

MEMORANDUM

TO: File No. SR-CboeBZX-2018-040

FROM: David Remus
Office of Market Supervision, Division of Trading and Markets

DATE: August 1, 2018

SUBJECT: Meeting with Van Eck Securities Corporation, SolidX Management LLC, and Cboe BZX Exchange, Inc.

On July 31, 2018, Brett Redfearn, Andrea Orr, David Shillman, Michael Coe, Edward Cho, Michou Nguyen, Lauren Yates, Alexander Zozos, and David Remus (by phone) from the Division of Trading and Markets; William Hinman, Valerie Szczepanik (by phone), Amy Starr (by phone), Charles Garrison, and Michael Seaman from the Division of Corporation Finance; and Igor Kozhanov from the Division of Economic and Risk Analysis, met with the following individuals:

Daniel Gallancy, SolidX Management LLC
Dimitri Nemirovsky, SolidX Management LLC
Adam Phillips, Van Eck Securities Corporation
Kyle Murray, Cboe BZX Exchange, Inc.
Laura Morrison, Cboe BZX Exchange, Inc.
Ben Brown, Patomak Global Partners

The discussion concerned Cboe BZX Exchange, Inc.'s proposed rule change to list and trade, pursuant to BZX Rule 14.11(e)(4), shares of SolidX Bitcoin Shares issued by the VanEck SolidX Bitcoin Trust. SolidX Management LLC also provided the attached presentation to the Commission Staff.

VanEck SolidX Bitcoin Trust

Presentation for SEC Staff

July 2018

PRESENTATION OUTLINE

- 1. Reasons delineated in March 2017 disapproval**
2. Significant changes in product, market structure and overall circumstances since March 2017 disapproval
3. Bitcoin in the context of Section 6(b)(5) of the SEA
4. Notes on January 18, 2018 Staff Letter: Engaging on Fund Innovation and Cryptocurrency-related Holdings

COMMISSION DETERMINED IN MARCH 2017 THE PROPOSED RULE CHANGE WAS NOT CONSISTENT WITH SECTION 6(b)(5) OF THE SECURITIES EXCHANGE ACT

1. Commission noted that for commodity-trust ETPs approved to date, there have been well-established, significant, regulated markets for trading futures on the underlying commodity
 - Examples: gold, silver, platinum, palladium, and copper
 - The ETP-listing exchange had entered into surveillance-sharing agreements with those markets
2. Commission observed, however, that significant markets for bitcoin were unregulated as of March 2017
 - Listing exchange unable to enter into surveillance-sharing agreements with those markets
 - The agreements help ensure availability of information necessary to detect and deter potential manipulations and other trading abuses

COMMISSION DETERMINED THE PROPOSED RULE CHANGE WAS NOT CONSISTENT WITH SECTION 6(b)(5) (CONT'D)

“The Commission continues to believe that surveillance-sharing agreements between the exchange listing shares of a commodity-trust ETP and significant, regulated markets related to the underlying asset provide a ‘necessary deterrent to manipulation’”

“The Commission notes that bitcoin is still in the relatively early stages of its development and that, over time, regulated bitcoin-related markets of significant size may develop. Should such markets develop, the Commission could consider whether a bitcoin ETP would, based on the facts and circumstances then presented, be consistent with the requirements of the Exchange Act”

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CHANGE 1 – MARKET STRUCTURE: MULTIPLE DERIVATIVES MARKETS NOW EXIST FOR BITCOIN

Derivatives markets:

1. CME bitcoin futures
2. Cboe bitcoin futures
3. LedgerX bitcoin swaps and options contracts
4. Cantor Exchange self-certified bitcoin swaps contract

All of the above are markets regulated by the CFTC and all are cleared products

Combined daily trading volume on CME and Cboe Futures Exchange is approximately \$150 - \$200 million

CHANGE 2 – PRODUCT PRICING

Trust will use OTC index for pricing and NAV

- OTC index is based on the mid-point of firm bid/ask quotes provided by constituent OTC platforms
- OTC desk prices are not subject to manipulation in the absence of misconduct by the trading desks themselves
- Constituent OTC index platforms will enter into information sharing agreements with Cboe
- OTC desks trade with institutional and sophisticated investors and follow AML, KYC and BSA regulations, among others
- Trades in OTC market are principal-to-principal, desks and trades are identifiable and accountable to regulators
- CFTC has jurisdiction over OTC bitcoin trading

Potential manipulative activity would be identified immediately, providing the “necessary deterrent to manipulation” described in the March 2017 disapproval notice

CFTC HAS JURISDICTION OVER OTC BITCOIN MARKET

The CFTC's jurisdiction is implicated when a virtual currency is used in a derivatives contract, or if there is fraud or manipulation involving a virtual currency traded in interstate commerce, which extends to bitcoin exchanges and the *OTC market*

As reported by CFTC Chairman J. Christopher Giancarlo before the Committee on Banking, Housing and Urban Affairs, the CFTC can now obtain trading data and analyze it for fraud and manipulation in five underlying spot markets

Section 2(c)(2)(D) of the CEA grants the CFTC oversight authority over any transaction in a commodity (including virtual currencies) that is entered into with or offered to a person who is not an eligible contract participant or eligible commercial entity (a "retail customer")

CHANGE 3 – MARKET STRUCTURE: PROLIFERATION OF INFORMATION SHARING AGREEMENTS THAT WERE NOT IN PLACE IN MARCH 2017

Information Sharing Agreements already in place / being established

- CME is an ISG member – Cboe can obtain information from CME
- ISA in place with Gemini, a US-based bitcoin spot market
- ISAs in process with other USD-bitcoin spot markets
- ISAs will be established between OTC bitcoin trading desks and Cboe

CHANGE 4 – PRODUCT STRUCTURE: OVERTLY NOT FOR RETAIL

Outside of the context of the disapproval notice from March 2017, the SEC has indicated concerns regarding bitcoin ETFs and retail investors

To address those concerns, the initial share price will be set at a level designed to ensure that only institutional and “non-retail” investors will be able to purchase shares

\$203,750 share price
(25 bitcoin x \$8,150 as of July 30)

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SECTION 6(b)(5) OF THE SECURITIES EXCHANGE ACT PROVIDES THE CRITERIA FOR APPROVAL

Section 6(b)(5) of the Exchange Act:

The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the exchange

The Trust provides investors with the virtues of the above criteria in a manner not offered by direct investment in bitcoin

DIRECT INVESTMENT IN BITCOIN CREATES RISKS FOR INVESTORS

Direct investment in bitcoin:

- Traditional capital markets infrastructure is not capable of handling bitcoin
- No clearing whatsoever. Complete counterparty risk in purchases and sales of bitcoin
- Additional counterparty risk if purchaser chooses to store bitcoin with a third-party provider
- Operational risks from self-storage: hacking, computer error, etc.

These issues make bitcoin completely inaccessible to most institutional investors, leaving the market largely to retail investors

All of the above run counter to the letter and the spirit of Section 6(b)(5)

LANDSCAPE OF EXISTING VEHICLES DOES NOT PROVIDE INVESTORS WITH SUFFICIENT PROTECTION

GBTC

In essence, a closed-end fund because creations/redemptions are not possible

Trades on the pink sheets in the US

Can be purchased in most brokerage accounts

Has traded as high as a 75% premium to the price of bitcoin

Minimal liquidity

Complete operational risk

No insurance

GBTC has a market cap of approximately **\$2 billion**

XBT Provider

Exchange Traded Note, a debt instrument that trades on Nasdaq OMX in Sweden

Can be purchased in many US brokerage accounts

Issuing entity has no balance sheet

- Investors are exposed to severe credit risk
- Original issuer went bankrupt – investors were bailed out by an acquiring entity
- The credit risk prevents institutions from participating

Complete operational risk

No insurance

XBT Provider has amassed AUM of approximately **\$2 billion**

BITCOIN IS UNLIKE ANY OTHER DIGITAL ASSET AND VANECK SOLIDX BITCOIN TRUST IS STRUCTURED METICULOUSLY TO ADDRESS THE SEC'S CONCERNS

Bitcoin is unlike any other digital asset

- Secure and stable open source system
- Nine year trading history with meaningful price transparency
- Truly decentralized, no founder team in control
- Not an ICO
- Deemed commodity by CFTC, no ambiguity
- Trades USD billions daily
- Established futures market
- Significant investment, including by VCs, in bitcoin ecosystem

VanEck SolidX Bitcoin Trust is constructed to promote investor protection

- Insurance on underlying bitcoin – a crucial feature
- Transparent pricing and accountability via OTC index
- Cash and in-kind creations and redemptions
- Structured for institutional investors
- VanEck is an established ETP issuer
 - Decades of industry experience
 - More than 70 funds
 - Approximately \$46 billion in AUM

By approving the VanEck SolidX Bitcoin Trust, SEC would:

- **Set high bar for other ETPs tied to digital assets**
- **Promote investor protection, per section 6(b)(5)**

VANECK SOLIDX BITCOIN TRUST SHOULD BE APPROVED

Issues identified in disapproval order have been resolved

- Bitcoin markets (e.g., OTC and futures) not “unregulated”
- OTC index is based on institutional principal-to-principal trading
- Concerns around price manipulation have been mitigated, consistent with approval of prior commodity-based ETPs
- There now exists a significant regulated derivatives market for bitcoin
- Not for retail: share price is for institutional investors

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STAFF LETTER ISSUE NO. 1 – POTENTIAL PRICE MANIPULATION

Investor protection should not be less than in securities markets, prevent fraud and manipulation

To address concerns respecting the potential for manipulation of bitcoin exchange prices, the bitcoin held by the Trust will be valued based on an index that tracks the price of bitcoin in the U.S. OTC market

OTC market is not an electronic market

OTC market transactions are negotiated principal-to-principal, via phone or other means of direct communication and trades are effected in size

OTC prices are not subject to the concerns respecting price manipulation discussed in the disapproval notice

OTC desks are either regulated or affiliates of regulated entities and subject to CFTC jurisdiction

The Trust expects to conduct its bitcoin trading in the OTC market and has identified the OTC market as its principal market for bitcoin for fund accounting purposes

STAFF LETTER ISSUE NO. 1 (Cont'd)

Necessity for negotiability and transaction size in OTC market eliminate ability of market participants to manipulate prices through small orders

The parallel existence of an exchange-based and an OTC market diminishes the risk of manipulation

Anyone attempting a manipulative act in the OTC market would simultaneously need to

- Implement parallel manipulations in the exchange spot markets, which would require a tremendous amount of capital across multiple exchanges (in multiple currencies and jurisdictions)
- Prevent others from taking advantage of potential arbitrage opportunities between the exchange spot markets, which is further complicated by the tremendous price transparency for bitcoin on exchanges, for which quotes are freely available

STAFF LETTER ISSUE NO. 2 – PRICING AND NAV

Fund must adequately value its assets

Trust will use OTC index for pricing and NAV

OTC index is based on the mid-point of firm bid/ask quotes provided by constituent OTC platforms

OTC desk prices are not subject to manipulation in the absence of misconduct by the trading desks themselves

Constituent OTC index platforms will enter into information sharing agreements with Cboe

OTC desks trade with institutional and sophisticated investors

OTC desks follow AML, KYC and BSA regulations, among others

Trades in OTC market are principal-to-principal

The OTC desks are identifiable and accountable to regulators

STAFF LETTER ISSUE NO. 3 – LIQUIDITY

Funds must maintain sufficient liquid assets in order to provide daily redemptions

Current bitcoin supply is approximately \$135 billion

Daily USD bitcoin trading volume across major exchanges (those that follow AML, KYC, BSA, etc.) is approximately \$1 billion (0.8% of monetary base)

OTC trading volume in the US is significant

Average trade size is approximately \$250,000

Daily OTC trading volume can range between 25% – 50% of the on-exchange volume: \$250 – \$500 million (0.2% – 0.4% of monetary base)

Daily bitcoin futures trading volume on CME and Cboe is approximately \$150 – \$200 million

STAFF LETTER ISSUE NO. 4 – ARBITRAGE

ETF required to have market price that would not deviate materially from NAV

Assuming \$1 billion AUM for the ETF, there exists sufficient liquidity to meet redemption orders, even assuming an unprecedented 10% daily redemption

“an illiquid investment means any investment that the fund reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment”

A 10% redemption, or \$100 million, is approximately 8% of daily USD bitcoin trading volume

Trust has already entered into AP agreements with several large institutions

There exist many established market makers that have expressed an interest in making markets in the ETF

These are established market participants that have dedicated ETF trading desks and trade bitcoin directly

STAFF LETTER ISSUE NO. 5 – CUSTODY

Safeguards to ensure funds maintain custody of holdings

bitcoin is a bearer asset – absolute operational risk

The only way to ensure investors are shielded from operational risk is to provide insurance against loss or theft of bitcoin

Insurance eliminates regulatory barriers and counterparty risk barriers that otherwise would prevent institutional participation

Assembled over the course of several years, the Trust has bound \$125,000,000 of insurance capacity from a syndicate of A-rated underwriters and arranged to scale coverage with goal to maintain insurance at a one-to-one ratio with bitcoin holdings

Independent auditor and underwriters can and will validate the Trust's bitcoin holdings

No one clears bitcoin – absolute counterparty risk

DVP- and RVP-style arrangements between Trust and OTC desks

Dealing with OTC desks (registered or affiliates of registered entities) mitigates counterparty risk

ABOUT VANECK

VanEck offers investors forward-looking, intelligently designed investment strategies that take advantage of targeted market opportunities. Founded in 1955, the firm is a pioneer in global investing with a history of placing clients' interests first in all market environments. VanEck Vectors exchange-traded products are one of the largest ETP families in the world, managing more than 70 funds with approximately \$46 billion in assets under management, including mutual funds, ETFs, and institutional accounts

Jan Van Eck is CEO and Director of Van Eck Associates Corporation, Director and President, Van Eck Securities Corporation, Director and President, Van Eck Absolute Return Advisers Corporation, and President, and Chief Executive Officer and Trustee, VanEck Vectors ETF Trust. Since joining VanEck in 1992, Jan has created a variety of international, emerging markets and commodity-related investment strategies in mutual fund, ETF, and alternative investment formats. Jan received his JD from Stanford University and holds a BA in Economics from Williams College

Adam Phillips is Chief Operating Officer of VanEck Vectors ETFs. Prior to joining VanEck, Adam was the Founder and Managing Member of LB Trading, LLC, a proprietary ETF trading firm on the American Stock Exchange and Junior General Partner and Management Committee Member at Orbit II Partners, L.P., a proprietary trading firm specializing in equity options, index options and ETF market making. Adam holds a BA in Economics and American Civilization from Lafayette College

ABOUT SOLIDX

SolidX is a financial technology company founded in 2014 and based in New York City. It develops cryptography products and services with a focus on software applications and capital markets. The SolidX team has been involved with the bitcoin ecosystem since 2011 and with the financial markets since the early 2000s

Daniel H. Gallancy is the CEO of SolidX Partners Inc. Prior to establishing SolidX, Mr. Gallancy spent a decade in the investment management industry. Mr. Gallancy earned an MBA from Columbia Business School, a BA in Physics and a BSE in Electrical Engineering from the University of Pennsylvania. Mr. Gallancy is a CFA Charterholder

Dimitri Nemirovsky is the co-founder of SolidX Partners Inc. Prior to SolidX, Dimitri spent 15 years as an attorney in the financial services industry with a focus on capital markets and regulation. Dimitri earned his JD from Brooklyn Law School and holds MBA and BBA degrees from Baruch College