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Brent Fields, Secretary
SR-BatsBZX-2016-30
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

This letter is in support of the petition and statement of Bats BZX (the "Exchange") opposing the disapproval, through delegated authority, of SR-BatsBZX – 2016-30 (the "Filing"). By way of context, I am currently the President and CEO of Convergex Group ("CVGX"), a leading global agency-focused broker-dealer. CVGX has a global institutional customer base of over 4,000 clients and executes orders in over 100 equity markets world-wide through high-touch, proprietary algorithms and other electronic tools. In addition, CVGX is an active participant in the Exchange Traded Product ("ETP") market – acting as an Authorized Participant ("AP")[1] in hundreds of ETFS as well as the innovator and sponsor of ETF Direct an institutional block discovery mechanism for ETFs. CVGX has agreed in a definitive agreement to be acquired by Cowen & Co. That transaction is expected to close shortly in the second quarter of 2017. This letter and my comments represent my views and not those of Cowen & Co. CVGX has agreed to act as an AP for the Winklevoss Bitcoin Trust (the "Bitcoin ETF") and has been supportive of this Filing since the beginning. In addition to acting as President and CEO of CVGX, I also serve on the Equity Market Structure Advisory Committee (the "EMSAC") of the Securities and Exchange Commission (the "Commission") and currently act as Chair of the Market Quality Sub-Committee of the EMSAC.

I think the disapproval decision of the Filing made through delegated authority by the Commission should be reversed for the following three reasons:

1. The standard applied to this Filing differs from past filings;
2. Concerns about the manipulability and risk of the Bitcoin ETF are overblown and run counter to past Commission views on risks in the market; and
3. The determination of net asset value ("NAV") and the Creation and Redemption functions, *actually* mitigate risk for investors who purchase shares the Bitcoin ETF as opposed to investors who purchase bitcoin the asset directly.

The standard applied for this Filing differs from past filings. The Commission seems to have applied different standards for the approval of the Bitcoin ETF than what has previously been applied to prior ETFs. This is especially unique in that the Commodities and Futures Trading Commission ("CFTC") has already determined that bitcoin qualified for treatment as an exempt

[1] An AP is a market participant who creates or redeems ETPs at NAV at the end of the day either for its own account or the accounts of others.

commodity. Surprisingly, and as pointed out by the Exchange in its letter to the Commission, this is the first time the Commission posited an affirmative obligation for the underlying markets of a commodity-based ETP to be regulated. One could argue that there are several commodity-based and other ETFs where the underlying market is either unregulated or lightly regulated. Examples include any and all FX linked or related ETPs or commodity-based ETPs that hold the underlying and not the derivative product. Frankly, this seems to be making new law because of the Commission's, unspoken but obvious, concern with bitcoin. Additionally, this issue can be cured by having the bitcoin exchange where the NAV is to be determined, sign an MOU with the Commission to share information.

Ironically, owning, trading and investing in bitcoin is legal in the United States, and as previously stated, bitcoin has been qualified as an exempt commodity by a peer regulator of the Commission, the CFTC. It strikes me as unusual that the Commission would decline to approve a product that — if or when listed – would allow it insight into the trading of bitcoin through the trading and operation of the Bitcoin ETF and give the Commission some oversight over a market that today – while having many thousands of investors – is outside of its purview.

Concerns about the manipulability and risk of this ETF are overblown and run counter to past Commission views on risks in the market. One objection raised by the Commission is that underlying could be or is more prone to manipulation than other assets classes. This concern seems theoretical. While manipulation of any asset price is a risk or a danger, there is nothing inherent in bitcoin to suggest that it is more subject or susceptible to manipulation than other asset classes. Additionally, with the structure of the Bitcoin ETF, its APs, the listing Exchange and oversight of the New York State Department of Financial Services ("NYSDFS") (the regulator for the custodian and the Gemini exchange that sets the NAV), there seem to be many touch points to surveil and guard against manipulation by market participants.

Additionally, the Commission seems to be taking the position that the traditional tools used by the Commission around issues of risk are inadequate or somewhat not applicable here. Those traditional tools are *transparency* and *disclosures* about the risks of investing in an asset or asset class — allowing investors to choose for themselves — not "picking" or "advising" a particular product for investors. In other words, the real review the Commission should engage in is ensuring that, in the issuing documents for the Bitcoin ETF, there is real transparency on how the Bitcoin ETF works, what the underlying is and its risks and how that market works. Additionally, brokers and other market intermediaries have to know your customer ("KYC") and suitability requirements which would continue to apply here. At some level, the Commission seems to have determined that in order to protect investors they need to or should make qualitative decisions about products as opposed to allowing the disinfectant of disclosure and transparency to allow investors to make their own risk decisions and requiring market intermediaries to continue their well-established duties around KYC and suitability.

Determination of NAV and Creation and Redemption functions actually mitigate risk in the Bitcoin ETF as opposed to imposing additional risk on to investors in bitcoin. Because of the auction process to determine NAV in the Bitcoin ETF, the use of well-known and respected APs, and the environment of market participants to use arbitrage techniques to hold pricing where it should be, the risk to investors who invest in the Bitcoin ETF may in fact be lower than those who just buy or sell bitcoin directly. This is especially true for those who transact in bitcoin in off-shore or less-regulated environments than the Gemini exchange which is an affiliate of the sponsor of the Bitcoin ETF. That Gemini exchange and custodian is registered as a New York trust company and regulated and examined by the NYSDFS. If a goal of the Commission is to create open and transparent markets for investors to transact in, the approval of the Bitcoin ETF would help do that and provide safeguards for investors who otherwise will and/or are currently transacting in bitcoin without those protections.

Finally, I am in full agreement with the Exchange petition and urge the Commission to reconsider its position on this Filing and approve it. As always, I am prepared to discuss this or any other part of my letter with you at your convenience.

Sincerely,

Eric W. Noll