

SolidX Management LLC
200 Park Avenue
New York, NY 10166

May 15, 2017

Assistant Secretary Eduardo A. Aleman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Release No. 34-80511

Dear Mr. Aleman:

SolidX Management LLC (“SolidX”) provides this statement in response to the Securities and Exchange Commission’s (the “Commission”) Release No. 34-80511 request for comments regarding the Order Granting Petition for Review and Scheduling Filing of Statements In the Matter of Bats BZX Exchange, Inc. Regarding an Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1 and 2, to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, to List and Trade Shares Issued by the Winklevoss Bitcoin Trust (File No. SR-BatsBZX-2016-30) (the “BatsBZX Proposed Rule Change”).

To the extent the Commission is inclined to reverse, modify, set aside or remand for further proceedings the BatsBZX Proposed Rule Change, then in accordance with Rule 431 and the factors set forth in Rule 411(b)(2) of the Rules of Practice, the Commission should, as a matter of equity and for the reasons set forth herein, reverse, modify, set aside or remand for further proceedings its March 28, 2017 Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust under NYSE Arca Equities Rule 8.201 (Release No. 34-80319; File No. SR-NYSEArca-2016-101) (the “NYSE Arca Proposed Rule Change”).¹

The NYSE Arca Proposed Rule Change is consistent with Section 6(b)(5) of the Exchange Act. First, no other proposal to list and trade shares of a bitcoin exchange traded product provides the same level of investor protection and benefits the public interest as the SolidX Bitcoin Trust, which will insure the trust’s bitcoin against loss or theft of bitcoin; something no other proposed bitcoin exchange traded product can offer. Indeed, the order that disapproved the NYSE Arca Proposed Rule Change is counterintuitive because it overtly deprives investors from being able to use the SolidX Bitcoin Trust to safely invest in bitcoin without being exposed to any operational risks associated with sourcing and securing bitcoin via any other alternative,

¹ See <https://www.sec.gov/rules/sro/nysearca/2017/34-80319.pdf>;
<https://www.sec.gov/rules/sro/nysearca/2017/34-80099.pdf>;
<https://www.sec.gov/rules/sro/nysearca/2017/34-79726.pdf>;
<https://www.sec.gov/rules/sro/nysearca/2016/34-79171.pdf>;
<https://www.sec.gov/rules/sro/nysearca/2016/34-78770.pdf>;
<https://www.sec.gov/rules/sro/nysearca/2016/34-78426.pdf>.

including direct bitcoin ownership.

Second, and beyond satisfying the investor protection and public interest aspects of Section 6(b)(5), the NYSE Arca Proposed Rule Change is also designed to prevent fraudulent and manipulative acts and practices.² Section 6(b)(5) requires, among other things, that a national exchange's rules be designed to prevent fraudulent and manipulative acts and practices, but such requirements in Section 6(b)(5) contemplate the exchange's rules as applied to "transactions in securities" that are or will be listed on the exchange.³ With respect to the NYSE Arca Proposed Rule Change that would permit the listing and trading of shares issued by the SolidX Bitcoin Trust, when shares of the trust begin to trade on the NYSE Arca, the rules of the NYSE Arca, as such rules will be applied to shares of the trust, will prevent fraudulent and manipulative acts and practices.

1. The NYSE Arca Proposed Rule is Designed to Protect Investors and the Public Interest

The SolidX Bitcoin Trust will provide investors with access to bitcoin without the risks associated with sourcing bitcoin directly.⁴ Over the past several years, bitcoin exchanges have been hacked and dishonest individuals have perpetrated investor schemes.⁵ During the period 2011, through the date of this letter, and based on the current price of bitcoin, these events have led to investor losses of over \$2.5 billion.⁶ These losses and documented schemes (about which the Commission is well-aware given its involvement in bringing enforcement actions) are documented and quantifiable. It is reasonable to assume that the Commission will see similar investor losses unless and until investors are able to invest in bitcoin through a product such as the SolidX Bitcoin Trust that is bound by well-established securities rules and regulations.

The SolidX Bitcoin Trust's insurance policy and the NYSE Arca Proposed Rule Change will serve the public interest in a manner otherwise unavailable. Multiple commenters have noted the importance of the SolidX Bitcoin Trust's insurance policy.⁷ In its order disapproving the NYSE

² SolidX incorporates herein by reference the bases and legal arguments set forth in Bats BZX Exchange, Inc.'s Petition for Review: <https://www.sec.gov/rules/sro/batsbzx/2017/petition-for-review-sr-batsbzx-2016-30.pdf>.

³ 15 U.S.C. 78f(b)(5)

⁴ See e.g., <https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-1.pdf>

⁵ See e.g., Allinvain Theft, BIPS, Bitcash.cz, Bitcoin Savings & Trust (Trendon Shavers), Bitcoin Syndicate, Bitcoinica, Bitcurex, Bitfinex, BitFloor, Bitomat.pl, Bitstamp, BTC-E, Canadian, Bitcoins, CryptoRush, Cryptsy, Flexcoin, Gatecoin, GBL Exchange Scam, Inputs.io, Kronos, MintPal, Mt. Gox Collapse, MyCoin, MyBitcoin, Picostocks, Poloniex and Shapeshift.

⁶ *Id.*

⁷ <https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-2.pdf>;
<https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-3.pdf>;
<https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-4.pdf>;
<https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-5.pdf>;

Arca Proposed Rule Change, the Commission noted that surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. *However, the investor harm from potential manipulation is hypothetical in nature and unlikely, whereas the harm to investors from a lack of access to an insured vehicle is overt and likely to continue in the absence of approval of the NYSE Arca Proposed Rule Change.*

It would undoubtedly be to the detriment of investors if the Commission were to prioritize surveillance agreements over protecting investors from ongoing losses related to hacking, errors and other operational hazards associated with direct bitcoin ownership.

2. The NYSE Arca Proposed Rule is Designed to Prevent Fraudulent and Manipulative Acts and Practices

The SolidX Bitcoin Trust will be subject to the criteria in NYSE Arca Equities Rule 8.201, including 8.201(e), for initial and continued listing of the shares of the SolidX Bitcoin Trust. A minimum of 100,000 shares will be required to be outstanding at the start of trading. With respect to application of Rule 10A-3 under the Act, the SolidX Bitcoin Trust will rely on the exception contained in Rule 10A-3(c)(7), and therefore the anticipated minimum number of shares outstanding at the start of trading should be sufficient to provide adequate market liquidity.

Shares of the SolidX Bitcoin Trust will be equity securities, thus rendering trading in the shares subject to the NYSE Arca's existing rules governing the trading of equity securities. Trading in the shares on the NYSE Arca will occur in accordance with NYSE Arca Equities Rule 7.34(a).

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on Equity Trading Permit Holders ("ETP Holders") acting as registered Market Makers in the shares of the SolidX Bitcoin Trust to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the shares is required to provide the NYSE Arca with information relating to its trading in the underlying bitcoin, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the shares of the SolidX Bitcoin Trust to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures and any related derivative instruments (including the shares).

As a general matter, the NYSE Arca has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to NYSE Arca jurisdiction, but the NYSE Arca could obtain information

<https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-6.pdf>;
<https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-1579480-131874.pdf>;
<https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-1594391-132352.pdf>

regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member. With respect to trading halts, the NYSE Arca may consider all relevant factors in exercising its discretion to halt or suspend trading in the shares of the SolidX Bitcoin Trust. Trading on the NYSE Arca in the shares may be halted because of market conditions or for reasons that, in the view of the NYSE Arca, would make trading in the shares inadvisable. These may include: (1) the extent to which conditions in the underlying bitcoin markets have caused disruptions and/or lack of trading or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in shares of the SolidX Bitcoin Trust will be subject to trading halts caused by extraordinary market volatility pursuant to the NYSE Arca's "circuit breaker" rule.⁸

The NYSE Arca will halt trading in the shares if the bitcoin holdings of the SolidX Bitcoin Trust are not calculated or disseminated daily. The NYSE Arca may halt trading during the day in which an interruption occurs to the dissemination of the intraday indicative value ("IIV") or the index used to price the SolidX Bitcoin Trust ("Index"). If the interruption to the dissemination of the IIV or the index persists past the trading day in which it occurs, the NYSE Arca will halt trading no later than the beginning of the trading day following the interruption. In addition, if the NYSE Arca becomes aware that the bitcoin holdings by the SolidX Bitcoin Trust is not disseminated to all market participants at the same time, the NYSE Arca will halt trading in the shares until such time as the bitcoin holdings are available to all market participants.

3. Trading in the Shares of the SolidX Bitcoin Trust will be Subject to NYSE Arca Surveillance

Section 6(b)(5) requires an exchange's rules to be designed to prevent fraudulent and manipulative acts and practices, but Section 6(b)(5) does not provide any inherent requirement for market surveillance.⁹ Indeed, the Commission has previously approved a rule change where the underlying market was not surveilled.¹⁰ In its November 28, 2005 order – Release No. 34-52843 – the Commission approved on an accelerated basis a rule change to list and trade shares of the Euro Currency Trust, even though there did not exist exchange surveillance of the underlying markets. The approval was based in part on the cross-platform trading that served to prevent manipulation. The bitcoin market has a similar structure to the currency market and benefits similarly from cross-platform trading activity.

As Professor Craig Lewis noted in his public comment to the NYSE Arca Proposed Rule Change, although each bitcoin exchange has its own market price, it is expected that most bitcoin

⁸ See NYSE Arca Equities Rule 7.12.

⁹ There is no mention in Release No. 34-79171 (regarding the proposed rule change by the NYSE Arca that would permit the listing and trading of shares of the SolidX Bitcoin Trust) regarding surveillance of bitcoin markets or surveillance sharing agreements. There was therefore no opportunity within the statutorily prescribed comment period to address any concerns the Commission may have had regarding surveillance as such concerns may apply to the NYSE Arca proposed rule change.

¹⁰ <https://www.sec.gov/rules/sro/nyse/34-52843.pdf>.

exchange market prices should be relatively consistent with the bitcoin exchange average.¹¹ Because market participants can choose the bitcoin exchanges on which to buy and sell bitcoin, price differentials across bitcoin exchanges create incentives to eliminate cross-exchange arbitrage opportunities.¹²

Furthermore, trading in shares of the SolidX Bitcoin Trust will be subject to the existing trading surveillances administered by the NYSE Arca and cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the NYSE Arca, which are designed to detect violations of the NYSE Arca rules and applicable federal securities laws.¹³ These procedures are adequate to properly monitor NYSE Arca’s trading of the shares of the SolidX Bitcoin Trust in all trading sessions and to deter and detect violations of the NYSE Arca’s rules and federal securities laws applicable to trading on the NYSE Arca.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The NYSE Arca or FINRA, on behalf of the NYSE Arca, or both, will communicate as needed regarding trading in the shares of the SolidX Bitcoin Trust with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and the NYSE Arca or FINRA, on behalf of the NYSE Arca, or both, may obtain trading information regarding trading in the shares from such markets and other entities. In addition, the NYSE Arca may obtain information regarding trading in the shares from markets and other entities that are members of ISG or with which the NYSE Arca has in place a comprehensive surveillance sharing agreement.

Also, pursuant to NYSE Arca Equities Rule 8.201(g), the NYSE Arca is able to obtain information regarding trading in the shares of the SolidX Bitcoin Trust and the underlying bitcoin or any bitcoin derivative through ETP Holders acting as registered Market Makers, in connection with such ETP Holders’ proprietary or customer trades through ETP Holders which they effect on any relevant market.

4. Both the Price of Bitcoin and the Price of the Shares of the SolidX Bitcoin Trust are Resilient to Manipulation and the NYSE Arca Proposed Rule Change Enhances the Resistance

The bitcoin market as currently structured is resilient to manipulation. Beyond the bitcoin market’s current resiliency, the NYSE Arca Proposed Rule Change is designed to strengthen the bitcoin market’s resistance to manipulation even further. As Professor Lewis noted in his

¹¹ <https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-1579480-131874.pdf>

¹² *Id.*

¹³ FINRA conducts cross-market surveillances on behalf of the NYSE Arca pursuant to a regulatory services agreement. The NYSE Arca is responsible for FINRA’s performance under this regulatory services agreement.

submission to the public comments file, the SolidX Bitcoin Trust may actually reduce the potential for fraud or manipulation of bitcoin because:

1. The SolidX Bitcoin Trust has entered into RVP/DVP arrangements with multiple exchanges, which are intended to create a more liquid supply of bitcoin than would be available if creation and redemptions were only permitted in a single location;
2. The SolidX Bitcoin Trust and transactions in its shares would be transparent, with the trust publishing information about its holdings and operations;
3. The SolidX Bitcoin Trust would utilize a consistent, transparent, non-discretionary, rules-based, and fully disclosed protocol for redemptions; and
4. A recognized independent valuation agent would use a third-party index to value the SolidX Bitcoin Trust's net asset value and intraday indicative values.¹⁴

Professor Lewis further noted that the Commission has concluded in past commodity-based ETP approvals that the listing and trading of commodity-based ETP shares would facilitate transparency with respect to the ETP shares and diminish the risk of manipulation or unfair informational advantage. It would then be expected that the SolidX Bitcoin Trust's disclosures, creation and redemption activity with respect to its shares, the dissemination of quotations for and last-sale prices of transactions in the shares and the net asset value and intraday indicative values of the SolidX Bitcoin Trust, would serve to reduce the ability of market participants to manipulate the bitcoin market or the price of the SolidX Bitcoin Trust's shares. Moreover, the NYSE Arca Proposed Rule Change will be subject to NYSE Arca Equities Rule 8.201, which provides strong protection against manipulation of shares traded on the exchange.

Consequently, the NYSE Arca Proposed Rule Change is designed to prevent fraudulent and manipulative acts and practices both in shares of the SolidX Bitcoin Trust and in the underlying bitcoin market. The decision not to permit the NYSE Arca Proposed Rule Change is in direct contravention of Section 6(b)(5)'s goal and purpose to protect investors and the public interest.

As noted in Professor Lewis's submission, the ability to manipulate the price of bitcoin or to manipulate the SolidX Bitcoin Trust's shares is *de minimis*. Numerous factors mitigate the risk of manipulation. These factors include:

- The net asset value and intraday indicative values of the SolidX Bitcoin Trust's shares are based on index, which is determined by an independent third party valuation agent;
- Reg NMS does not apply to bitcoin;
- Concerted efforts to manipulate bitcoin prices enough to affect the level of the index would require a significant capital investment on each exchange in the index;
- Compared to equity markets, trading on bitcoin exchanges is relatively slow;
- Given the degree of fragmentation across bitcoin exchanges, the relatively slow transaction speeds (compared to equity markets) and the capital necessary to maintain a significant presence on each one, the likelihood of spoofing is low;
- Manipulation of the open and close prices is not a significant risk because the bitcoin market is open continuously and the third-party index is calculated on a continuous basis;

¹⁴ <https://www.sec.gov/comments/sr-nysearca-2016-101/nysearca2016101-1579480-131874.pdf>

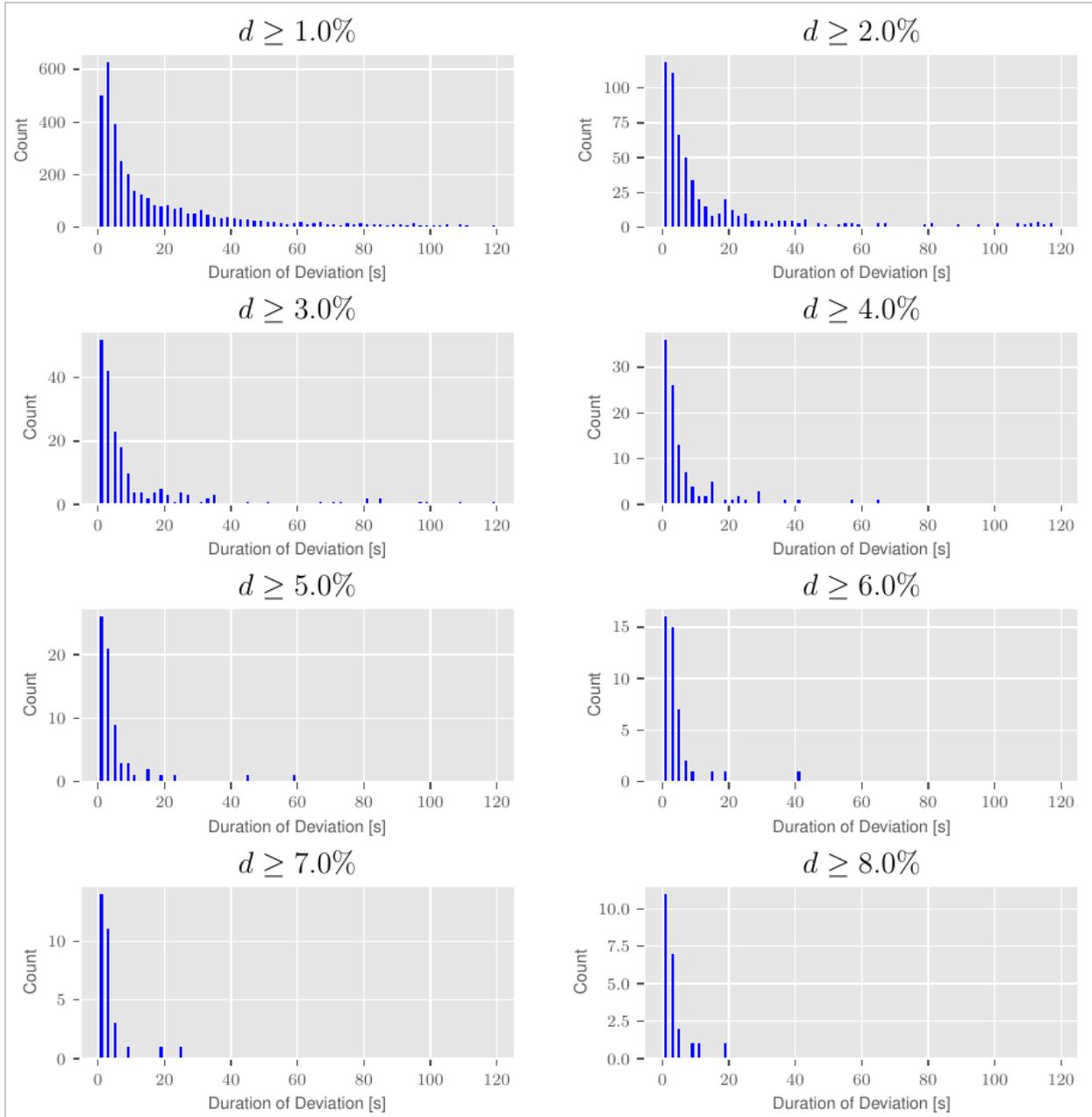
- The additional market transparency created by the listing of shares of the SolidX Bitcoin Trust shares is likely to enhance efficiency in the market for bitcoin; and
- The listing and delisting criteria for the SolidX Bitcoin Trust's shares are expected to help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the share prices.¹⁵

Price efficiency can be achieved when there is a liquid market that accommodates price discovery. For physical commodities that are not traded on exchanges, the presence of a liquid derivatives market is a necessary condition. For digital assets like bitcoin, price discovery occurs on the over-the-counter market and exchanges instead. Derivatives markets for bitcoin are not necessary because the over-the-counter market and exchanges are close substitutes. The ability to manipulate prices of the SolidX Bitcoin Trust's shares is expected to be immaterial due to the market structure of bitcoin trading.¹⁶

In addition, arbitrage across bitcoin markets helps to keep bitcoin prices aligned and reduces the likelihood of manipulation. The histograms below examine data from four of the largest U.S. dollar bitcoin exchanges – Bitfinex, Bitstamp, GDAX and itBit – during the period November 30, 2016, through March 13, 2017, a continuous period of 8,977,848 seconds. The histograms compare volume weighted average price across the exchanges with deviations in price at one or more exchange. The steep drops in duration of deviations demonstrate that pricing discrepancies are generally arbitrated away within a few seconds and evidence the strong effect of arbitrage among the exchanges.

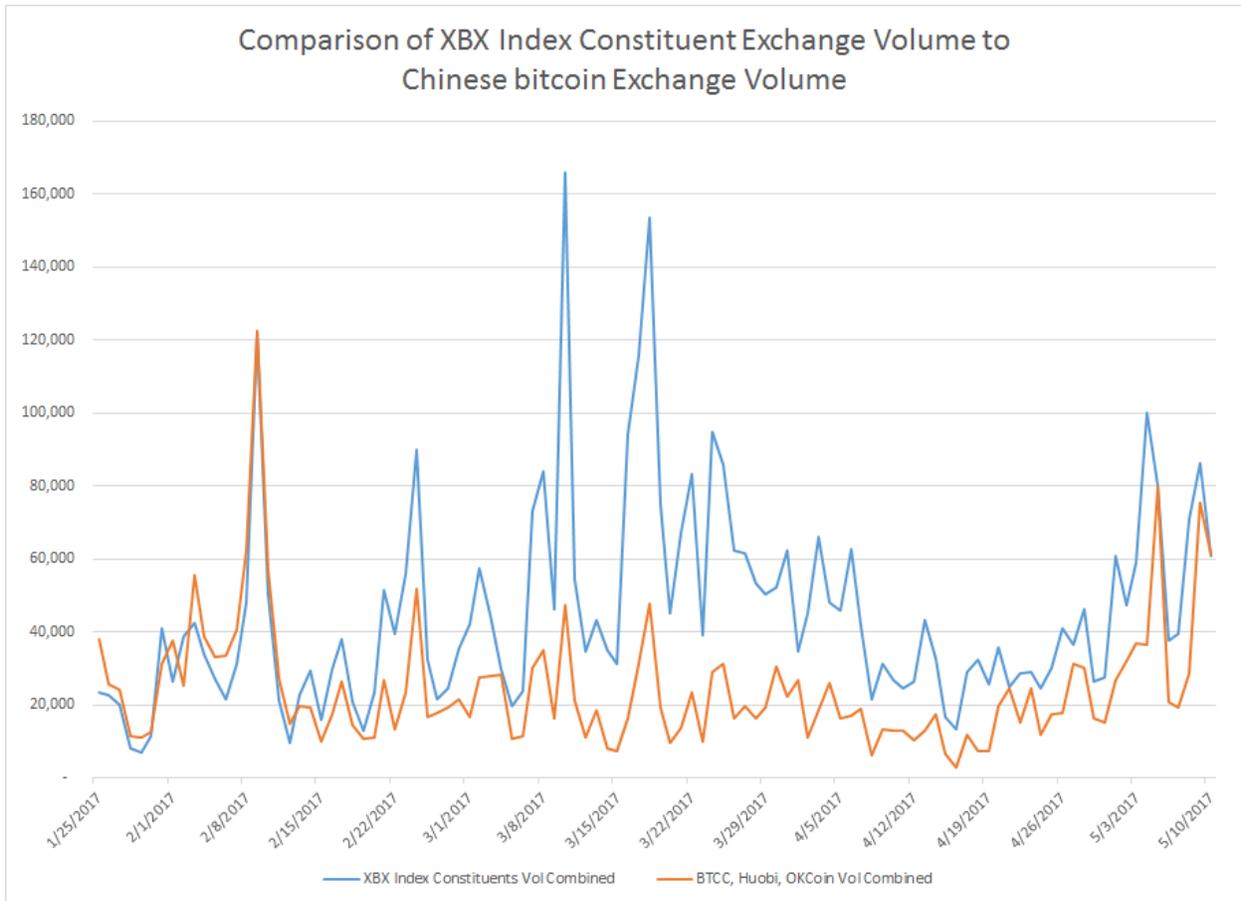
¹⁵ *Id.*

¹⁶ *Id.*

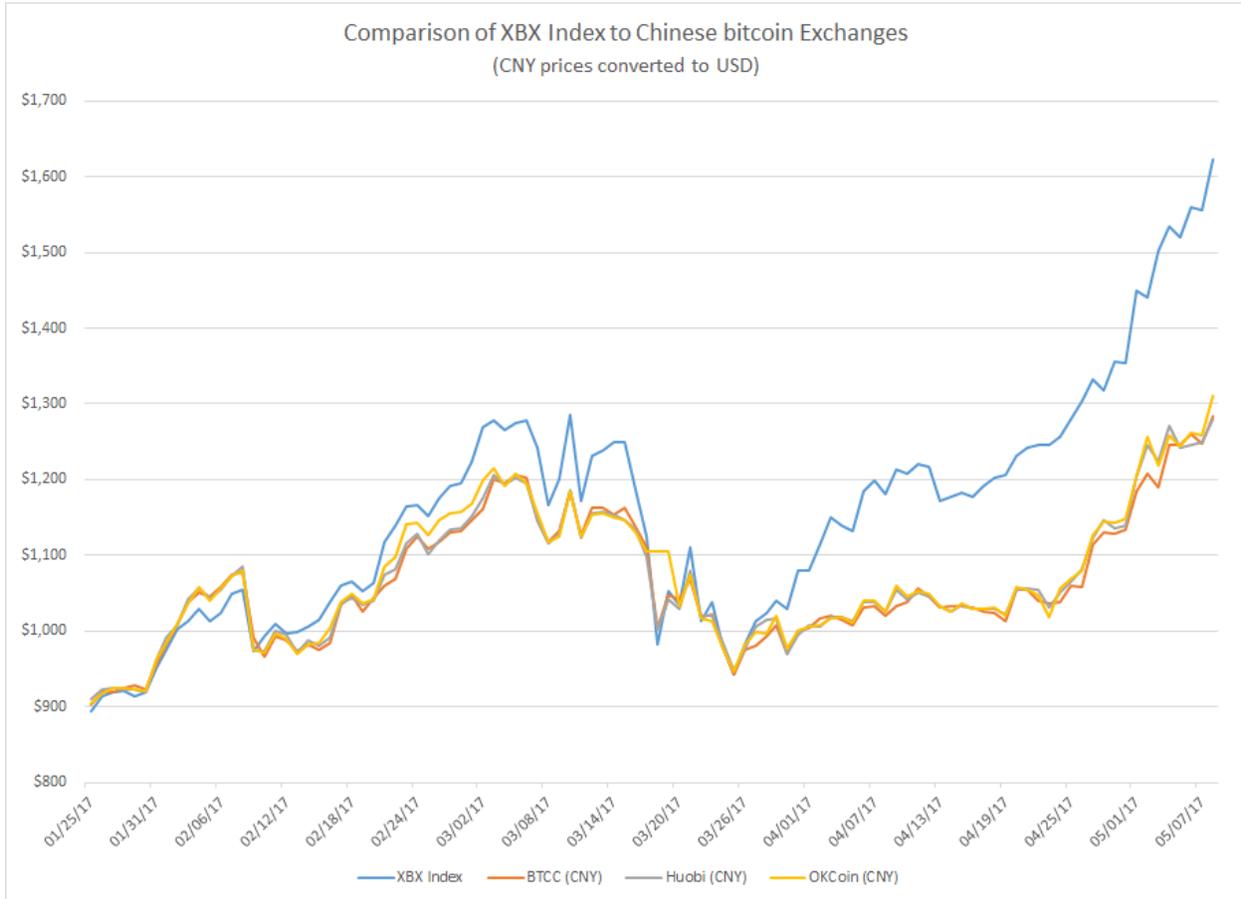


Beyond the above, the U.S. dollar market for bitcoin has become the dominant market for bitcoin. In January 2017, the People’s Bank of China mandated that the Chinese bitcoin exchanges reduce leveraged trading and impose various trading fees, which caused the volumes on the Chinese exchanges to decline to levels that are now below the trading volumes on U.S. dollar-denominated exchanges. In addition, the Chinese exchanges follow various anti-money laundering and know-your-customer procedures as such procedures are applied within the exchanges’ respective jurisdictions.

The chart below demonstrates that the volumes on the Chinese markets are below the volumes on U.S. dollar bitcoin exchanges (Bitstamp, Bitfinex, GDAX, itBit and OKCoin comprise the XBX Index).



The second chart below demonstrates that the bitcoin prices on the Chinese exchanges do not influence the prices on U.S. dollar bitcoin exchanges (Bitstamp, Bitfinex, GDAX, itBit and OKCoin comprise the XBX Index).



Location-based differences in pricing of a commodity are a standard feature of most commodities markets, including the markets for gold, silver, platinum and palladium, all four of which are underlying assets for ETPs listed in the U.S.

* * *

The NYSE Arca Proposed Rule Change is consistent with the Exchange Act under a standard consistent with the standard applied to other approved commodity-trust ETPs. The Commission should therefore find that in connection with the order to disapprove the NYSE Arca Proposed Rule Change, the standard applied by the Commission Staff was inconsistent with prior approval orders and not required under Section 6(b)(5) of the Exchange Act, and the manipulation concerns are overstated and largely theoretical.

Accordingly, to the extent the Commission is inclined to reverse, modify, set aside or remand for further proceedings the BatsBZX Proposed Rule Change, then in accordance with Rule 431 and the factors set forth in Rule 411(b)(2) of the Rules of Practice, the Commission should, as a matter of equity and for the reasons set forth herein, reverse, modify, set aside or remand for further proceedings the order that disapproved the NYSE Arca Proposed Rule Change.

Very truly yours,

/s/ Daniel H. Gallancy

Daniel H. Gallancy, CFA
SolidX Management LLC