



**Consumers'  
Research**  
established 1929

*Consumers' Research  
1801 F Street, NW  
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Washington, DC 20006*

**Re: File Number SR-NYSEArca-2016-101**

On behalf of Consumers' Research<sup>1</sup> and its constituents, we thank you for the opportunity to provide comment on the above-referenced proposed rule change, the approval of which we believe will promote consumer protection.

Consumers' Research takes very seriously its responsibility to ensure the consumers we represent have access to new and innovative technologies, such as bitcoin, and are adequately protected when they invest in those technologies. In this regard, we are acutely aware of the U.S. Securities and Exchange Commission's (the "Commission") desire to ensure that an asset with the novel and unique properties of bitcoin is an appropriate underlying asset for a product that will be traded on a national securities exchange. However, we are also aware of the multitude of unintended consequences that will continue to effect consumers who invest in bitcoin through unregulated means.

The proposed rule will reinforce investor protection and the public interest, and is in line with the goals of the Commission. Exchange traded funds ("ETF") enable investors to buy and sell shares in the fund on the New York Stock Exchange in the same way that investors can use the Exchange to buy and sell shares in a corporation. ETFs linked to commodities appeared on U.S. stock exchanges for the first time in 2004, when an ETF linked to gold was offered for sale. Today, retail investors and other market participants can use stock exchanges to buy and sell shares in a wide variety of commodity based ETFs, some of which track broad commodity indexes, and some of which reference a single commodity. By buying and selling these shares, commodity-based ETF investors gain exposure to commodity prices without ever having to transact using the underlying asset. All of this is especially important for consumers who desire exposure to bitcoin.

Bitcoin has established itself as a significant new asset class, and many predict that the technology underlying bitcoin will transform numerous industries from finance to healthcare to identity. The value proposition of bitcoin has not been lost on consumers, who over the past five years have been investing in bitcoin.

Several bitcoin exchanges allow investors to buy and sell bitcoin. Unfortunately, these exchanges do not offer the same regulatory safeguards that U.S. consumers have come to expect when they make an investment in the U.S. securities markets. Bitcoin exchanges lack Commission oversight, and have in the past lost investor funds. The most famous of

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<sup>1</sup> Consumers' Research is an independent educational organization founded in 1929 whose mission is to increase the knowledge and understanding of issues, policies, products and services of concern to consumers and to promote the freedom to act on that knowledge and understanding.

these losses occurred at Mt. Gox, and more recently at Bitfinex where approximately \$60 million worth of bitcoin was stolen, resulting in financial loss for U.S. consumers who held their bitcoin on that exchange.<sup>2</sup> Apart from bitcoin exchanges, U.S. consumers have also sought out investment in bitcoin through other unregulated conduits. As the Commission is well aware, investment schemes such as *SEC v. Shavers* and *SEC v. Garza, Gaw Miners and Xenminer*, have resulted in losses for consumers in the U.S.<sup>3</sup> Providing U.S. consumers with a regulated digital-asset-based-security will offer them a tested alternative, reducing further losses.

The SolidX Bitcoin Trust will provide a secure and regulated method of investing in bitcoin. Like any other security in the U.S. that is listed on a regulated exchange, consumers will be able to buy shares of the Trust in their brokerage accounts and freely trade those shares. U.S. consumer will be protected by the various securities laws and regulations and will not be exposed to the issues they currently face when investing in bitcoin through lesser-regulated third parties.

The SolidX Bitcoin Trust intends to insure the Trust's bitcoin, and the bitcoin insurance will promote investor protection. Investors were stunned by the recent hack at Bitfinex and that breach proves the necessity for bitcoin insurance. Bitfinex's purported custodial protections failed those investors who held bitcoin on the exchange. Consumers should not be exposed to such risk and their trust should not be violated. Bitfinex was a watershed moment for all bitcoin exchanges and bitcoin wallet service providers that had over the past several years managed to gain the trust of a steadily increasing number of investors. Consumers should not be forced into a "buyer beware" mentality, or situations where they face the risk of losing bitcoin or having it stolen due to flawed security protocols of a fiduciary. The SolidX Bitcoin Trust resolves these issues because it will carry bitcoin insurance and trade on the New York Stock Exchange, making it subject to the checks and balances requisite to ensure consumer protection.

Consumers' Research thanks the Commission for taking up this very important issue, and believes the SolidX Bitcoin Trust will protect U.S. consumers in a way that truly bears in mind the best interest of such consumers. We urge the Commission to approve the proposed rule change so that consumers in the U.S. can invest in bitcoin using a safe and properly regulated ETF.

Sincerely,



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Joseph J. Colangelo  
President, Consumers' Research

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<sup>2</sup> See, e.g., <http://www.nasdaq.com/article/a-480-million-mystery-the-saga-of-mt-gox-cm507054> and <http://fortune.com/2016/08/15/bitfinex-bitcoin-hack-hong-kong-customers-law/>.

<sup>3</sup> See <https://www.sec.gov/litigation/complaints/2013/comp-pr2013-132.pdf> and <https://www.sec.gov/litigation/complaints/2015/comp23415.pdf>.