

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79171; File No. SR-NYSEArca-2016-101)

October 27, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to the Listing and Trading of Shares of SolidX Bitcoin Trust under NYSE Arca Equities Rule 8.201

On July 13, 2016, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the SolidX Bitcoin Trust (“Trust”) under NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the Federal Register on August 2, 2016.³

On September 6, 2016, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has received no comments on the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78426 (Jul. 27, 2016), 81 FR 50763 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 78770, 81 FR 62780 (Sept. 12, 2016). The Commission designated October 31, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal⁷

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.⁸ Each Share will represent a fractional undivided beneficial interest in the Trust's net assets. SolidX Management LLC will be the sponsor of the Trust ("Sponsor"). The Bank of New York Mellon will be the administrator and the custodian, with respect to cash, for the Trust.

According to the Exchange, the Trust will normally hold only bitcoins as an asset, but may hold a limited amount of cash in connection with the creation and redemption process and to pay Trust expenses. The investment objective of the Trust is to provide investors with exposure

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ The Commission notes that additional information regarding the Trust and the Shares can be found in the Notice (see supra note 3) and the registration statement filed with the Commission on Form S-1 on July 11, 2016 under the Securities Act of 1933 ("Registration Statement"), as applicable. This additional information addresses the Trust's investment objectives, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, as well as additional background information about bitcoins and the "Bitcoin Network," including information relating to Bitcoin Network operations, bitcoin transfers and transactions, cryptographic security used in the Bitcoin Network, bitcoin mining and creation of new bitcoins, the mathematically controlled supply of bitcoins, and modifications to the bitcoin protocol, among other things.

⁸ See NYSE Arca Equities Rule 8.201 (permitting the listing and trading of "Commodity-Based Trust Shares," defined as a security "(a) that is issued by a trust that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity").

to the daily change in the U.S. dollar price of bitcoin, before expenses and liabilities of the Trust, as measured by the TradeBlock XBX Index (“XBX”).

The Trust intends to achieve this objective by investing substantially all of its assets in bitcoin traded on various domestic and international bitcoin exchanges and OTC markets, depending on liquidity and other factors at the Sponsor’s discretion. The Trust is not actively managed and will not engage in activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of bitcoin. The Trust will generally use the XBX to calculate the Trust’s net asset value (“NAV”) on each business day that the NYSE Arca is open for regular trading, as promptly as practicable after 4:00 p.m., Eastern time (“E.T.”).⁹

According to the proposal, given the novelty and unique digital characteristics of bitcoin as an innovative asset class, traditional custodians who normally custody assets do not currently offer custodial services for bitcoin. Accordingly, the Sponsor will secure the bitcoin held by the Trust using multi-signature “cold storage wallets,” which the Exchange describes as an industry best practice.¹⁰

The Trust will issue and redeem the Shares in “Baskets” only to certain Authorized Participants.¹¹ According to the Exchange, the creation and redemption of Baskets will principally be made in exchange for the delivery to the Trust, or the distribution by the Trust, of the amount of cash or bitcoin represented by the combined NAV of the Baskets being created or

⁹ See Notice, supra note 3 (describing in greater detail the alternative procedures if the XBX cannot be utilized as the basis for NAV calculations).

¹⁰ According to the Exchange, the Sponsor will employ security procedures, described in greater detail in the Notice and the Registration Statement, to safeguard the bitcoin assets of the Trust. See Notice and Registration Statement, supra notes 3 and 7, respectively.

¹¹ Each Basket will consist of 10,000 Shares, and the value of the Basket will be equal to the value of 10,000 Shares at their NAV per Share on that day.

redeemed. This combined NAV will be based on the aggregate number of bitcoins represented by the Shares included in a Basket, as determined on the day an order to create or redeem the Basket is properly received.

According to the Exchange, Authorized Participants and market makers can hedge their exposure to bitcoin, whether creating and redeeming baskets in-kind or for cash, by using non-deliverable forward contracts (“NDFs”) or swap contracts that will create synthetic long or short exposure to bitcoin. NDFs will be offered by several participants, including the Sponsor itself, operating on a principal basis. Such arrangements, according to the Exchange, will make it possible for Authorized Participants that lack the trading infrastructure to transact in bitcoin to be able to hedge their exposure by entering into an NDF or a swap contract. In addition, according to the Exchange, the Sponsor will, to the extent requested by Authorized Participants and market makers, act as agent by buying and selling bitcoin on behalf of the Authorized Participants and market makers, including short sale orders for hedging purposes.¹²

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2016-101 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹³ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below,

¹² See Notice, supra note 3, 81 FR at 50771.

¹³ 15 U.S.C. 78s(b)(2)(B).

the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."¹⁵

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹⁶

¹⁴ Id.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,¹⁷ in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. There are currently no exchange-traded products ("ETPs") available on U.S. markets that hold a digital asset such as bitcoins, which have neither a physical form (unlike commodities) nor an issuer that is currently registered with any regulatory body (unlike securities, futures, or derivatives), and whose fundamental properties and ownership can, by coordination among a majority of its network processing power, be changed (unlike any of the above). What are commenters' views about the current stability, resilience, fairness, and efficiency of the markets on which bitcoins are traded? What are commenters' views on whether an asset with the novel and unique properties of a bitcoin is an appropriate underlying asset for a product that will be traded on a national securities exchange? What are commenters' views on the risk of loss via computer hacking posed by such an asset? What are commenters' views on whether an ETP based on such an asset would be susceptible to manipulation?

2. According to the Exchange, the logic utilized for the derivation of the daily closing index level for the XBXX is intended to analyze actual bitcoin transactional data, verify

¹⁷ See supra note 3.

and refine the data set, and yield an objective, fair-market value of one bitcoin as of 4:00 p.m., E.T., each weekday, priced in U.S. dollars. What are commenters' views on the Trust's proposal to value its holdings based on XBX and on the methodology used by XBX? What are commenters' views on the alternative and sequential manner in which the Trust proposes to value its holdings in the event that the Sponsor determines that a rule has failed if a pricing source is unavailable or, in the judgment of the Sponsor, is deemed unreliable?

3. Given the novelty and unique digital characteristics of bitcoin as an asset class, and in the interest of adequate security and investor confidence in bitcoin control, what are commenters' views regarding the Trust's proposed security, control, and insurance measures?

4. The proposal states that bitcoin trades on more than 30 exchanges globally on a 24-hour basis and that, therefore, it is difficult for attempted market manipulation on any one exchange to affect the global market price of bitcoin. The proposal further states that any attempt to manipulate the price would result in an arbitrage opportunity among exchanges, which typically would be acted upon by market participants. What are commenters' views on the cost and the efficiency of the arbitrage among the various global markets for bitcoin? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin market, susceptibility to manipulation, and thus the suitability of bitcoins as an underlying asset for an ETP?

5. The proposal states that the dissemination of information on the Trust's website, along with quotations for and last-sale prices of transactions in the Shares and the intra-day indicative value and NAV of the Trust will help to reduce the ability of market participants to manipulate the bitcoin market or the price of the Shares. The proposal further states that the Trust's arbitrage mechanism will facilitate the correction of price discrepancies in bitcoin and the

Shares and that demand from new investors accessing bitcoin through investment in the Shares will broaden the investor base in bitcoin, which could further reduce the possibility of collusion among market participants to manipulate the bitcoin market. What are commenters' views regarding these statements? Do commenters' agree or disagree with the assertion that Authorized Participants and other market makers will be able to make efficient and liquid markets in the Shares at prices generally in line with the NAV?

6. The proposal states that the Sponsor of the Fund may engage in principal trades of NDFs with market makers and Authorized Participants in order to facilitate hedging for Authorized Participants who do not possess the technical abilities to transact directly in bitcoin. In addition, to the extent requested by Authorized Participants and market makers, the Sponsor would act as agent by buying and selling bitcoin on behalf of the Authorized Participants and market makers. What are commenters' views on any potential conflict of interest that may be created by this arrangement, which would involve the Sponsor acting in a capacity other than as agent for the Fund? Would this arrangement affect the effectiveness and efficiency of the arbitrage mechanism and, if so, how? What other effects, if any, might this activity by the Sponsor have on the operation of the Fund?

7. Under the proposal, Baskets may be created or redeemed utilizing bitcoin or cash.¹⁸ What are commenters' views on whether cash creations and redemptions are consistent

¹⁸ See supra note 8; see also NYSE Arca Equities Rule 8.201 (specifically defining Commodity-Based Trust Shares as a security that is issued in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity, and that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity).

with the requirements under NYSE Arca Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange?

8. Under the proposal, creation or redemption orders for the Fund would have to be submitted by 1:00 p.m. E.T. to be effected the same business day. The proposal also sets forth conditions under which the Fund’s administrator may reject Basket purchase orders. One such condition would be “if the Sponsor thinks it is necessary or advisable for any reason, which the Sponsor determines is in the best interests of the Trust or shareholders.” Similarly, the proposal states that the Fund’s administrator “may, in its discretion, suspend the right of redemption or postpone the redemption settlement date (1) for any period during which an emergency exists as a result of which the redemption distribution is not reasonably practicable or (2) for such other period as the Sponsor determines to be necessary for the protection of the shareholders.” What are commenters’ views on the 1:00 p.m. cut-off for order submission and on the necessity and scope of the discretion to reject creation or redemption orders? Are these provisions likely to have an effect on the arbitrage mechanisms and, if so, how?

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2016-101 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Numbers SR-NYSEArca-2016-101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-101 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Brent J. Fields
Secretary

¹⁹ 17 CFR 200.30-3(a)(57).