



June 28, 2017

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F. Street N.E.  
Washington, D.C. 20549-0609

Re: Proposal to List and Trade Shares of the Bitcoin Investment Trust (SR-NYSEArca-2017-06)

Dear Mr. Fields:

NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) is providing further comments in support of the Exchange’s proposal to list and trade shares of the Bitcoin Investment Trust.<sup>1</sup> NYSE Arca has a long history of supporting the innovation of new exchange-traded products (“ETPs”), and takes seriously its responsibilities as a listing venue and self-regulatory organization for the development, application and oversight of listing standards for ETPs. NYSE Arca is proud to have supported the innovation in the ETP issuer community that now has more than \$2 trillion of ETP assets under management in the United States.

NYSE Arca is the premier listing and trading venue for ETPs in the U.S., representing the largest single pool of liquidity for ETPs, with over two times more liquidity than the next largest exchange. With over 1,500 total listings, NYSE Arca represents approximately 92% of ETP assets under management. Our strategy remains consistent—to provide issuers and market professionals with the most compelling and innovative marketplace for launching and trading ETPs.

The Exchange believes that the approval of Exchange listing and trading of the Bitcoin Investment Trust’s shares, which are currently available for trading on the over-the-counter (“OTC”) market,<sup>2</sup> would help to protect investors and promote a fair, orderly and efficient market. As an ETP listed and trading on the NYSE Arca, the Bitcoin Investment Trust would be held to a higher regulatory standard and its shares could be expected to more closely track the

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<sup>1</sup> See Securities Exchange Act Release Nos. 79955 (February 3, 2017), 82 FR 10086 (February 9, 2017) (notice of SR-NYSEArca-2017-06) (“Proposal”); 80297 (March 22, 2017), 82 FR 15408 (March 28, 2017) (notice of designation of longer period for Commission action SR-NYSEArca-2017-06); 80502 (April 21, 2017), 82 FR 19398 (April 27, 2017) (order instituting proceedings to determine whether to approve or disapprove SR-NYSEArca-2017-06).

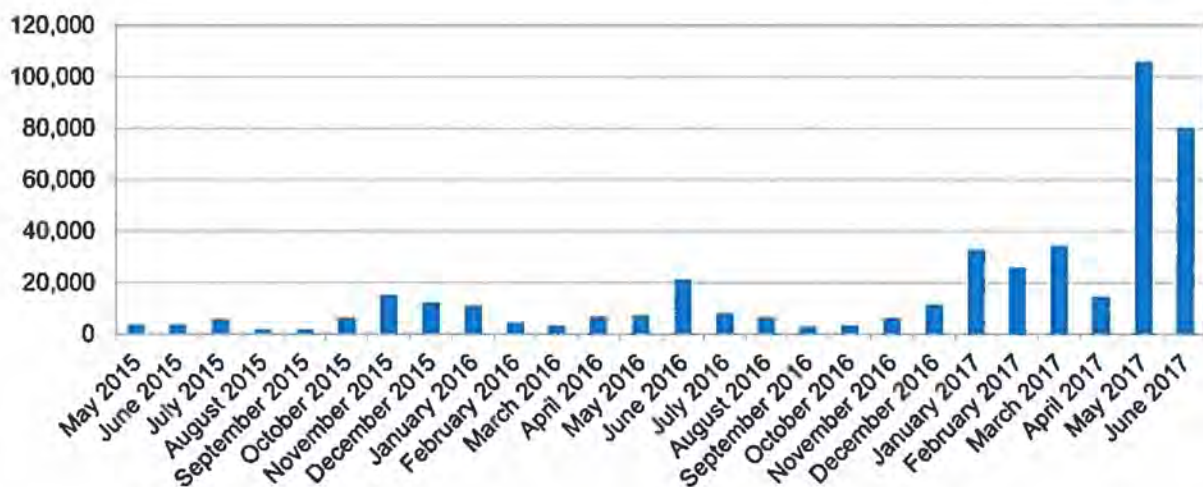
<sup>2</sup> Shares of Bitcoin Investment Trust have been quoted on OTC Market’s OTCQX Best Marketplace under the symbol “GBTC” since March 26, 2015.

price of the underlying bitcoin than the shares trading on the OTC market, creating a more liquid and efficient market in the process.

### Premium Trading Price of OTC Shares

Since the Bitcoin Investment Trust OTC shares began trading on the OTCQX market in May 2015, the Exchange notes that there has been increasing volume as investor demand for exposure to bitcoin rises. The chart below sets forth the average daily trading volume per month of the OTC shares from May 4, 2015 to June 22, 2017.<sup>3</sup>

**GBTC Average Daily Trading Volume Per Month (Shares)**



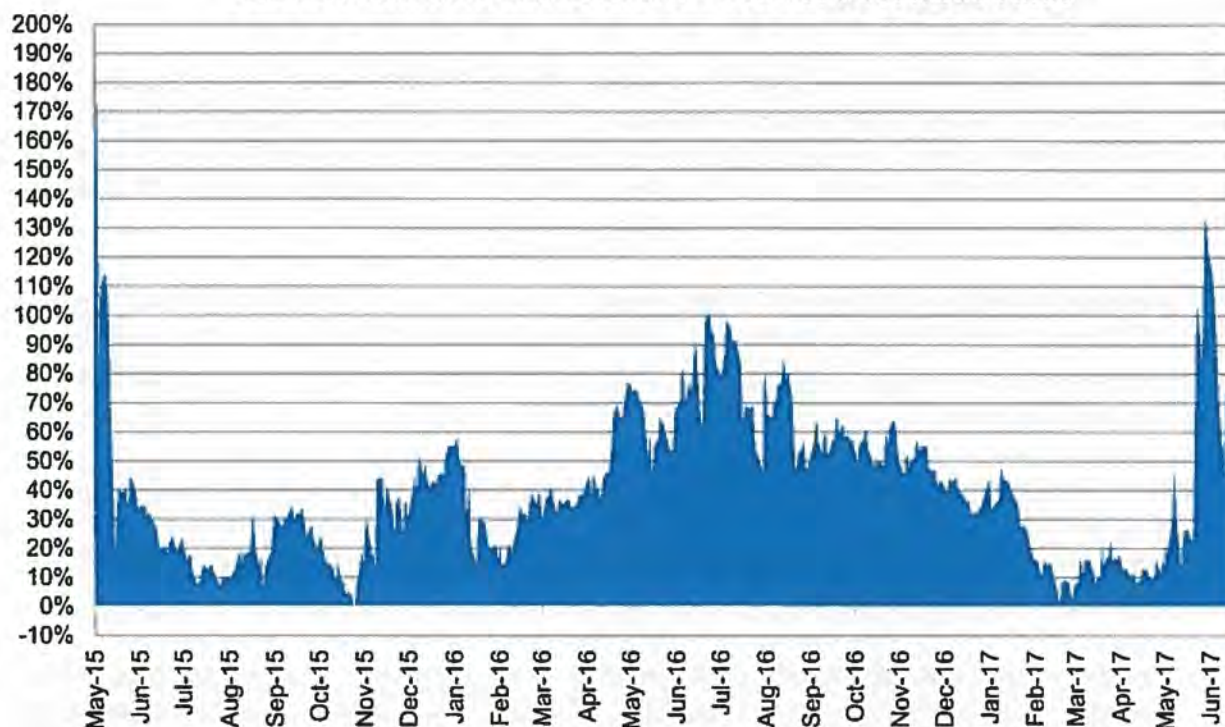
Moreover, in May 2017, US dollar-denominated trade volume for GBTC exceeded \$770 million and, as of June 22, 2017, US dollar-denominated trade volume has already surpassed \$590 million for the month.<sup>4</sup> This increased investor demand has contributed to a premium in the trading price of the OTC shares relative to the net asset value of the shares based on the price of the underlying bitcoin as evidenced in the chart below.<sup>5</sup>

<sup>3</sup> Average daily volume information obtained from OTC Markets.

<sup>4</sup> US dollar-denominated trade volume obtained from Bloomberg.

<sup>5</sup> GBTC share price information obtained from OTC Markets. Net asset value information provided by Bitcoin Investment Trust.

### GBTC Premium: GBTC Share Price vs. Net Asset Value



The Commission’s approval of the Proposal would allow NYSE Arca to list and trade the Bitcoin Investment Trust’s shares with creation and redemption procedures that would allow the shares of the ETP to closely track the price of the underlying bitcoin as market participants engage in arbitrage. For example, if the shares of the ETP were trading at a premium to the value of the underlying portfolio of bitcoin, arbitrageurs could profit on this spread using the in-kind creation and redemption process by: (i) selling short shares of the ETP; (ii) purchasing an amount of bitcoin equivalent to a creation basket (“Total Basket Bitcoin Amount”); (iii) exchanging the Total Basket Bitcoin Amount for a creation unit through an Authorized Participant; and then (iv) using the ETP shares in the creation unit to close out the short position. This arbitrage mechanism, through the sales of the ETP shares and the purchases of bitcoin would apply market pressure that would tend to bring the price of the ETP shares closer to the value of the underlying bitcoin.

#### TradeBlock XBX Index

The Exchange wishes to provide the following additional comments regarding features of the Bitcoin Investment Trust shares and the Bitcoin Investment Trust’s underlying index, the TradeBlock XBX Index (“XBX Index”), which we believe supports the Exchange’s representation that the Proposal protects investors and the public interest.

As described in the Proposal, the Bitcoin Investment Trust will use the XBX Index to value the bitcoin held by the Bitcoin Investment Trust. The Exchange believes that a well-designed index such as the XBX Index, which incorporates price information from multiple bitcoin exchanges,

is an effective and appropriate means to objectively determine the fair-market value of one bitcoin priced in U.S. dollars (“USD”).

The XBX Index represents a real-time spot price for bitcoin based on observed trading activity across leading USD-denominated bitcoin exchanges. The XBX Index is designed as a reference rate to track the most liquid bitcoin markets while also adjusting for deviations caused by pricing outliers and any potential attempts at the manipulation of the bitcoin price at individual exchanges. The key elements of the index weighting mechanism include:

- **Volume Weighting:** Exchanges with greater liquidity receive a higher weighting in the XBX Index, increasing the ability to execute against the XBX Index in the underlying spot markets. Liquidity weighting also mitigates the impact of volume spikes during off-peak trading hours.
- **Price Variance Weighting:** The XBX Index price reflects data points that are discretely weighted in proportion to their variance from the rest of the cohort. As the price at a particular exchange diverges from the rest of the data points, its influence on the XBX Index consequently decreases.
- **Inactivity Adjustment:** The algorithm penalizes stale ticks on any given exchange. If an exchange does not have recent trading data, its weighting is gradually reduced until it is de-weighted entirely. Similarly, once activity resumes, the corresponding weighting for that constituent is gradually increased until it reaches the appropriate level.<sup>6</sup>

In addition to the comprehensive measures employed by TradeBlock, Inc., the Index Provider, to help ensure that a fair and accurate bitcoin pricing mechanism is used, Grayscale Investments, LLC (“Sponsor”) takes further measures in an effort to reduce the potential for mispricing and possible manipulation by pricing the Bitcoin Investment Trust’s “Bitcoin Holdings per Share” based on 24-hour volume-weighted average price.<sup>7</sup> This could further reduce the potential for coordinated manipulation of the spot prices across the bitcoin exchanges that comprise the XBX Index at a single point in time.

### **Creation and Redemption of Shares**

As described in the Proposal, the Sponsor has developed clear and thorough procedures that facilitate both cash and in-kind creations and redemptions. Special consideration was taken in each case to establish protocols that facilitate liquid, transparent, orderly and efficient trading in the primary market for bitcoin and for shares of the Bitcoin Investment Trust.

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<sup>6</sup> See <https://tradeblock.com/markets/ecx/>.

<sup>7</sup> See “Bitcoin Holdings” in the Proposal for additional information regarding the calculation of the Bitcoin Holdings per Share.

These considerations include a smaller basket size (100 shares) to provide Authorized Participants with enhanced opportunities to appropriately size their positions and manage risk, as well as a longer time cycle for cash creations, in order to provide the Trust's "Liquidity Provider(s)" with nearly a full day to source the bitcoin leading up to a creation.<sup>8</sup> These features may help prevent market participants from easily identifying specific times during the trading day during which large blocks of bitcoin will be sourced by Authorized Participants and Liquidity Providers. Additionally, since the Proposal provides for both cash and in-kind creations and redemptions, the product can be expected to draw participation from a broader range of Authorized Participants, including those that do not have the facilities or experience to transact in the bitcoin market directly.<sup>9</sup>

The Exchange notes that other commodity and non-commodity ETPs routinely provide for both in-kind and cash creations and redemptions and that the Commission previously has approved Commodity-Based Trust Shares for listing and trading under NYSE Arca Equities Rule 8.201 that provide for both in-kind and cash redemptions.<sup>10</sup>

### **Robust Adoption of Bitcoin and Blockchain Technology**

A growing number of large financial institutions have shown interest in bitcoin and blockchain technology and some have launched bitcoin-related initiatives. For instance, Fidelity Investments has recently announced plans to integrate bitcoin into its website by allowing its customers to view their bitcoin holdings held at Coinbase, a San Francisco-based bitcoin exchange.<sup>11</sup> The Exchange also notes that the Sponsor's parent company, Digital Currency

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<sup>8</sup> See "Creation and Redemption of Shares" in the Proposal for additional information regarding the cash creation procedures.

<sup>9</sup> Currently, the Bitcoin Investment Trust has entered into Authorized Participant Agreements with Credit Suisse (USA) LLC, KCG Americas LLC and Wedbush Securities. The Exchange also notes that the Bitcoin Investment Trust currently has more than 20 market makers actively engaged in the OTC shares on OTCQX.

<sup>10</sup> See Securities Exchange Act Release Nos. 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18) (order approving listing and trading of shares of the APMEX Physical-1 oz. Gold Redeemable Trust, which provides for weekly in-kind redemptions and monthly cash redemptions); 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113) (order approving listing and trading of shares of the Sprott Physical Gold Trust, which provides for monthly redemptions in cash or in-kind); 70195 (August 14, 2013), 78 FR 51239 (August 20, 2013) (SR-NYSEArca-2013-61) (order approving listing and trading of shares of the First Trust Gold Trust, which provides for monthly redemptions in cash or in-kind); 68430 (December 13, 2012), 77 FR 75239 (December 19, 2012) (SR-NYSEArca-2012-111) (order approving listing and trading of shares of Sprott Physical Platinum and Palladium Trust, which provides for monthly redemptions in cash or in-kind).

<sup>11</sup> See, e.g., <http://www.reuters.com/article/us-fidelity-bitcoin-idUSKBN18J20P>.

Group, counts as investors numerous large institutions including CIBC, Western Union, New York Life, MasterCard, CME Ventures LLC (a subsidiary of CME Group, Inc.) and Gibraltar Ventures (the investing arm of Prudential).<sup>12</sup> The Exchange believes interest from the financial services industry further highlights bitcoin's growing public acceptance and need for enhanced investor protection provided by a regulated, exchange-traded instrument.

### **Maturing Regulatory Landscape**

According to the Bitcoin Investment Trust's registration statement on Form S-1 ("Registration Statement"),<sup>13</sup> as bitcoins have grown in both popularity and market size, the U.S. Congress and a number of U.S. federal and state agencies (including, among others, the SEC, Commodity Futures Trading Commission ("CFTC"), Financial Industry Regulatory Authority, Department of Justice, Internal Revenue Service and various state financial institution regulators) have been examining the bitcoin network, bitcoin users and bitcoin exchanges.

Notably, the CFTC treats bitcoin and other digital currencies as "commodities" under the Commodity Exchange Act, thereby asserting jurisdiction over futures, swaps and other CFTC-regulated derivatives that reference digital currencies. Also, in 2015, the New York Department of Financial Services ("NYDFS") finalized a rule that requires most businesses involved in digital currency business activity in or involving New York, excluding merchants and consumers, to apply for a license, commonly known as a BitLicense, from the NYDFS and to comply with anti-money laundering, cyber security, consumer protection and financial reporting requirements, among others. Other states (e.g., Washington and Georgia) have considered regimes similar to the BitLicense or have required digital currency businesses to register with their states as money transmitters.

According to the Registration Statement, the regulatory landscape across foreign jurisdictions also varies. While certain governments have issued guidance regarding the treatment of bitcoins, most regulatory bodies have not yet issued official statements regarding their intention to regulate bitcoins and bitcoin exchanges. However, in March 2017, the People's Bank of China reaffirmed its commitment to regulating bitcoin exchanges and indicated that it may license a number of qualified exchanges. Also, in April 2017, regulations went into effect in Japan that recognize digital currencies as a legal method of payment and require market participants, including bitcoin exchanges, to meet certain compliance requirements and be subject to oversight by the Financial Services Agency, a Japanese regulator.

The Exchange believes that approval of the listing and trading of the Bitcoin Investment Trust's shares would allow investors to diversify their investment portfolios with a bitcoin-based

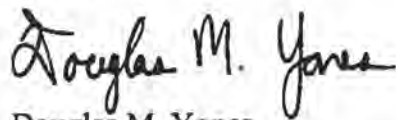
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<sup>12</sup> See, e.g., <https://www.forbes.com/sites/laurashin/2015/10/28/mastercard-bain-and-new-york-life-invest-in-bitcoin-company-digital-currency-group/#5c3d6b92661e> and <https://www.forbes.com/sites/laurashin/2016/04/28/western-union-foxconn-and-prudentials-venture-arms-back-blockchain-firm-digital-currency-group/#639d97707d30>.

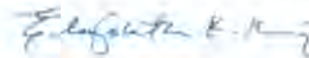
<sup>13</sup> See Amendment No. 2 to the Bitcoin Investment Trust's registration statement on Form S-1 under the Securities Act of 1933 (File No. 333-215627).

product. By virtue of Exchange listing, the Bitcoin Investment Trust would provide a robust and liquid market for bitcoin-based trading. In addition, Exchange trading would provide greatly increased bitcoin pricing transparency than currently exists. In view of the intense and growing global interest from investors, corporations and other market participants in uses for digital assets such as bitcoin, the Exchange views the “commoditization” of financial instruments such as bitcoin as both inevitable and essential if there is to be broad participation by all market constituents. By providing bitcoin market participation in a regulated trading environment, Exchange listing and trading would represent a significant step in the transparency of pricing and trading surveillance in the bitcoin market.

Sincerely,



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Head of Exchange Traded Products  
New York Stock Exchange



Elizabeth K. King  
General Counsel  
New York Stock Exchange