



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85896; File No. SR-CboeBZX-2019-004]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the VanEck SolidX Bitcoin Trust

May 20, 2019

On January 30, 2019, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of SolidX Bitcoin Shares (“Shares”) issued by the VanEck SolidX Bitcoin Trust (“Trust”) under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the Federal Register on February 20, 2019.<sup>3</sup>

On March 29, 2019, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 85119 (Feb. 13, 2019), 84 FR 5140 (Feb. 20, 2019) (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 85475 (Mar. 29, 2019), 84 FR 13345 (Apr. 4, 2019). The Commission designated May 21, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

The Commission has received 25 comment letters on the proposed rule change.<sup>6</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in detail in the Notice,<sup>8</sup> the Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.<sup>9</sup> Each Share would represent a fractional undivided beneficial interest in the Trust's net assets. The Trust's assets would consist of bitcoin, and the Trust would be responsible for custody of the Trust's bitcoin.<sup>10</sup> SolidX Management LLC would be the sponsor of the Trust ("Sponsor"). The Bank of New York Mellon would be the Administrator, transfer agent, and the custodian with respect to cash of the Trust. Foreside Fund Services, LLC would be the marketing agent in connection with the creation and redemption of baskets of Shares. Van Eck Securities Corporation would provide assistance in the marketing of the Shares.<sup>11</sup>

According to the Exchange, the investment objective of the Trust would be for the Shares to reflect the performance of the price of bitcoin, less the expenses of the Trust's operations. The

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<sup>6</sup> Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-cboebzx-2019-004/srcboebzx2019004.htm>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Notice, supra note 3.

<sup>9</sup> See BZX Rule 14.11(e)(4) (permitting the listing and trading of "Commodity-Based Trust Shares," defined as a security (a) that is used by a trust which 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).

<sup>10</sup> See Notice, supra note 3, 84 FR at 5141.

<sup>11</sup> See id.

Trust would not be actively managed and would not engage in activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of bitcoin.<sup>12</sup> The Administrator would generally use the closing price set for bitcoin by the MVIS Bitcoin OTC Index (“MVBTCO”) to calculate the Fund’s net asset value (“NAV”) on each business day that the Exchange is open for regular trading, as promptly as practicable after 4:00 p.m. E.T.<sup>13</sup>

According to the Exchange, the MVBTCO represents the value of one bitcoin in U.S. dollars at any point in time. The Exchange represents that the MVBTCO calculates the intra-day price of bitcoin every 15 seconds and a closing price as of 4:00 p.m. E.T., each weekday and that the intra-day levels of the MVBTCO incorporate the real-time price of bitcoin based on executable bids and asks derived from constituent bitcoin OTC platforms that have entered into an agreement with MV Index Solutions GmbH to provide such information.<sup>14</sup> According to the Exchange, the intra-day price and closing level of the MVBTCO are calculated using a

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<sup>12</sup> See id.

<sup>13</sup> See id. at 5147. In the event that the Sponsor determines that this valuation method has failed, the Sponsor will determine the bitcoin market price on the valuation date according to a set of alternative methods to be used in the following order: (a) the mid-point price of the bid/ask spread as of 4:00 p.m. E.T. obtained by the Sponsor from any bitcoin over-the-counter (“OTC”) platform that is part of the MVBTCO index; (b) the volume-weighted average price over the 24-hour period ending at 4:00 p.m. E.T. as published by a public data feed that is calculated based upon a volume-weighted average bitcoin price obtained from the major U.S. dollar-denominated bitcoin exchanges and that the Sponsor determines is reasonably reliable; and (c) the Sponsor’s best judgment of a good faith estimate of the bitcoin market price. Greater detail concerning the alternative pricing procedures if the MVBTCO cannot be utilized as the basis for NAV calculations can be found in the Notice. See id.

<sup>14</sup> According to the Exchange, each OTC constituent platform or “OTC Trading Desk” will offer constant, executable bids and offers of at least \$250,000 worth of bitcoin, and the MVBTCO value will be based on these bids and offers. The Exchange represents that it will have in place a comprehensive surveillance sharing agreement with each of these OTC Trading Desks prior to the Shares listing on the Exchange. See id. at 5145, n.35.

proprietary methodology collecting executable bid/ask spreads and calculating a mid-point price from these U.S.-based bitcoin OTC platforms.<sup>15</sup>

II. Proceedings to Determine Whether to Approve or Disapprove SR-CboeBZX-2019-004 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>16</sup> 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, 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,<sup>17</sup> 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."<sup>18</sup>

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<sup>15</sup> According to the Sponsor, the MVBTCO's methodology decreases the influence on the MVBTCO of any particular OTC platform that diverges from the rest of the data points used by the MVBTCO, which reduces the possibility of an attempt to manipulate the price of bitcoin as reflected by the MVBTCO. See id. at 5146.

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>17</sup> Id.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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,<sup>19</sup> 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 questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on whether the Exchange has entered into a surveillance-sharing agreement with a regulated market of significant size related to bitcoin? What are commenters' views of the Exchange's assertion that the trading volume in bitcoin futures makes the market for bitcoin futures a regulated market of significant size related to bitcoin? What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade in the bitcoin futures market to manipulate the Shares? What are commenters' views on whether it is likely that trading in the Shares would be the predominant influence on prices in the bitcoin futures market?

2. What are commenters' views on the relationship between the bitcoin futures market and the bitcoin spot market? For example, what is the relative size of these markets, and where does bitcoin price formation occur? Does the market, spot or futures, in which price formation occurs affect commenters' analysis of whether it is reasonably likely that someone attempting to manipulate the Shares would have to trade in the bitcoin futures market, or that trading in the Shares would be the predominant influence on prices in the bitcoin futures market? To what extent, if at all, do recent developments in the bitcoin futures market—namely, the cessation of new bitcoin futures contract trading on the Chicago Futures Exchange—affect commenters' analysis of these questions?

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<sup>19</sup> See Notice, supra note 3.

3. What are commenters' views on whether the trading relationship between the market for bitcoin futures contracts and the proposed Trust, which would hold physical bitcoins, would be similar to, or different from, the relationship between the market for freight futures contracts and the Breakwave Dry Bulk Shipping ETF (cited by the Exchange in the Notice),<sup>20</sup> which directly holds futures contracts traded on that market? What are commenters' views on how these similarities or differences might affect an analysis of whether it is reasonably likely that someone attempting to manipulate the Shares would have to trade in the bitcoin futures market, or that trading in the Shares would be the predominant influence on prices in the bitcoin futures market?

4. What are commenters' views on the Trust's proposal to value its bitcoin holdings based on an index—the MVBTCO—that is calculated through a proprietary, non-public methodology that uses the privately reported bid/ask spreads of an unidentified set of U.S.-based market-makers in the OTC marketplace, which, the Exchange says, has no formal structure and no open-outcry meeting place? Is the use of a non-public, proprietary index to value holdings based on OTC activity an appropriate means to calculate the NAV of an exchange-traded product ("ETP")? What are commenters' views on whether determining NAV based on the index value at 4:00 p.m. E.T. might, or might not, create an opportunity for manipulation of the NAV or of the Shares? What are commenters' views on the assertion in the Notice that, according to the Sponsor, the MVBTCO's methodology reduces the possibility of an attempt to manipulate the price of bitcoin as reflected by the MVBTCO? What are commenters' views on the Sponsor's assertion, as described by the Exchange in the Notice, that "the OTC desks have a better measure

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<sup>20</sup> See id. at 5142–45.

of the market than any exchange-specific reference price, whether individually or indexed across multiple exchanges”?

5. What are commenters’ views on the Exchange’s representation that it will have in place a comprehensive surveillance sharing agreement with each of the OTC platforms that constitute the MVBTCO prior to the Shares listing on the Exchange? What are commenters’ views on the Exchange’s assertion that the regulated nature of each of the OTC platforms that make up the MVBTCO, the notional volume of trading and liquidity available on these platforms, the principal-to-principal nature of these platforms, and comprehensive surveillance sharing agreements with each of the OTC platforms (in addition to the Exchange’s standard surveillance procedures) are sufficient to prevent fraudulent and manipulative acts and practices in the Shares? What are commenters’ views on the extent to which each of these OTC platforms is regulated? What are commenters’ views on the extent to which each of these OTC platforms can, or does, conduct surveillance of bitcoin trading activity?

6. What are commenters’ views on the size, liquidity, transparency, number and nature of market participants, and price discovery in the OTC market for bitcoin, both on an absolute basis and relative to the bitcoin spot market as a whole? What are commenters’ views on whether the volume of U.S. dollar trading of bitcoin—which excludes bitcoin trading against other sovereign currencies or digital assets—is a meaningful or appropriate measure of bitcoin market volume?

7. The Exchange states that the Trust does not intend to report its OTC trading. What are commenters’ views on how the Trust’s unreported OTC trades may affect the calculation of the Trust’s NAV and the ability of market makers to engage in arbitrage?

8. What are commenters' views on each of the set of alternative means by which the Trust proposes to value its holdings in the event that the Sponsor determines that the MVBTCO, or another alternate pricing mechanism, has failed, is unavailable, or is deemed unreliable? What are commenters' views on whether any of these pricing mechanisms, primary or alternate, would be affected by, or resistant to, manipulative activity in bitcoin markets?

9. What are commenters' views on the assertion by the Exchange 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 (or "IIV") 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 and that the Trust's arbitrage mechanism will facilitate the correction of price discrepancies in bitcoin and the Shares? What are commenters' views on whether the liquidity of the OTC bitcoin market is sufficient to support efficient arbitrage between the price of the Shares and the spot price of bitcoin?

10. The Exchange represents that it has entered into a comprehensive surveillance-sharing agreement with the Gemini Exchange and is working to establish similar agreements with other bitcoin venues. What are commenters' views on whether the Gemini Exchange is a regulated market of significant size? What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would also have to trade on the Gemini Exchange? What are commenters' views on whether trading in the proposed ETP would be the predominant influence on prices in the Gemini Exchange? What are commenters' views on whether the Exchange could enter into surveillance-sharing agreements with regulated spot markets of significant size related to bitcoin?

11. What are commenters' views of the Exchange's assertions that bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; that the geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin; that trading on inside information regarding bitcoin is unlikely; that the fragmentation across bitcoin markets, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity unlikely; that manipulation of the price on any single venue would require manipulation of the global bitcoin price to be effective; that a substantial OTC bitcoin market provides liquidity and shock-absorbing capacity; that bitcoin's "24/7/365 nature"<sup>21</sup> provides constant arbitrage opportunities across all trading venues; and that it is unlikely that any one actor could obtain a dominant market share?

12. What are commenters' views of the Exchange's assertions that transacting in the Shares will be geared toward more sophisticated institutional investors and will be cost-prohibitive for smaller retail investors? What are commenters' views regarding whether broker-dealers are likely to offer fractional shares in the Trust to retail investors, permitting retail investment with a smaller financial commitment? What are commenters' views of the Exchange's assertions that the Sponsor believes that demand from new, larger 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, in light of the possibility that broker-dealers may offer fractional shares to their customers?

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<sup>21</sup> See id. at 5142 n.11, 5156 n.46.

13. What are commenters' views on the Exchange's assertion that a minimum of 100 Shares outstanding at the time of commencement of trading will be sufficient to provide adequate market liquidity? What are commenters' views on whether the 100-share minimum would affect the arbitrage mechanism? What are commenters' views on the Exchange's assertion that, even though the Trust would not comply with the minimum number of shares outstanding required by Exchange rules, the policy concerns underlying that requirement would be otherwise mitigated in the case of the Trust, because the lower number of Shares is merely a function of the price of the Shares and will have no effect on the creation and redemption process or on arbitrage?

14. What are commenters' views of whether the Trust's proposed insurance coverage would affect trading in the Shares or in the underlying bitcoins? What are commenters' views regarding the Trust's proposed security, control, and insurance measures?

### 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, and 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.<sup>22</sup>

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<sup>22</sup> 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

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].

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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-004 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 Number SR-CboeBZX-2019-004. 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

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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).

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-004 and should be submitted by [insert date 21 days from date of 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.<sup>23</sup>

Eduardo A. Aleman,  
Deputy Secretary.

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<sup>23</sup> 17 CFR 200.30-3(a)(57).

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