income from shareholders worth nearly $620 million in exchange for its limited oversight responsibilities. All told, over the past two years, Grayscale has earned more than $1.3 billion for managing the Trusts, and even more for managing twelve other single-digital-asset trusts that it runs in parallel.

29. Given the Trusts' lack of active management, the Trust Agreements provide for two mechanisms that can work to ensure that the Trusts' share prices actually track the value of the Trusts' asset holdings as intended: share creation and redemption. Share creations, which involve depositing Bitcoin or Ether in the Trusts in exchange for shares, can help regulate excessive market premiums. Conversely, share redemptions, which involve delivering shares to the Trusts in exchange for Bitcoin or Ether, can help regulate any excessive market discounts. Indeed, the Trust Agreements identify the primary two "purposes of the Trust" as being "to accept Bitcoin [or Ether] for subscriptions of Shares" and "to distribute Bitcoin [or Ether] (or cash from the sale of Bitcoin [or Ether]) upon redemption of Shares" when

permissible. Trust Agreements § 1.5(a). Without such mechanisms, temporary differences in the supply-and-demand dynamics of the shares on the one hand and the underlying asset on the other would become entrenched, distorting the Trusts' share prices away from the value of their claims on the Trust corpuses.

B. Grayscale Lures Retail Investors Into The Trusts And Continues The Expansion Of Its Portfolio

30. Incentivized by its NAV-based Sponsor's Fees, Grayscale has worked tirelessly over the years to increase the size of the Trusts' shareholder base.

31. In May 2015, the Bitcoin Trust succeeded in listing its shares on the over-the-counter interdealer quotation system OTCQX Best Marketplace. This marked a significant step forward in the public availability of Trust shares by enabling investors—including retail investors—to "easily trade" with the "diverse network of broker-dealers that provide liquidity and execution services" on OTCQX through "the broker of their choice."

32. Fortunately for Grayscale, the share price exhibited a persistent premium to the NAV from 2015 until early 2021, which meant there was demand only for creation transactions which allowed the Trust to grow rapidly. The Bitcoin Trust consequently doubled in size from 2014 to 2019.

33. In 2019 and 2020, to further enlarge the Trusts and increase its fees, Grayscale financed an aggressive mass marketing campaign to extoll the Trusts' virtues to potential investors. Grayscale's campaign "#DropGold" sought to

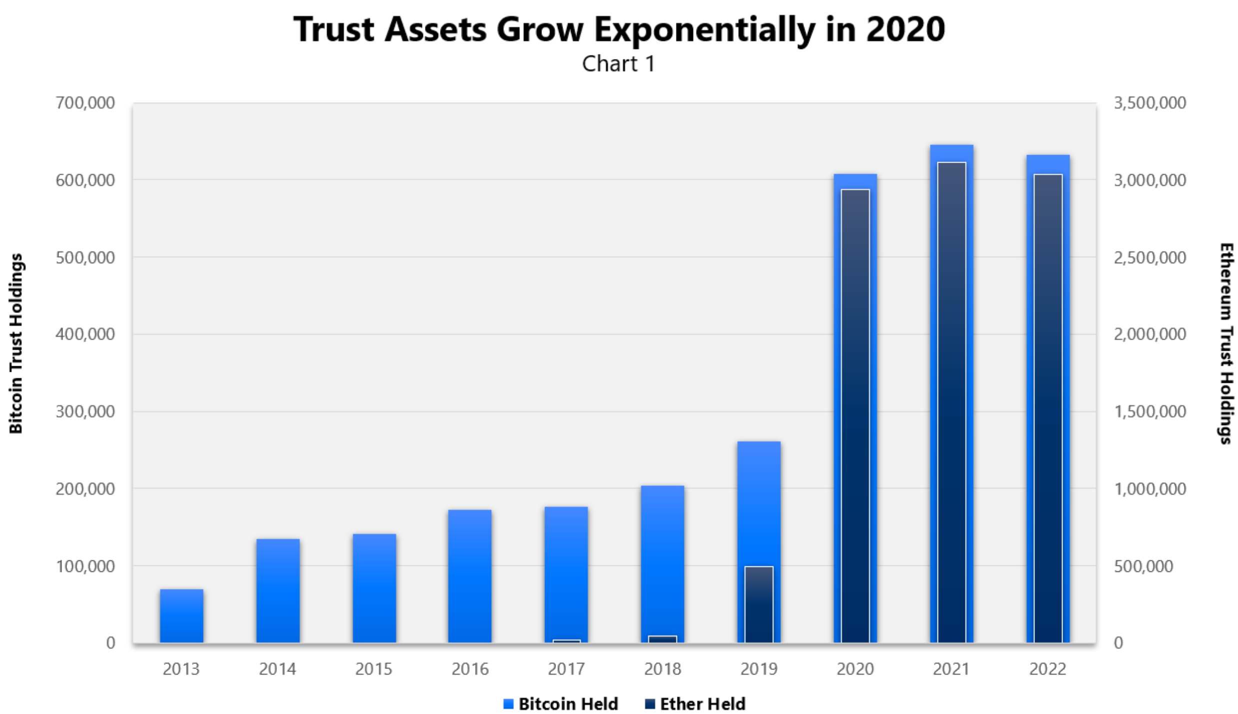
convince gold investors that Bitcoin was a superior store of value and hedge against inflation. Sonnenshein declared that Grayscale was "going after a narrative around gold being where investors should go when markets turn south" and "highlighting the absurdity of gold." Grayscale also represented that reallocating investments from gold to Bitcoin could create "an annualized return that was over 5% higher than that of a pure gold allocation, with lower volatility."

34. Grayscale's advertising blitz also swept the airwaves with TV commercials aimed at capturing a share of the pandemic-era retail investment frenzy. A 30-second commercial implied that digital assets were the next evolution in the history of money, and that it was time for investors to "go digital; go Grayscale." Another 42-second commercial asked investors "Why did you invest in gold? Are you living in the past? . . . Digital currencies like bitcoin are the future . . . and unlike gold, they actually have utility. Leave the pack behind: it's time to drop gold."

35. None of these advertisements disclosed that Bitcoin Trust shares had persistently traded at a premium of more than 10% to NAV, meaning that retail purchasers who saw Grayscale's ads and bought shares on the secondary market paid a significant premium for the fractional interest in the Bitcoin Trust's Bitcoin holdings that the shares represented. Amidst a wave of growing enthusiasm for Bitcoin and other digital assets, demand for the Bitcoin Trust's shares on the

secondary market remained strong enough for the premium to persist into early 2021.

36. By the end of the first quarter of 2021, the Bitcoin Trust held an astounding 654,600 Bitcoins—nearly one-and-a-half times the number it held on January 1, 2020. As of December 31, 2022, the Bitcoin Trust held fully 3.3% of all Bitcoin in the world. Chart 1 below shows the dramatic growth in the size of the Bitcoin Trust over time. Grayscale, meanwhile, benefitted by earning ever-higher Sponsor's Fees from the expanded asset base.



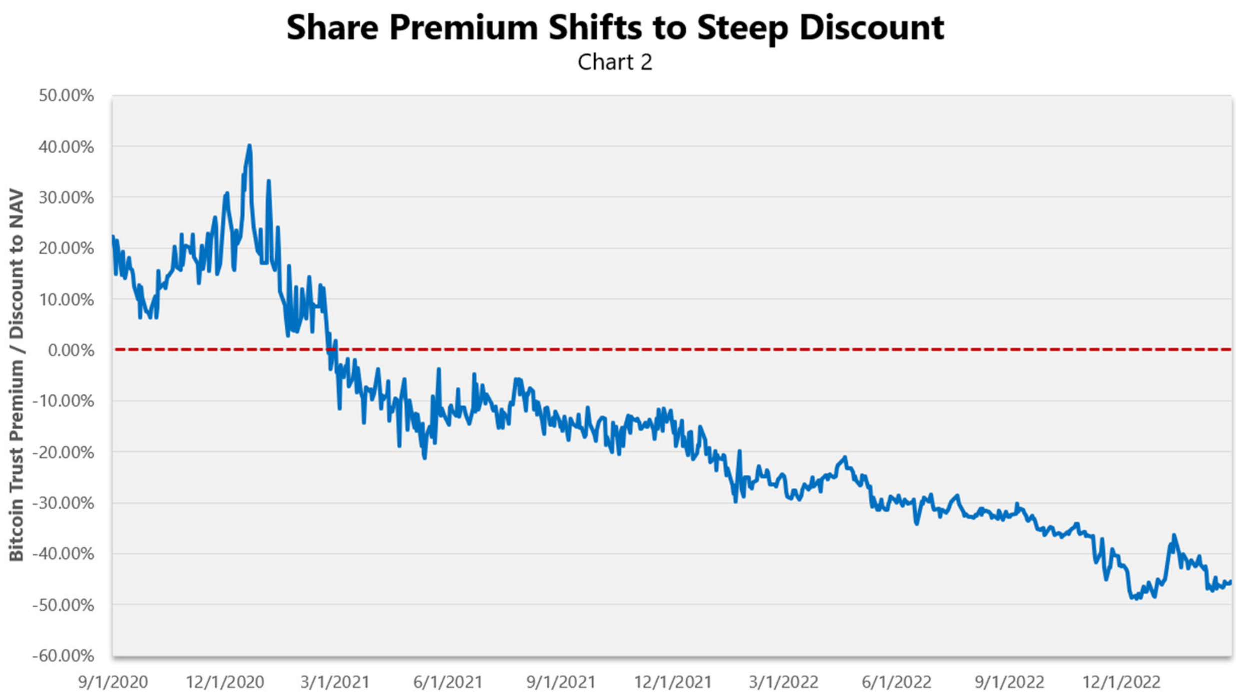
37. Nor was the Bitcoin Trust Grayscale's only pandemic-era cash cow. From 2013 to 2016, the price of Bitcoin was below $1,000. In 2017, the price rose exponentially, reaching nearly $20,000 by the end of the year. This meteoric rise

captured widespread public attention, which Grayscale promptly sought to capitalize on by expanding its product offerings. In December 2017, Grayscale launched the Ethereum Trust and, as shown above in Chart 1, it likewise took off during the pandemic. Grayscale also created more than a dozen other trusts based upon other digital assets such as Litecoin and Filecoin.

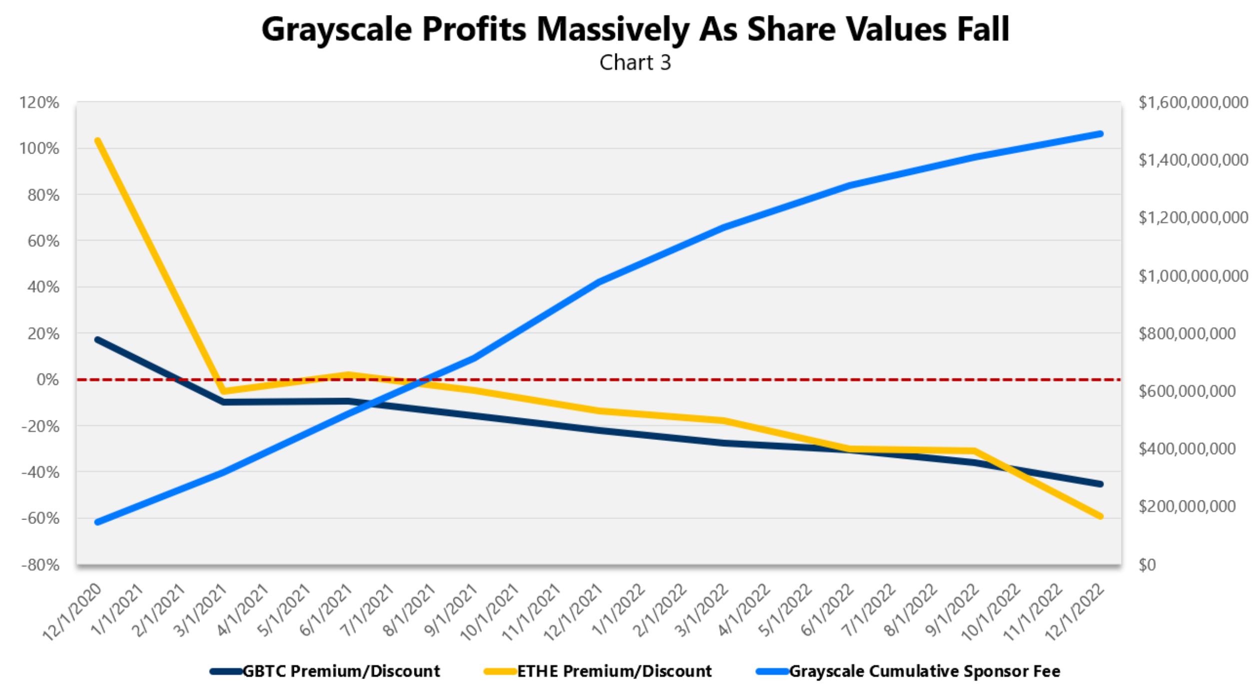
38. For Grayscale's expansion campaign, the music stopped in February 2021, when the years-long premium the Trusts had exhibited suddenly shifted to a discount. As more competitors entered the market offering lower fees, and owning Bitcoin and Ether directly became easier and cheaper—which Grayscale long foresaw would happen—shares in the Trusts began to trade at a significant discount to the underlying NAV per share. As digital asset prices then began to fall in late 2021, the discount deepened and has continued to do so, as shown in Chart 2 below.[6] As of March 3, 2023,[7] the Bitcoin Trust's shares were trading at a 45% discount to the NAV per share and the Ethereum Trust's shares were trading at a 54% discount.

[6] Shares in the Ethereum Trust reflected the same trading pattern, although their premium in the early years after the Ethereum Trust was established was at times far higher.

[7] All figures appearing herein are current as of the March 3, 2023 market close unless otherwise indicated.



39. Nonetheless, this poor secondary-market share performance proved no impediment to Grayscale capturing fee revenue from shareholders at an accelerating rate. As shown below in Chart 3, from January 2021 to the end of 2022, Grayscale's cumulative Sponsor's Fee income from the Trusts grew by more than 700% from about $190 million to over $1.5 billion.



II. GRAYSCALE BREACHES ITS CONTRACTUAL OBLIGATION TO ENSURE IT IS PAID ONLY AT COMPETITIVE RATES

40. Among other obligations to shareholders, the Trust Agreements expressly require Grayscale to "[m]onitor all fees charged to the Trust[s], and the services rendered by the service providers to the Trust[s], to determine whether the fees paid by, and the services rendered to, the Trust[s] are at competitive rates and are the best price and services available under the circumstances, and if necessary, renegotiate the fee structure to obtain such rates and services for the Trust[s]." Trust Agreements § 6.3(g).[8]

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[8] Other more general provisions of the Trust Agreements also require Grayscale to ensure for the benefit of shareholders that the Trusts' assets are not depleted through payment of excessive fees. For example, Grayscale has the responsibility for "safekeeping . . . of the Trust Estate" and to "[n]ot employ or
(footnote continued)

41. The fees that Grayscale must ensure are at "competitive rates" include Grayscale's own Sponsor's Fees—which, at the Trusts' inception, Grayscale set at an annual rate of 2.0% (for the Bitcoin Trust) and 2.5% (for the Ethereum Trust), accruing daily and paid monthly in Bitcoin and Ether. Trust Agreements § 6.8(a)(i). Given the structure of the Trusts, these fees directly reduce each Trust shareholder's interest in the Trusts and are, in effect, paid by Alameda and the Trusts' other shareholders. On its website, Grayscale explicitly lists itself at the top of a list of "Service Providers" for each of the Trusts. Its Sponsor's Fees thus fall squarely within "fees charged to the Trust[s]" by "service providers to the Trust[s]."[9] Yet Grayscale has utterly failed to satisfy its monitoring and renegotiation obligations with respect to the Trusts' Sponsor's Fees.

42. As the Trusts' discount to NAV widened over the course of 2021, investor interest in the Trusts waned. Many investors liquidated their positions on the secondary market at substantial losses. Others opted to invest instead in

permit others to employ the Trust Estate in any manner except for the benefit of the Trust" including preventing it from being used "for the exclusive benefit of the Sponsor." Trust Agreements § 6.3(h), (i).

[9] The fact that Grayscale was expected to be in a position of regulating its own conduct, even in regard to such things as fees, is supported by the Trust Agreements' conflict-of-interest provisions which set forth standards for such situations that require Grayscale to always act with "integrity and good faith" and to consider not only its own interests whenever such a conflict arises, but the "relative interest of *each* party" impacted as well as "customary or accepted industry practices." *Id.* §§ 6.3(j), 6.6(b).

competing digital asset trusts or exchange-traded products ("ETPs") that offer various types of exposure to Bitcoin or Ether.[10] Every single one of these competing trusts and products offers significantly lower management fees on a percentage basis, and accepts astronomically lower profit margins on a USD basis.

43. Advisers to trusts that hold Bitcoin directly (so-called "spot Bitcoin products") typically charge fees of less than 1%—that is, less than half the management fee Grayscale charges the Trusts on a percentage basis. And since these other trusts are generally smaller than the Grayscale Trusts, these lower percentage fees bring in far less on an aggregate basis than what Grayscale receives. Moreover, because the sponsors of these products do not actively manage the invested funds, many management expenses are fixed costs: for instance, marketing, listing and quotation fees, auditing and accounting, and website maintenance. Thus, the pure profits that Grayscale skims from the Trusts' shareholders are massively larger than the profits competing sponsors retain after deducting expenses against charged fees.

44. For example, The Osprey Bitcoin Trust (OBTC), which launched in February 2021, offers a management fee of 0.49%. With less than $70 million in

[10] In general, an exchange-traded product (ETP) is a security that is listed on a U.S. exchange and seeks to provide exposure to the performance of a benchmark (such as the price of gold), an index (such as the S&P 500) or an actively managed strategy. ETFs are the most common and most well-known type of ETP, but ETPs also include exchange-traded notes (ETNs), commodity pools, and other product types.

assets as of early this year, Osprey is managing its trust with about $1 million in annual fees, about three-tenths of one percent of the nearly $300 million annual fee Grayscale is currently charging. Similarly, the Valkyrie Bitcoin Trust, which launched in January 2021, provides "exposure to the value of Bitcoin held by the Trust" in exchange for a management fee of just 0.40%, and the Ark 21Shares Bitcoin ETF, a trust that sought SEC approval to become an exchange-traded fund, planned to pay its fund sponsor a "unified fee" of 0.95%.

45. Grayscale's management fee is so obviously inflated relative to the Trusts' actual operating expenses—and so obviously correctable—that both Valkyrie and Osprey have penned open letters offering to replace Grayscale and take over the Bitcoin Trust as the new sponsor and manager. Among other things, the advisers promise to lower the Bitcoin Trust's fees.

46. In a letter dated December 28, 2022, Valkyrie proposed to "[l]ower the fees to a more equitable level, in line with best industry practices." Specifically, Valkyrie "propose[d] a fee of 75 basis points, which is significantly lower than the current rate of 200 basis points." Weeks later, Osprey Funds offered to undercut Valkyrie's proposal even further. On January 13, 2023, noting the "many concerns articulated about Grayscale's high fees," Osprey committed that if it were to become sponsor of the Bitcoin Trust it would "slash the management fee to 0.49%, and clean up the expense structure of the fund which contains significant conflicts of interest."

Of course, even these fees are likely supra-competitive given the lower rates at which Valkyrie and Osprey have operated their own trusts to date.

47. The Trusts are also structurally similar to ETPs that hold other commodities like gold, platinum, or palladium. Those products, too, tend to charge annual fees of 1% or less. For example, the Sprott Physical Platinum and Palladium Trust (SPPP) offers a "management expense ratio" of 0.92%; the abdrn Physical Palladium Shares ETF (PALL) features a total expense ratio of 0.60%; physically backed Gold ETFs offered by SPDR, iShares, abrdn, GraniteShares, VanEck, Goldman, and Credit Suisse feature expense ratios of 0.10% to 0.65%; the GraniteShares Platinum Trust (PLTM) has an expense ratio of 0.50%; and the abrdn Standard Physical Platinum Shares ETF (PPLT) has an expense ratio of 0.60%.

48. Although Grayscale has not received SEC approval to operate as an ETF, it is also notable that its fees far exceed the fees typically paid to advisers to ETFs that track Bitcoin futures and commodities. Unlike Grayscale, such entities actually do require active management and therefore have significant expenses related to asset management. Nevertheless, they manage to operate competitively with far lower fees.

49. For example, the ProShares Bitcoin Strategy ETF (BITO) has reportedly attracted investors away from the Bitcoin Trust in part because it offers a substantially lower management fee. Indeed, BITO is "now the world's largest and

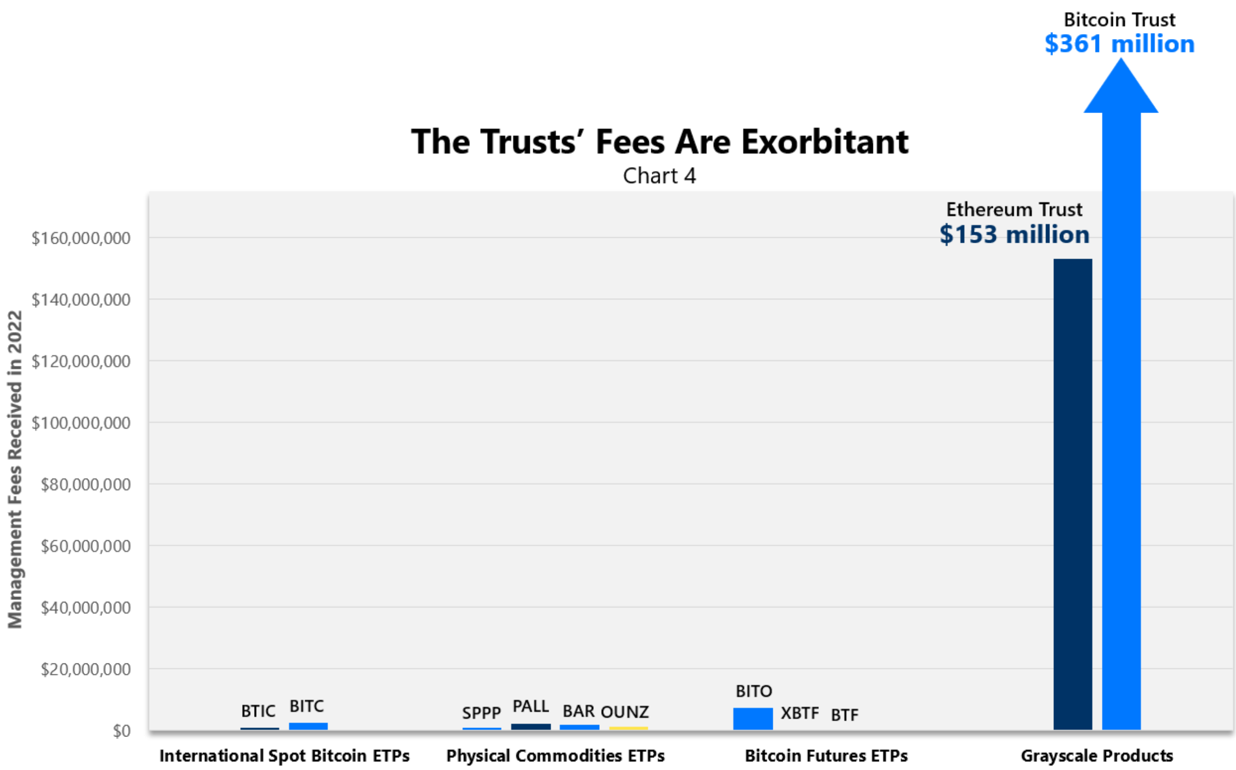
most actively traded cryptocurrency ETF." BITO invests in Bitcoin futures contracts with the goal, similar to the Bitcoin Trust, of tracking the performance of spot Bitcoin prices. The fund's investment adviser, ProShares, charges an annual management fee of 0.95%.

50. Other Bitcoin futures ETFs charge fees similar to or lower than BITO's fees. The VanEck Bitcoin Strategy ETF (XBTF), an actively managed fund that offers exposure to Bitcoin via Bitcoin futures contracts, charges an annual fee of 0.65%. The Valkyrie Bitcoin Strategy ETF (BTF), an actively managed ETF available through Nasdaq that invests primarily in Bitcoin futures contracts, charges an annual management fee of 0.95%.

51. There are also a number of ETPs trading on European exchanges that are designed to track the price of Bitcoin and are 100% backed by "physically held" Bitcoin—much like the "spot" products available in the U.S. As in the U.S., those products typically charge management fees of 1% or less. For example, the Invesco Physical Bitcoin ETP features a fixed annual fee of 0.99%; the Fidelity Physical Bitcoin ETP charges fees of 0.75%; and the CoinShares Physical Bitcoin ETP charges a management fee of 0.98% annually.

52. When Grayscale's fee rate is considered in the context of the Trust's size, the noncompetitive nature of Grayscale's Sponsor's Fee becomes even more stark. At the peak of the market in 2021, when Bitcoin reached over $60,000 per

token, Grayscale took fee income from shareholders worth nearly $620 million. In 2022 Grayscale charged Alameda and other shareholders over $360 million to perform the largely administrative and custodial functions required as Sponsor of the Bitcoin Trust. In parallel, Grayscale charged over $150 million last year for minimal additional management responsibilities as Sponsor of the Ethereum Trust. The contrast with any other product investors might consider is egregious. Bitcoin futures ETPs, physical commodities ETPs, and international spot Bitcoin ETPs all generally earn fees in the ***low single digit millions*** or less.



53. As shown in Chart 4 above, the fees Grayscale earned last year are literally off the chart. They dwarfed those earned by competing ETP providers by many orders of magnitude: the Ethereum Trust's fees were 21 times larger than the

next most expensive fund identified (BITO) and the Bitcoin Trust's fees were 49 times larger. Given this massive disconnect, it is no surprise that Grayscale's competitors are chomping at the bit to undercut its pricing.

54. It is thus self-evident that Grayscale has not fulfilled its obligation to negotiate competitive Sponsor's Fees. The Sponsor's Fees are so obviously excessive that Grayscale actually *admits* in securities filings that the Sponsor's Fee is "a competitive factor that may influence the value of the Shares"—in other words, it may place the Trusts at a disadvantage relative to their competitors. Indeed, even Grayscale's own executives have tacitly acknowledged that its fees are too high. Just recently, its CEO committed to lowering fees, but only after Grayscale succeeds in its quest to obtain SEC approval to run the Trusts as ETFs. On the podcast Unchained on January 27, 2023, Sonnenshein stated:

> The total annual management fee for any and all GBTC shareholders is 2%. . . . . The fee on the product today is certainly borne by a lot of costs that go into running a product in the crypto space . . . . We've said publicly and I'll say again we are committed to lowering the fee on GBTC when it converts to an ETF but, certainly in the meantime, all the fees that are being generated on GBTC: that is all the capital that we as an organization are putting into our lawsuit against the SEC, bringing the best legal minds possible to the case, and really just continuing to advocate for our investors. We feel very strongly about the case. The full resources of the firm are behind it and, again, we'll lower fees in an ETF state.

55. Sonnenshein's excuse for maintaining Grayscale's exorbitant fees is transparent pretext. At current Bitcoin prices, Grayscale's annual "Sponsor's Fee"

is running at nearly $300 million per year for the Bitcoin Trust alone. Grayscale could pay a team of five lawyers to work 40 hours a week, 50 weeks a year on its appeal against the SEC for a small fraction of its $300 million fee. Grayscale could not possibly be spending "all"—or even a material amount—of the $300 million of its Bitcoin Trust Sponsor's Fee on "[the Bitcoin Trust]'s lawsuit against the SEC," as Sonnenshein falsely suggested.

56. In any event, litigation costs cannot possibly justify Grayscale's excessive Sponsor's Fees because the Trust Agreements direct the Trusts to pay "extraordinary legal fees and expenses, including ***any*** legal fees and expenses incurred in connection with litigation, regulatory enforcement or investigation matters" out of the Trust corpus, ***separate from and in addition to*** the Sponsor's Fees. Trust Agreement § 6.8(b)(i).[11] It is telling, however, that Sonnenshein himself recognizes that Grayscale's Sponsor's Fees are so obviously excessive that they cry out for some explanation—however false.

57. Finally, Grayscale currently operates seventeen digital asset trusts, all of which would share in the benefit of ETF approval. But, according to Sonnenshein, the Bitcoin Trust alone is funding its battle with the SEC. Sonnenshein has thus

[11] The operative Third Amended Trust Agreement includes a similar, but differently worded provision: "In certain extraordinary circumstances, the Trust may pay expenses in addition to the Combined Fee and the Assumed Fees, such as . . . extraordinary legal fees." Third Amended Trust Agreement § 4.8(b).

offered no excuse at all for maintaining a 2.5% fee on the Ethereum Trust or any of Grayscale's other trusts that charge investors similarly high rates. The fact is there is no commercial justification for the Trusts' usurious fees. Grayscale has simply perverted the Trusts by holding investors hostage to a perpetual grifting of billions of dollars in the guise of management "fees."

58. Nor do the Trust Agreements sanction Grayscale's malfeasance. Between Trust Agreements Sections 6.3(g), 6.3(i), 6.3(j), and 6.6(b), Grayscale is required to "monitor" its own fees, make a determination that its own fees are "competitive," and "if necessary, renegotiate the fee structure to obtain such rates[,]" ensure the Trust estates are not "employ[ed] . . . in any manner except for the benefit of the Trust Estate[s]" such as through payment of excessive fees, and undertake this determination exercising "integrity," "good faith," and "due diligence" after considering "customary or accepted industry practices[.]"

59. It has done none of these things. Instead, it has breached its obligation to monitor the Sponsor's Fees and "obtain" the "best price" available. It has done so in bad faith and with willful misconduct. It has done so in direct violation of Section 6.3(i) of the Trust Agreements, which prohibits Grayscale from using the Trusts' estates "for the exclusive benefit of the Sponsor," to enrich itself at enormous expense to the Trusts' shareholders.

60. These breaches not only wrongfully extract resources from the Trusts' shareholders—they also put substantial downward pressure on the market price of Trust shares, as Grayscale admits in its filings with the SEC. And because Grayscale wrongfully refuses to permit redemptions, shareholders are left with no ability to escape these harms and reinvest with a competing provider.

III. GRAYSCALE'S SELF-SERVING BAN ON REDEMPTIONS VIOLATES THE TRUST AGREEMENTS AND THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

61. The Trust Agreements require that "the Trust shall be managed by the Sponsor in accordance with this Trust Agreement," Trust Agreements § 6.1, and provides that Grayscale, as the Sponsor, "shall have, and may exercise on behalf of the Trust, all powers and rights necessary, proper, convenient, and advisable to effectuate and carry out the purposes of the Trust[.]" *Id.* § 6.2.

62. This grant of authority carries with it an obligation to "effectuate and carry out the purposes of the Trust[.]" *Id.* This is further confirmed by Section 6.3(a) of the Trust Agreements, which obligates the Sponsor to "[d]evote such of its time to the affairs of the Trust as it shall, in its discretion exercised in good faith, determine to be necessary to carry out the purposes of the Trust, as set forth in Section 1.5, for the benefit of the Shareholders." Under Section 1.5(a) of the Trust Agreements, the purposes of the Trusts are simple:

- "to accept Bitcoin [or Ether] for subscriptions of Shares" (*i.e.*, creation transactions);

- “to hold Bitcoin [or Ether],” (*i.e.*, custody services); and
- “to distribute Bitcoin [or Ether] (or cash from the sale of Bitcoin [or Ether]) upon redemptions of Shares” (*i.e.*, redemption transactions).

63. In its SEC filings, Grayscale advertises that the Trusts pursue these purposes in furtherance of their simple “investment objective[—]for the value of its Shares (based on BTC per share) to reflect the value of Bitcoin held by the Trust, less fees and expenses.” Correspondingly, the Ethereum Trust’s self-professed “investment objective is for the value of its Shares (based on ETH per Share) to reflect the value of Ethereum held by the Trust, less fees and expenses.”

64. It is incontrovertible that the Trusts were designed, marketed, and intended to act as tracking funds, holding an underlying asset while facilitating the creation and redemption of shares to be sold on the secondary market to purchasers seeking exposure to that asset. The Bitcoin Trust’s SEC filings repeatedly confirm this, assuring shareholders that “the Trust’s investment objective 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.” The Ethereum Trust’s SEC filings provide the same assurance to investors.

65. When a tracking fund operates as intended, arbitrageurs keep the market value of its shares in line with its NAV. Here, when the Trusts’ shares trade above NAV, arbitrageurs would exchange Bitcoin or Ether for shares in creation

transactions and sell those shares at the prevailing market premium until that selling pressure returned the market price of the Trusts' shares to parity with NAV. When the Trusts' shares trade below NAV, arbitrageurs would buy shares at the prevailing market discount and redeem those shares for digital assets until the buying pressure returned the market price of the Trusts' shares to parity with NAV. The net result is that any premia or discounts are short-lived, and the share price closely tracks the value of the underlying assert (here, Bitcoin or Ether) over the long term.

66. Working in tandem, this double-sided mechanism has two important and related effects: it keeps the value of all the shares aligned with the value of the Trusts' assets and it keeps the overall size of the Trusts in line with market demand for the product. When the Trusts are not being manipulated, it is the market—not Grayscale—that determines the appropriate size of the Trusts.

67. Grayscale's CEO Sonnenshein has indeed publicly touted the Trusts' arbitrage mechanism, assuring the investing public that the Trusts are designed to enable market forces to keep the Trusts' share values aligned with their NAVs. Yet Grayscale itself has been forced to admit that, "[t]o date, GBTC has not met its investment objective and the Shares . . . have not reflected the value of Bitcoin held by GBTC." The reason is simple: Grayscale refuses to allow redemptions.

68. While the Trusts' shares had historically traded at a premium to NAV, that collapsed during the first quarter of 2021. The discount in the price of both

Trusts' shares has been a persistent feature ever since that time. It has at times exceeded 50%—meaning that a share trades at less than half the value of the fractional claim to Bitcoin or Ether that it represents.

69. At current market prices, the Bitcoin Trust holds Bitcoin with a market value of $14.1 billion, but Bitcoin Trust shares trade at a market capitalization of roughly $7.8 billion. Reflecting the cost to investors of Grayscale's unabashed perversion of shareholder rights, Bitcoin Trust investors choosing to sell their shares in the secondary market today must absorb a 45% discount to the market value of their fractional interest in the Bitcoin Trust's assets. Similarly, the Ethereum Trust holds Ether with a market value of $4.7 billion, but the Ethereum Trust's shares trade at a market capitalization of roughly $2.2 billion. Ethereum Trust investors choosing to sell their shares in the secondary market today must therefore absorb a 54% discount to the market value of their fractional interests in the Ethereum Trust's assets. The staggering size of the NAV discount is indicative of the harm done to the personal rights of shareholders to redeem for their proportional share of digital assets, rather than trade away that interest at a massive loss.

70. Investors in the Trusts thus face an unenviable set of options. On the one hand, they can sell their shares and suffer the impact of the massive discount at current market prices. On the other, they may hold their shares in the hope that the resumption of redemptions in the future will bring the market value of their shares

back in line with the value of the Trusts' assets. Investors who take the former path must forfeit upwards of 50% of their investment in stranded value. But those who take the latter path are trapped in their positions, exposed to ongoing disruptions in the value of the underlying digital assets, which have tended to exhibit much higher realized volatilities than almost any other common asset class.

71. The Trusts have ceased to function due to the radical disconnect between the value of the Trusts' shares and the value of their underlying assets. The Trusts each last issued new shares in the first quarter of 2021, shortly before the Trusts' shares fell below NAV. New creation transactions are not economically feasible, since no rational market participant would deliver Bitcoin or Ether to the Trusts in exchange for shares worth substantially less.

72. Thus, while Grayscale and its officers still seek to lure investors by falsely proclaiming that the Trusts' shareholders "own[] a piece of [the] Bitcoin [or Ether] underlying th[eir] share[s]" and "control" the digital assets held in trust, they have in practice usurped those rights by prohibiting shareholders from redeeming their shares in exchange for the Bitcoin or Ether they supposedly represent.

73. In order to unfreeze the Trusts' operations, Grayscale needs to honor Trust shareholders' right to invoke orderly redemption procedures. As explained above, permitting redemption transactions would allow shareholders to exchange their shares in the Trusts for their fractional interest in the Trusts' assets (either

Bitcoin or Ether), incentivizing arbitrageurs to snap up the Trusts' shares in order to redeem them until the shares traded back into alignment with the Trusts' NAV. But Grayscale refuses to turn on the redemption spigot. As a result, the Trusts remain frozen in time, unable to fulfill *either* their purpose of facilitating creation transactions (because they are no longer economically viable) *or* their purpose of facilitating redemption transactions (because Grayscale refuses to authorize them).

74. Grayscale's refusal to permit redemption transactions can only be explained by one thing: greed. When the Trusts' shares first traded below NAV in the first quarter of 2021, Grayscale was facing serious competitive pressures from other products allowing institutional investors access to Bitcoin and Ether on far more favorable terms. *See supra* ¶¶ 38-39. Bitcoin had begun trading on the Chicago Mercantile Exchange and Bitcoin futures ETFs were just months away from regulatory approval. The Trusts, with their wildly inflated Sponsor's Fees, were no longer competitively situated to capture additional shareholder capital. But Grayscale had a massive captive pool at its disposal that would generate substantial fee income for Grayscale indefinitely if it could prevent capital flight. And capital flight was impossible as long as Grayscale could, however improperly, keep a lid on shareholders' redemption rights, so that is what it did. As a result, the Trusts' shares continue to trade at a massive discount—indicative of the substantial harm caused

by Grayscale's refusal to honor Trust shareholders' redemption rights—while Grayscale reaps massive fees.

75. Grayscale attempts to justify its conduct by hiding behind the Trusts' purported lack of regulatory approval for redemption transactions and its broad discretion to carry out its duties as Sponsor in a self-interested manner. Grayscale's pretextual efforts to cleanse its malfeasance wither under scrutiny.

76. *First*, Grayscale points to Section 5.1 of the Trust Agreements as requiring "receipt of regulatory approval" as a contractual prerequisite to authorizing redemption transactions. But since the Trusts already *have* regulatory approval for redemption transactions, Grayscale's reliance on Section 5.1 is a red herring. Indeed, regulatory approval has been in place at least since creation transactions halted in the first quarter of 2021.

77. SEC Regulation M ("Reg M," 17 C.F.R. § 242.100, *et seq.*) governs the permissibility and timing of share creation and redemption programs. The SEC structured Reg M as "a prophylactic approach to anti-manipulation regulation" by promulgating a comprehensive set of six rules that generally "govern[] the activities of underwriters, issuers, selling security holders, and others in connection with offerings of securities." Activities conducted in compliance with those rules are *de facto* approved by the SEC, and no further agency action is necessary or available.

78. Reg M straightforwardly permits redemption transactions outside of specified restricted periods that occur when an issuer distributes new securities.[12] Reg M thus allows issuers and distribution participants to distribute securities during one period of time, complete that distribution, and then engage in redemption transactions when, as has long been the case here, those distribution transactions have halted or been completed.

79. Reg M unquestionably authorizes redemptions under the current circumstances. Since the first quarter of 2021, not only have the Trusts not issued any shares, but any share issuance is entirely foreclosed by the large and persistent discounts of the Trusts' shares to their respective NAVs. Under Reg M, the Trusts are not, and as a practical matter cannot be, engaged in any distribution and may thus embrace Trust shareholders' redemption rights at any time. Consistent with Section 5.1 of the Trust Agreement, the Trust has already received "regulatory approval" for "a redemption program."

80. Grayscale begrudgingly acknowledges this. In December 2022, facing public outcries from the shareholders of the Trusts, Grayscale sought to placate them by suggesting in a public letter that it was contemplating a future tender offer for the Bitcoin Trust's shares. Hidden in a footnote, Grayscale conceded that while such

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[12] The "restricted period" typically begins five days before securities are distributed and ends when the distribution is completed.

purchases might otherwise implicate Reg M, because "Regulation M applies to redemptions and repurchases of shares of GBTC when GBTC is creating shares, and because GBTC would not create any shares while pursuing a tender offer, [Grayscale] would not need relief from the requirements of Regulation M."

81. The Trusts have not created shares in years and cannot do so until their discount to the market price of Bitcoin and Ether is erased. Grayscale's logic with respect to the Reg M implications of its contemplated tender offer would thus apply with equal force to its acceptance of redemptions. Since the Trust currently is not and cannot be engaged in share creation, the Trusts have regulatory approval for redemptions under Reg M and may accept redemptions at any time without further relief from the SEC.

82. Section 6.3(b) further imposes explicit obligations on Grayscale to execute and file all documents and do "any and all other things as may be appropriate" for the "qualification and operation of the Trust[s] and for the conduct of its affairs." Thus, Grayscale cannot contend that – notwithstanding Reg M's existing approval for a redemption program – it would be "inappropriate" to proceed with such a program without communicating with the SEC in advance. Even if true, the Trust Agreements explicitly obligate Grayscale to undertake any communication

and file any documents with the SEC that may be appropriate to facilitate a redemption program under the present circumstances.[13]

83. In any event, the "regulatory approval" language Grayscale tried to effect in Section 5.1 of the Trust Agreement is not even operative. Examination of Grayscale's purported amendments of the Trust Agreement reveal that Grayscale has been trying, albeit ineffectively, to prospectively insulate its improper actions for years through a series of invalid amendments to the Trust Agreement.

84. Going back to the Third Amended Bitcoin Trust Agreement, Grayscale agreed to subject any trust agreement amendments that "adversely affect . . . the rights of Limited Owners" or "material[ly] change[] . . . the Trust's purpose or structure" to "written approval or affirmative vote of Limited Owners holding Units equal to at least a majority (over 50%) of the Shares." Third Amended Bitcoin Trust Agreement § 10.1(a). The agreement was clear that any amendments "shall occur only upon" this shareholder-support condition being met. *Id.*

85. In its 2016 Annual Report, Grayscale likewise explained that "any amendment that adversely affects the rights of Shareholders, appoints a new Sponsor, dissolves the Trust or makes any material change to the Trust's basic

[13] Grayscale's position, moreover, turns Reg M on its head. While Reg M was promulgated to "maintain[] essential investor protection" and for the "prevention of manipulation," Grayscale invokes Reg M in order to enrich itself at the expense of investors, and in order to manipulate the Trusts' share prices to maintain excessive discounts from NAV.

investment policies or structure must be approved by the affirmative vote of Shareholders owning at least 50% of the outstanding Shares."[14]

86. In late 2017, around the same time Grayscale withdrew its initial ETF application and at the point when Bitcoin prices were beginning to skyrocket, Grayscale cunningly sought to "adopt" an amendment to the trust agreement without complying with these requirements.

87. In purporting to pass the Fourth Amended Bitcoin Trust Agreement, Grayscale made several subtle changes to the agreement that "adversely affect" shareholder rights. One of those changes was to eliminate the requirement that adverse amendments receive "written approval or affirmative vote" from the majority of the Limited Owners. This was replaced by provisions permitting materially adverse amendments so long as the majority of shareholders did not object after notice at least twenty days prior to the effective date of the amendment—*i.e.*, negative consent. Fourth Amended Bitcoin Trust Agreement §§ 10.1(a), 10.3.

88. The Fourth Amended Bitcoin Trust Agreement had other adverse changes as well. For example, it purported to expand the Sponsor's authority to

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[14] Notably, the 2016 Annual Report nowhere suggests that shareholder approval for amendments could be secured through negative consent. By contrast, SEC filings in later years explicitly assert that the Sponsor may amend the trust agreements "in its sole discretion without shareholder consent provided that the Sponsor provides 20 days' notice of any such amendment."

suspend or refuse creation orders and redemption orders and limited the circumstances in which Shareholders could compel replacement of the Sponsor.

89. Notwithstanding that Grayscale was materially undermining shareholders' voting rights, Grayscale did not seek, or receive, the "written approval or affirmative vote" of 50% of the Limited Owners (*i.e.*, unaffiliated shareholders) necessary to adopt the Fourth Amended Trust Agreement in accordance with the requirements of the Third Amended Trust Agreement. As a result, the Fourth Amended Bitcoin Trust Agreement—and the subsequent amendments Grayscale sought to impose on investors in service of its redemption-blocking scheme to maximize fees—was ineffective and void *ab initio*.

90. Professing to have fundamentally changed the Trust's voting mechanism, albeit in violation of the existing voting procedures, Grayscale proceeded in the fall of 2018 to subvert redemption rights in the Fifth Amended Bitcoin Trust Agreement. In purporting to pass this amendment, Grayscale employed the negative consent procedure for amendments it had surreptitiously, and invalidly, added to the Fourth Amended Bitcoin Trust Agreement. The new provisions in the Fifth Amended Bitcoin Trust Agreement, including the regulatory-approval prerequisite to redemptions, were therefore—as Grayscale and its deal counsel have no doubt known all along—ineffective and void *ab initio* as well.

91. *Second*, Grayscale also seeks to justify its failure to accept redemptions by hiding behind the broad grant of discretion afforded the Sponsor under the Trust Agreements to act in its "sole discretion" in deciding whether to authorize a redemption program. According to the Trust Agreements, this "sole discretion" language permits Grayscale to "consider only such interests and factors as it desires, including its own interests," without "any consideration to any interest of . . . the Shareholders." Trust Agreements § 6.6(d).

92. While broadly drafted, the effect of this self-serving language remains cabined by Delaware law, which is clear that this type of contractual provision cannot be used to justify bad-faith conduct, disloyalty, or self-dealing. Even broadly drafted "sole discretion" language does not excuse Grayscale from its duty to "exercise that discretion consistent with its covenant of good faith and fair dealing." *Hilco Cap., LP v. Fed. Ins. Co.*, 978 A.2d 174, 178 (Del. 2009); *accord In re P3 Health Grp. Holdings, LLC*, 2022 WL 16548567, at *26 (Del. Ch. Oct. 31, 2022). And, notably, the Delaware Statutory Trust Act renders the implied covenant nonwaivable. 12 *Del. C.* § 3806(e) (The "governing instrument [of a statutory trust] may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.").

93. For these reasons, among others, Grayscale's bad-faith, disloyal, and self-dealing refusal to allow redemptions in derogation of Trust shareholder rights

lacks a good-faith justification, has not been sanctioned by Grayscale's unsuccessful attempts to amend the Trust Agreements, and remains unexcused under well settled principles of Delaware law.

IV. GRAYSCALE'S BREACHES HAVE BEEN AT THE DIRECTION OF ITS CONTROLLERS

94. Grayscale has not acted alone. Its exploitation of Trust shareholders and violation of their rights has at all times been at the direction of its ultimate controller, Barry Silbert, who together with Grayscale's current CEO, Michael Sonnenshein, has orchestrated Grayscale's self-serving conduct detailed herein.

95. Silbert, the founder and CEO of DCG and the founder, chairman, and CEO of Grayscale until January 2021, presides over a conflict-laden empire that exists to extract resources from the investing public for his personal benefit. Grayscale, DCG, Genesis, and the Trusts are all pawns in this disloyal and unlawful scheme.

96. As Grayscale's parent and sole member, DCG was instrumental in creating the conditions necessary for Grayscale's ongoing fee bonanza. As discussed above, shares in the Bitcoin Trust traded at a substantial premium to NAV for many years. This demand was, in part, driven by Grayscale's affiliate, Genesis, which like Grayscale is a subsidiary of the Silbert-controlled DCG.

97. Genesis borrowed Bitcoin from a retail-investor lending program (that the SEC subsequently alleged to be an illegal securities offering) and lent those

Bitcoin to cryptocurrency hedge funds buying additional shares of the Bitcoin Trust. Most significantly, Genesis lent a fund called Three Arrows Capital over $2 billion of Bitcoin that Three Arrows Capital then used for Bitcoin Trust creation transactions, at one point causing Three Arrows Capital to acquire over 6% of all Bitcoin Trust shares outstanding. In this way, DCG and its subsidiary Genesis were responsible for propping up the price of the Bitcoin Trust shares in order to sustain their premium over NAV which, in turn, incentivized the creation of more Bitcoin Trust shares.

98. Over many years, including while Silbert was CEO of Grayscale and later the Chairman of its Board, DCG and Silbert masterminded this coordinated effort for the purpose of inflating the Sponsor's Fee payable to Grayscale, which lacks any independent oversight in the form of unaffiliated directors or otherwise, and is controlled by Silbert.

99. Once the Trust's share price had ballooned far out of proportion to its underlying assets, Silbert and Sonnenshein set about ensuring that the base from which Grayscale's fees are calculated could never shrink. To that end, they devised the subterfuge of invoking Reg M to justify Grayscale's refusal to permit shareholders to redeem their shares out of either Trust and refusal to reduce fees in the interim.

100. Sonnenshein, Grayscale's current CEO—who has publicly admitted that he is a fiduciary of the Trusts—has not been shy in claiming credit for his role in these decisions. He joined Grayscale in January 2014, when the Bitcoin Trust, with just $60 million under management, was less than one-half of one percent its current size. As self-styled "employee number one" at Grayscale, and later Managing Director, Sonnenshein personally oversaw and directed Grayscale's self-dealing conduct in connection with its refusal to allow redemptions. He has openly acknowledged that it was he who chose to sue the SEC and focus the "full resources of [his] team and [his] firm" on Grayscale's lawsuit against the agency, while refusing to offer any alternative redemption program to shareholders like Alameda.

101. Meanwhile, Grayscale's abdication of its contractual duty to shareholders to ensure its fees are competitive has likewise been at the direction of Silbert and Sonnenshein. Grayscale's SEC filings tout that Sonnenshein oversees Grayscale's entire "strategic direction" and the "growth of the business," that is, the extraction of more than $1.3 billion in fees from shareholders while Sonnenshein has served as CEO. Sonnenshein has publicly sought to justify Grayscale's exorbitant Sponsor's Fee on multiple occasions. Sonnenshein's public promise to lower the Sponsor's Fee upon receipt of ETF approval reflects the reality that it is he who determines the size of Grayscale's fees.

102. In breach of their fiduciary duties, Grayscale, DCG, Silbert, and Sonnenshein have refused to vindicate Trust shareholders' rights to an investment vehicle with competitive fees that permits redemptions as appropriate. While their conduct has subverted the purpose of the Trusts and saddled Trust beneficiaries with billions of dollars in stranded value, it achieved its intended purpose: As Sonnenshein recently observed, 2022 was "a really good year" for Grayscale.

V. THE ALAMEDA DEBTOR BRINGS THESE CLAIMS TO BENEFIT ITS CREDITORS AND ALL SHAREHOLDERS

103. Plaintiff Alameda is a significant shareholder in each of the Trusts. As a shareholder, it is also a party to the Trust Agreements. Based on a diligent inquiry to date, though recognizing that Alameda's present business records may be incomplete, the Alameda debtor owns at least 22,166,720 shares in the Bitcoin Trust and at least 6,318,384 shares in the Ethereum Trust. As of the end of 2022, there were 692,370,100 shares outstanding in the Bitcoin Trust and 310,158,500 shares outstanding in the Ethereum Trust, making Alameda a 3.2% and 2.0% shareholder of each, respectively.

104. As of March 3, 2023, Alameda's shares in the Trusts would be worth about $290 million if sold in the secondary markets. If Grayscale were to reduce its fees and offer redemption programs for the Trusts, Alameda would receive the benefits of critical rights it has as a shareholder. Share prices would swiftly rise to around the NAV per share, or potentially higher, and Alameda's shares, at current

Bitcoin and Ether prices, would be worth more than $540 million, a $250 million increase in value Alameda could ultimately choose to monetize and distribute to the FTX Debtors' customers and other creditors.

105. Alameda is only one of the more than one million shareholders in the Trusts, who live in all 50 states and all over the world. Due to Grayscale's persistent marketing to the public, many of these shareholders, like FTX customers, are retail investors. Should Alameda prevail in this suit and secure the injunctive relief it seeks, all trust shareholders would receive their rightful contractual benefits under the Trust Agreements.

106. Assuming for illustrative purposes that shares in the Bitcoin Trust, which are presently collectively worth $7.8 billion based on secondary market prices, would rise to meet the current NAV, they would rise in value to $14.1 billion. Shares in the Ethereum Trust, which are presently collectively worth $2.2 billion based on secondary market prices, would rise in value to a NAV of $4.7 billion. And these figures are likely conservative. Were shareholders not forced to bear supra-competitive fees, share prices would rise even higher. Altogether, the injunctive relief this lawsuit seeks would return at least $8.8 billion of value to shareholders at current Bitcoin and Ether prices.

107. The Alameda debtor, moreover, files this lawsuit in a distinctive position. Alameda filed a petition for relief under chapter 11 of the United States

Bankruptcy Code (title 11, U.S. Code) on November 11, 2022. The chapter 11 case is pending before the Honorable John Dorsey, United States Bankruptcy Judge, District of Delaware (Case No. 22-11068). Judge Dorsey is also overseeing the chapter 11 cases of numerous of Plaintiff's affiliates, including Alameda's parent company, Alameda Research LLC, and FTX Trading Ltd. Plaintiff is a debtor in possession under 11 U.S.C. § 1107.

108. The FTX Debtors' chapter 11 filing created a bankruptcy estate for each of the FTX Debtors under 11 U.S.C. § 541. The bankruptcy estate includes "all legal and equitable interests" of Alameda as of the bankruptcy filing, including Alameda's interests in the Trusts and all of its claims in this action.

109. Just prior to Alameda's chapter 11 filing, Mr. John Ray III was appointed to be the FTX Debtors' Chief Executive Officer.[15] Since his appointment, Mr. Ray and his team have been identifying, securing, and recovering assets, uncovering and pursuing claims against third parties and insiders, and maximizing the value of the FTX Debtors' assets, all for the benefit of the FTX Debtors' customers and other creditors. This action to vindicate the bankruptcy estate's rights in the Trusts is an important part of that process.

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[15] Mr. Ray has over 40 years of legal and restructuring experience. He has been the Chief Restructuring Officer or Chief Executive Officer in several of the largest corporate restructurings in history, including among many others, Enron and Residential Capital, where Mr. Ray oversaw substantial recoveries for the benefit of creditors.

<u>FIRST CAUSE OF ACTION</u>[16]
(Breach Of Contract – The Bitcoin Trust Fees)

110. All of the allegations set forth in paragraphs 1 through 109 are realleged and incorporated as if fully stated herein.

111. Section 6.3(g) of the Trust Agreement imposes on Grayscale an affirmative obligation to monitor "***all*** fees charged to the Trust" to ensure such fees are "at competitive rates" and "the best price and services available under the circumstances, and if necessary, renegotiate the fee structure to obtain such rates and services for the Trust." The fees that Grayscale must monitor and renegotiate as needed include the Sponsor's Fee, which, pursuant to Section 6.8(a)(i) of the Trust Agreement and Grayscale's website, is a service provider fee charged to the Bitcoin Trust. Sections 6.3(h), (i) and (j) further obligate Grayscale to provide for the "safekeeping . . . of the trust," to prevent "employ[ment] of the Trust Estate in any manner except for the benefit of the Trust," and to "act with integrity and good faith . . . in all activities relating to the Trust and in resolving conflicts of interest."

112. Upon information and belief, Grayscale has never engaged in any such efforts to ensure its Sponsor's Fee was at a "competitive rate." Instead, the Sponsor's Fee has remained unchanged since the Bitcoin Trust was created almost a decade ago.

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[16] All causes of action are asserted against Grayscale alone unless otherwise indicated.

113. Had Grayscale complied with its contractual obligations, it would have long ago confronted the inescapable reality that the Sponsor's Fee is far from "competitive." Competing products generally charge fees of less than one percent and these fees amount to far less than $100 million per year. Thus, Grayscale's fees are many times higher than "competitive" fees.

114. The Sponsor's Fee is and always has been the largest fee payable by the Bitcoin Trust. If one assumes that the Sponsor's Fee is just two times higher than the contractually mandated "best price" required under the Trust Agreement, then Grayscale overcharged Trust shareholders by approximately $500 million in the past two years alone.

115. Instead of complying with its contractual obligation to monitor and adjust the Sponsor's Fee to ensure shareholders are paying the "best price" possible, Grayscale has chosen to enrich itself at the expense of the Bitcoin Trust's shareholders.

116. To the extent its obligation to monitor and adjust the Sponsor's Fee implicates the conflict-of-interest procedures appearing in Sections 6.3(j) and 6.6(b) of the Trust Agreement, those provisions require Grayscale, in "resolv[ing] [any] conflict of interest" between itself and the Bitcoin Trust, to act "at all times with integrity and good faith," to "exercise due diligence," and to undertake an analysis of "customary or accepted industry practices." It has performed no such exercise.

Instead, it has chosen to place its own interests above those of the Bitcoin Trust's beneficiaries in bad faith and with willful misconduct.

117. By refusing to monitor and renegotiate the Sponsor's Fee—for its own benefit and to the detriment of shareholders like Plaintiff—Grayscale has breached its contractual duties under the Trust Agreement, including but not limited to its Section 6.3(g) obligation to ensure competitive rates and its express duty of integrity and good faith under Sections 6.3, 6.5, 6.6, and 6.7. This breach has resulted in substantial, material, and direct harm to Plaintiff. There is no adequate remedy at law to fully compensate Plaintiff. Only a reduction of the Sponsor's Fee to a competitive rate will remedy the ongoing breach. Plaintiff will further require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale's past malfeasance.

SECOND CAUSE OF ACTION
(Breach Of Contract — The Bitcoin Trust Redemption)

118. All of the allegations set forth in paragraphs 1 through 117 are realleged and incorporated as if fully stated herein.

119. Grayscale's refusal to authorize redemptions constitutes a breach of multiple of its express obligations to shareholders in the Trust Agreement.

120. Sections 1.5(a), 6.1, 6.2, and 6.3(a) of the Trust Agreement obligate Grayscale to effectuate and carry out the purposes of the Trust, one of which is and always has been facilitating redemption transactions by shareholders.

121. Further, Sections 6.3(j), 6.5, 6.6, and 6.7 of the Trust Agreement impose a contractual duty of good faith upon Grayscale, pursuant to which Grayscale must "[a]t ***all*** times act with integrity and good faith and exercise due diligence in ***all*** activities relating to the Trust and in resolving conflicts of interest."

122. Grayscale has breached its express contractual duty of good faith by blocking Bitcoin Trust shareholders' redemption rights for the improper purpose of enriching itself at shareholders' expense. Grayscale itself has acknowledged that it has no legitimate justification for refusing to implement a shareholder redemption program, noting that since "Regulation M applies [only] to redemptions and repurchases of shares of GBTC when GBTC is creating shares," Grayscale "would not need relief from the requirements of Regulation M" so long as it does not permit creation and redemption to occur simultaneously. Grayscale thus knows that its stated reason for refusing to authorize redemptions—that it could not do so without violating Reg M—is false and pretextual.

123. Grayscale's refusal to authorize shareholder redemptions also constitutes a breach of other provisions of the Trust Agreement, including but not limited to: Section 6.3(b), which obligates Grayscale to execute and file all documents and to do "any and all other things as may be appropriate" for the "qualification and operation of the Trust[s] and for the conduct of its affairs[,]" including if appropriate communicating with the SEC regarding redemptions;

Section 6.3(h), which provides that Grayscale shall "[h]ave fiduciary responsibility for the safekeeping and use of the Trust Estate"; and Section 6.3(i), which prohibits Grayscale from using (or allowing others to use) the "Trust Estate in any manner except for the benefit of the Trust." Grayscale has breached these obligations by violating shareholders' rights for the improper purpose of increasing its own fees.

124. As of the date of this filing, the elimination of the Bitcoin Trust discount would increase the value of the Bitcoin Trust's shares by 45 percent, unlocking stranded value of $6.3 billion for shareholders. The magnitude of the Bitcoin Trust shares' discount to NAV is indicative of the harm caused to Bitcoin Trust shareholders through denial of their redemption rights. Yet Grayscale continues to hold its shareholders hostage, reaping exorbitant fees at their expense.

125. By acting in bad faith and with willful misconduct in refusing to permit redemptions—for its own benefit and to the detriment of Plaintiff—Grayscale has breached its contractual duties under the Trust Agreement. This breach has resulted in substantial, material, and direct harm to Plaintiff, whose inability to monetize the value of its shares of the Bitcoin Trust harms its ownership interest as a result of Grayscale's refusal to allow redemptions. There is no adequate remedy at law to fully compensate Plaintiff. Only the implementation of a redemption program will allow the market to determine the value of Plaintiff's shares. Plaintiff will further

require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale's past malfeasance.

<u>THIRD CAUSE OF ACTION</u>
(Breach Of Implied Covenant — The Bitcoin Trust Redemption)

126. All of the allegations set forth in paragraphs 1 through 125 are realleged and incorporated as if fully stated herein.

127. Under Delaware law, an implied covenant of good faith and fair dealing attaches to every contract, including statutory trust instruments. This implied covenant is non-waivable. 12 *Del. C.* § 3806(e) (governing instrument of trust agreement may not "limit or eliminate" liability for breach of implied covenant). The covenant of good faith and fair dealing is thus implied in the Trust Agreement as a matter of law.

128. This implied covenant requires, *inter alia*, that Grayscale refrain from acting arbitrarily or unreasonably with respect to the interests of Plaintiff; that it not undermine the intent of the Trust Agreement, frustrate any of its terms or its overarching purpose, or act contrary to the reasonable expectations of the Bitcoin Trust's shareholders; and that it exercise any discretion afforded to it under the Trust Agreement in good faith.

129. Grayscale's conduct breached the implied covenant. Specifically, its refusal to allow shareholder redemptions is arbitrary and unreasonable, especially where Reg M does not foreclose redemptions. This unreasonable refusal undermines

the intent of, frustrates the terms of, and controverts the Bitcoin Trust's shareholders' reasonable expectations based on the Trust Agreement, to which they are parties, and which is not designed to allow Grayscale to enrich itself at their expense. Moreover, to the extent the Trust Agreement grants Grayscale any discretion with respect to redemptions, Grayscale has not exercised such discretion in good faith.

130. Grayscale has attempted to sidestep its contractual and implied duties of good faith by amending Section 5.1 of the Trust Agreement to confer upon itself the "sole discretion" to decide whether to offer a redemption program.

131. Grayscale's effort to authorize itself to act in bad faith is unavailing. Even where a contract grants "sole discretion" to a decision maker, the decision maker must still "exercise that discretion consistent with its covenant of good faith and fair dealing." *Hilco Cap., LP v. Fed. Ins. Co.*, 978 A.2d 174, 178 (Del. 2009); *accord In re P3 Health Grp. Holdings, LLC*, 2022 WL 16548567, at *26 (Del. Ch. Oct. 31, 2022). Grayscale has not done so.

132. And, to the extent Grayscale endeavored to create a "regulatory approval" condition precedent to its ability to offer redemptions in Section 5.1 of the Trust Agreement, it has abused its contractual discretion by refusing to even consult the SEC about its ability to offer redemptions under the present circumstances, thus causing that condition to fail willfully and in bad faith.

133. Grayscale's breach of the implied covenant of good faith and fair dealing has resulted in substantial, material, and direct harm—in the form of significant monetary damages and otherwise—to Plaintiff, which has been forced to hold artificially devalued shares as a result of Grayscale's conduct. This breach has resulted in substantial, material, and direct harm to Plaintiff, whose inability to monetize the value of its shares of the Bitcoin Trust harms its ownership interest as a result of Grayscale's refusal to allow redemptions. There is no adequate remedy at law to fully compensate Plaintiff. Only the implementation of a redemption program will allow the market to determine the value of Plaintiff's shares. Plaintiff will further require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale's past malfeasance.

FOURTH CAUSE OF ACTION
(Breach Of Contract – The Ethereum Trust Fees)

134. All of the allegations set forth in paragraphs 1 through 133 are realleged and incorporated as if fully stated herein.

135. Sections 6.3(g), (h), (i), and (j) of the Ethereum Trust Agreement impose the same obligations on Grayscale to ensure "competitive" rates and protect shareholders' rights that the Trust Agreement does.

136. And, as in the case of the Bitcoin Trust Sponsor's Fee, Grayscale has never engaged in any such efforts. Instead, the Ethereum Trust Sponsor's Fee has remained unchanged since the Ethereum Trust was created on December 13, 2017.

137. The Ethereum Trust Sponsor's Fee accrues daily at an annual rate of 2.5%—even higher on a percentage basis than the 2.0% Bitcoin Trust Sponsor's Fee. It is markedly higher than the management fees charged by other digital asset trusts, *see supra* ¶¶ 42–53, and far from the "competitive" or "best" price the Ethereum Trust Agreement requires.

138. The Ethereum Trust Sponsor's Fee is and always has been the largest fee payable by the Ethereum Trust. If one assumes that the Ethereum Trust Sponsor's Fee is just two times higher than the contractually mandated "best price" required under the Ethereum Trust Agreement, then Grayscale overcharged Ethereum Trust shareholders by nearly $190 million in the past two years alone.

139. Instead of complying with its contractual obligation to monitor and adjust the Ethereum Trust Sponsor's Fee to ensure shareholders are paying the "best price" possible, Grayscale has chosen to enrich itself at the expense of the Ethereum Trust's shareholders.

140. To the extent its obligation to monitor and adjust the Ethereum Trust Sponsor's Fee implicates the conflict-of-interest procedures appearing in Sections 6.3(j) and 6.6(b) of the Ethereum Trust Agreement, those provisions require Grayscale, in "resolv[ing] [any] conflict of interest" between itself and the Ethereum Trust, to act "[a]t all times with integrity and good faith," to "exercise due diligence," and to undertake an analysis of "customary or accepted industry practices." It has

performed no such exercise. Instead, it has chosen to place its own interests above those of the Ethereum Trust's beneficiaries in bad faith and with willful misconduct.

141. By refusing to monitor and renegotiate the Ethereum Trust Sponsor's Fee—for its own benefit and to the detriment of shareholders—Grayscale has breached its contractual duties under the Ethereum Trust Agreement, including but not limited to, its Section 6.3(g) obligation to ensure competitive rates and its express duty of good faith and integrity under Sections 6.3, 6.5, 6.6, and 6.7. This breach has resulted in substantial, material, and direct harm to Plaintiff. There is no adequate remedy at law to fully compensate Plaintiff. Only a reduction of the Ethereum Trust Sponsor's Fee to a competitive rate will remedy the ongoing breach. Plaintiff will further require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale's past malfeasance.

FIFTH CAUSE OF ACTION
(Breach Of Contract — The Ethereum Trust Redemption)

142. All of the allegations set forth in paragraphs 1 through 141 are realleged and incorporated as if fully stated herein.

143. Grayscale's refusal to authorize redemptions constitutes a breach of multiple of its express obligations to shareholders in the Ethereum Trust Agreement.

144. Sections 1.5(a), 6.1, 6.2, and 6.3(a) of the Ethereum Trust Agreement obligate Grayscale to "effectuate and carry out the purposes of the Trust," one of which is and always has been facilitating redemption transactions by shareholders.

145. Further, Sections 6.3(j), 6.5, 6.6, and 6.7 of the Ethereum Trust Agreement impose a contractual duty of good faith upon Grayscale, pursuant to which Grayscale must "[a]t ***all*** times act with integrity and good faith and exercise due diligence in ***all*** activities relating to the Trust and in resolving conflicts of interest."

146. Grayscale has breached its express contractual duty of good faith by blocking Ethereum Trust shareholders' redemption rights for the improper purpose of enriching itself at shareholders' expense. Grayscale itself has acknowledged that it has no legitimate justification for refusing to implement a shareholder redemption program. *See supra* ¶ 80. It knows that its stated reason for refusing to authorize redemptions—that it could not do so without violating Reg M—is false and pretextual.

147. Grayscale's refusal to authorize shareholder redemptions also constitutes a breach of other provisions of the Ethereum Trust Agreement, including but not limited to: Section 6.3(b), which obligates Grayscale to execute and file all documents and to "do any and all other things as may be appropriate" for the "qualification and operation of the Trust and for the conduct of its affairs[,]" including if appropriate communicating with the SEC regarding redemptions; Section 6.3(h), which provides that Grayscale shall "[h]ave fiduciary responsibility for the safekeeping and use of the Trust Estate"; and Section 6.3(i), which prohibits

Grayscale from using (or allowing others to use) the "Trust Estate in any manner except for the benefit of the Trust." Grayscale has breached these obligations by violating shareholders' rights for the improper purpose of increasing its own fees.

148. As of the date of this filing, the elimination of the Ethereum Trust discount would increase the value of the Ethereum Trust's shares by 54 percent, unlocking stranded value of $2.5 billion for shareholders. The magnitude of the Ethereum Trust shares' discount to NAV is indicative of the harm caused to Ethereum Trust shareholders through denial of their redemption rights. Yet Grayscale continues to hold its shareholders hostage, reaping exorbitant fees at their expense.

149. By acting in bad faith and with willful misconduct in refusing to permit redemptions—for its own benefit and to the detriment of Plaintiff—Grayscale has breached its contractual duties under the Ethereum Trust Agreement. This breach has resulted in substantial, material, and direct harm to Plaintiff, whose inability to monetize the value of its shares in the Ethereum Trust harms its ownership interest as a result of Grayscale's refusal to allow redemptions. There is no adequate remedy at law to fully compensate Plaintiff. Only the implementation of a redemption program will allow the market to determine the value of Plaintiff's shares. Plaintiff will further require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale's past malfeasance.

<u>SIXTH CAUSE OF ACTION</u>
(Breach Of Implied Covenant – The Ethereum Trust Redemption)

150. All of the allegations set forth in paragraphs 1 through 149 are realleged and incorporated as if fully stated herein.

151. Under Delaware law, an implied covenant of good faith and fair dealing attaches to every contract, including statutory trust instruments. This implied covenant is non-waivable. 12 *Del. C.* § 3806(e) (governing instrument of trust agreement may not "limit or eliminate" liability for breach of implied covenant). The covenant of good faith and fair dealing is thus implied in the Ethereum Trust Agreement as a matter of law.

152. Grayscale has breached this implied covenant for the same reasons set forth at ¶¶ 127–133 *supra*, as it has engaged in the same conduct with respect to shareholder redemptions in connection with the Ethereum Trust as it has in connection with the Bitcoin Trust.

153. Grayscale's breach of the implied covenant of good faith and fair dealing has resulted in substantial, material, and direct harm to Plaintiff, whose inability to monetize the value of its shares of the Ethereum Trust harms its ownership interest as a result of Grayscale's refusal to allow redemptions. There is no adequate remedy at law to fully compensate Plaintiff. Only the implementation of a redemption program will allow the market to determine the value of Plaintiff's

shares. Plaintiff will further require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale's past malfeasance.

SEVENTH CAUSE OF ACTION
(Breach Of Fiduciary Duty)
(Against Grayscale, DCG, Silbert, And Sonnenshein (the "Fiduciary Defendants"))

154. All of the allegations set forth in paragraphs 1 through 153 are realleged and incorporated as if fully stated herein.

155. Pursuant to Section 2.2 of both the Ethereum and the Bitcoin Trust Agreements, "the duty and authority to manage the affairs of the Trust is vested in the Sponsor." Under this and other provisions of the Trust Agreements, the Trustee delegated virtually all of its inherent rights and obligations to Grayscale, including its fiduciary duties.

156. As this Court has recognized, where a "Trust Agreement delegates the function of the Trustee to [a third party], [it] thereby subjects [that third party] to fiduciary duties." *Cargill, Inc. v. JWH Special Circumstance LLC*, 959 A.2d 1096, 1120 (Del. Ch. 2008). Accordingly, in light of its possession of virtually all of the Trustee's powers, Grayscale is subject to fiduciary duties drawn from the Delaware law of trusts absent a clear and unambiguous disclaimer to the contrary. *Id.*

157. The Trust Agreements contain no such clear disclaimer. Instead, by subjecting Grayscale to liability for "fraud, gross negligence, bad faith or willful

misconduct," Sections 6.5 and 6.6 of the Trust Agreements permit fiduciary duty claims against Grayscale and its controllers.

158. Indeed, Section 6.6 of the Trust Agreements expressly acknowledges that "the Sponsor has duties (including fiduciary duties) and liabilities relating thereto to the Trust [and] the Shareholders," while Section 6.3(h) further provides that Grayscale "shall . . . [h]ave fiduciary responsibility for the safekeeping and use of the Trust Estate, whether or not in [Grayscale's] immediate possession or control."

159. As its sole member and owner, DCG controls Grayscale. It too is thus in a position to control the fiduciary of the underlying trust entity and therefore owes fiduciary duties of its own to the Trusts' shareholders.

160. As CEO of DCG and Chairman of the Board of Grayscale, Silbert controls both DCG and Grayscale. As such, Silbert is in a position to control the fiduciary and therefore owes fiduciary duties of his own to the Trusts' shareholders.

161. Sonnenshein owes fiduciary duties to the Trusts' shareholders as the CEO of Grayscale.

162. Thus, under the laws of the State of Delaware, Grayscale, DCG, Silbert, and Sonnenshein were all subject to the duty of loyalty.

163. The Fiduciary Defendants' duty of loyalty required that they act in the best interests of the Trusts' shareholders when deciding whether to authorize

shareholder redemptions and not subordinate the Trusts' shareholders' interests to their own self-interest.

164. This decision presents the Fiduciary Defendants with a conflict of interest because the redemptions that would ensue should the Trusts resume their redemption programs would reduce the size of the Trusts, thereby decreasing Grayscale's Sponsor's Fees and by extension the profits reaped by the Fiduciary Defendants.

165. Placing their own interests before those of the Trusts' shareholders, the Fiduciary Defendants chose to prevent shareholders from vindicating their redemption rights. Rather than even attempting to implement a redemption program, they instead directed their energy to amending the Trust Agreements in a naked attempt to insulate themselves from liability for their bad-faith conduct.

166. The Fiduciary Defendants' decision to prohibit redemptions was not made with the honest belief that the action taken was in the best interests of shareholders. Instead, the Fiduciary Defendants acted to advance their personal interest in increasing Grayscale's fees at the expense of shareholders like Plaintiff.

167. The Fiduciary Defendants' actions and inactions deprived and continue to deprive shareholders like Plaintiff of the ability to exit their investment at a share price commensurate with the value of the Trusts' underlying assets, in contravention of the Trusts' stated purpose as tracking funds.

168. Similarly, the Fiduciary Defendants breached their duty of loyalty by improperly resolving the conflict of interest presented by their obligation to monitor and renegotiate their own Sponsor's Fees, considering only their own interests and disregarding those of the Trusts' shareholders.

169. Plaintiff has stated a claim for breach of fiduciary duty under Delaware law.

EIGHTH CAUSE OF ACTION

(Declaratory Judgment That Grayscale Must Obtain A Competitive Management Fee For The Bitcoin Trust)

170. All of the allegations set forth in paragraphs 1 through 169 are realleged and incorporated as if fully stated herein.

171. Pursuant to 10 *Del. C.* §§ 6501 et seq., this Court has authority to issue a declaratory judgment.

172. An actual controversy exists between Plaintiff and Defendants concerning whether Grayscale has an obligation to shareholders to renegotiate the structure of the Bitcoin Trust Sponsor's Fee to obtain competitive rates and thereby ensure that shareholders remain at all times invested in a vehicle providing competitive services.

173. As detailed at ¶ 111 *supra*, Sections 6.3(g), (h), (i), and (j) of the Trust Agreement obligate Grayscale to protect the Trust estate and to ensure that all fees charged to the Bitcoin Trust are at competitive rates.

174. Grayscale has breached these obligations in connection with its failure to monitor and renegotiate its own Sponsor's Fee. *See supra* ¶¶ 112–117. By the same conduct, it has also breached its express duty of integrity and good faith under Sections 6.3, 6.5, 6.6, and 6.7 of the Trust Agreement. *See supra* ¶ 117. A judicial declaration is necessary and appropriate at this time under the circumstances to establish that Grayscale has thus failed to perform its obligations to shareholders under the Trust Agreement and must reduce its fees charged to the Bitcoin Trust to competitive rates as the Trust Agreement requires.

NINTH CAUSE OF ACTION
(Declaratory Judgment That The Bitcoin Trust Must Offer A Redemption Program)

175. All of the allegations set forth in paragraphs 1 through 174 are realleged and incorporated as if fully stated herein.

176. Pursuant to 10 *Del. C.* §§ 6501 et seq., this Court has authority to issue a declaratory judgment.

177. An actual controversy exists between Plaintiff and Defendants concerning whether Grayscale must implement a program to accept redemptions from shareholders in the Bitcoin Trust.

178. As detailed above, Sections 1.5(a), 6.1, 6.2, and 6.3(a) of the Trust Agreement obligate Grayscale to "effectuate and carry out the purposes of the Trust," one of which is and always has been facilitating redemption transactions

(*supra* ¶ 120); Section 6.3(b) obligates Grayscale to execute and file all documents and to do "any and all other things as may be appropriate" for the "qualification and operation of the Trust and for the conduct of its affairs[,]" including if appropriate communicating with the SEC regarding redemptions (*supra* ¶ 123); and Sections 6.3, 6.5, 6.6, and 6.7 impose a contractual duty of good faith upon Grayscale, pursuant to which Grayscale must "[a]t ***all*** times act with integrity and good faith and exercise due diligence in ***all*** activities relating to the Trust and in resolving conflicts of interest," including those that relate to redemptions (*supra* ¶ 121).

179. Grayscale has breached these obligations in connection with its refusal to implement a shareholder redemption program for the Bitcoin Trust. *See supra* ¶¶ 122–125. By the same conduct, it has also breached the nonwaivable implied covenant of good faith and fair dealing inherent in the Trust Agreement. *See supra* ¶¶ 127–133.

180. A judicial declaration is necessary and appropriate at this time under the circumstances to establish that Grayscale has thus failed to perform its obligations under the Trust Agreement and the implied covenant and must implement a program to accept redemptions from shareholders in the Bitcoin Trust as provided under the Trust Agreement and described herein.

<u>TENTH CAUSE OF ACTION</u>
(Declaratory Judgment That Grayscale Must Obtain A Competitive Management Fee For The Ethereum Trust)

181. All of the allegations set forth in paragraphs 1 through 180 are realleged and incorporated as if fully stated herein.

182. Pursuant to 10 *Del. C.* §§ 6501 et seq., this Court has authority to issue a declaratory judgment.

183. An actual controversy exists between Plaintiff and Defendants concerning whether Grayscale has an obligation to shareholders to renegotiate the structure of the Ethereum Trust Sponsor's Fee to obtain competitive rates and thereby ensure that shareholders remain at all times invested in a vehicle providing competitive services.

184. As detailed at ¶ 135 *supra*, Sections 6.3(g), (h), (i), and (j) of the Ethereum Trust Agreement obligate Grayscale to protect the Ethereum Trust estate and to ensure that all fees charged to the Ethereum Trust are at competitive rates.

185. Grayscale has breached these obligations in connection with its failure to monitor and renegotiate its own Ethereum Trust Sponsor's Fee. *See supra* ¶¶ 136–141. By the same conduct, it has also breached its express duty of integrity and good faith under Sections 6.3, 6.5, 6.6, and 6.7 of the Ethereum Trust Agreement. *See supra* ¶ 141. A judicial declaration is necessary and appropriate at this time under the circumstances to establish that Grayscale has thus failed to

perform its obligations to shareholders under the Ethereum Trust Agreement and must reduce its fees charged to the Ethereum Trust to competitive rates as the Ethereum Trust Agreement requires.

ELEVENTH CAUSE OF ACTION
(Declaratory Judgment That The Ethereum Trust Must Offer A Redemption Program)

186. All of the allegations set forth in paragraphs 1 through 185 are realleged and incorporated as if fully stated herein.

187. Pursuant to 10 *Del. C.* §§ 6501 et seq., this Court has authority to issue a declaratory judgment.

188. An actual controversy exists between Plaintiff and Defendants concerning whether Grayscale must implement a program to accept redemptions from shareholders in the Ethereum Trust.

189. As detailed above, Sections 1.5(a), 6.1, 6.2, and 6.3(a) of the Ethereum Trust Agreement obligate Grayscale to "effectuate and carry out the purposes of the Trust," one of which is and always has been facilitating redemption transactions (*supra* ¶ 144); Section 6.3(b) obligates Grayscale to execute and file all documents and to do "any and all other things as may be appropriate" for the "qualification and operation of the Trust and for the conduct of its affairs[,]" including if appropriate communicating with the SEC regarding redemptions (*supra* ¶ 147); and Sections 6.3, 6.5, 6.6, and 6.7 impose a contractual duty of good faith upon Grayscale,

pursuant to which Grayscale must "[a]t ***all*** times act with integrity and good faith and exercise due diligence in ***all*** activities relating to the Trust and in resolving conflicts of interest," including those that relate to redemptions (*supra* ¶ 145).

190. Grayscale has breached these obligations in connection with its refusal to implement a shareholder redemption program for the Ethereum Trust. *See supra* ¶¶ 146–149. By the same conduct, it has also breached the nonwaivable implied covenant of good faith and fair dealing inherent in the Ethereum Trust Agreement. *See supra* ¶¶ 151–153.

191. A judicial declaration is necessary and appropriate at this time under the circumstances to establish that Grayscale has thus failed to perform its obligations under the Ethereum Trust Agreement and the implied covenant and must implement a program to accept redemptions from shareholders in the Ethereum Trust as provided under the Ethereum Trust Agreement and described herein.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Alameda respectfully requests that the Court enter a judgment:

(a) Finding that Grayscale materially breached its obligations to Plaintiff under the Trust Agreement by failing to ensure the Sponsor's Fees Grayscale charged were at competitive rates as described herein;

(b) Finding that Grayscale materially breached its obligations to Plaintiff under the Trust Agreement and the implied covenant of good faith and fair dealing by failing to institute a shareholder redemption program as described herein;

(c) Finding that Grayscale materially breached its obligations to Plaintiff under the Ethereum Trust Agreement by failing to ensure that the Sponsor's Fees Grayscale charged were at competitive rates as described herein;

(d) Finding that Grayscale materially breached its obligations to Plaintiff under the Ethereum Trust Agreement and the implied covenant of good faith and fair dealing by failing to institute a shareholder redemption program as described herein;

(e) Finding that Defendants breached the fiduciary duties owed to Plaintiff as a shareholder in the Trusts;

(f) Ordering Grayscale to reduce the fees it charges to Plaintiff and other Trust shareholders to competitive rates as provided under the Trust Agreements and described herein;

(g) Ordering Grayscale to implement a program to accept redemptions from shareholders in the Trusts as provided under the Trust Agreements and described herein;

(h) Awarding Plaintiff damages in an amount to be proven at trial;

(i) Granting such other relief as this Court deems just and proper.

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Dated: March 6, 2023