



June 28, 2019

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: File Number SR-CboeBZX-2019-004 (the “Proposal”)**

Dear Ms. Countryman:

Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to submit this comment letter in response to the request for comments in the Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposal<sup>1</sup> and express its belief that the Securities and Exchange Commission (the “Commission”) should approve the Proposal to list and trade SolidX Bitcoin Shares (the “Fund”) issued by the VanEck SolidX Bitcoin Trust (the “Trust”) and for which SolidX Management LLC is the sponsor (the “Sponsor”).

Cboe operates four registered national securities exchanges in the U.S. for the trading of equity securities, one of which, Cboe BZX Exchange, Inc., (the “Exchange”) is a listing venue that currently lists 324 exchange-traded products (“ETPs”) from 48 sponsors. Cboe is a leading exchange operator for the trading of ETPs, with its four equity exchanges accounting for 19.5% of the daily trading volume in ETPs.<sup>2</sup>

As noted above, Cboe is submitting this comment letter in support of the Proposal and to respond to the Commission’s request for comments.

**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**

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<sup>1</sup> See Securities Exchange Act Release No. 85896 (May 20, 2019), 84 FR 24188 (May 24, 2019) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of SolidX Bitcoin Shares Issued by the VanEck SolidX Bitcoin Trust Under Rule 14.11(e)(4), Commodity-Based Trust Shares) (the “Order”).

<sup>2</sup> Based on data from May, 2019.

**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?**

**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), 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?**

**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?**

**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” provides constant arbitrage opportunities across all trading venues; and that it is unlikely that any one actor could obtain a dominant market share?**

Cboe continues to believe that the policy concerns related to reference assets underlying series of Commodity-Based Trust Shares and their susceptibility to manipulation are mitigated as it relates to bitcoin and the Shares because the bitcoin ecosystem, the spot, OTC, and derivatives trading markets, and the proposed pricing of the Shares minimize the risk of manipulation of the price of bitcoin and of the Shares, especially as compared to other commodities underlying already approved and listed ETPs.

As discussed in the Proposal, the Exchange believes that the bitcoin futures market compares favorably to the freight futures market, which was deemed by the Commission to be a significant regulated market. The Exchange continues to believe that the analysis remains the same regardless of whether an ETP holds a derivative contract related to the underlying asset or the underlying asset itself: because a “significant market” is one in which there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to

trade on that market to manipulate the ETP,<sup>3</sup> the test presented by the Commission implicitly requires that the derivatives market has a strong influence on the price formation process of the underlying asset. Stated another way, if the derivative market (the freight futures market) did not contribute to price formation in the underlying market for the reference asset (the freight market), then a potential manipulator would simply transact in the market for the reference asset (the relatively unregulated freight market) in order to manipulate the price of the derivative contracts and avoid detection regardless of the presence of surveillance-sharing agreements. As such, the Exchange believes that the analysis of whether a derivative market is a significant market is the same regardless of whether the associated ETP is holding the derivative contract or the underlying asset. As noted throughout the Proposal and this comment letter, the Exchange believes that the bitcoin futures market is a significant regulated market.<sup>4</sup>

In the OTC markets, principal-to-principal trading, which allows each OTC venue to identify the parties on each side of a trade that is being executed, combined with the large size at which trades are effected, meaning that even large marketable buy or sell orders will not likely cause significant price movement at the OTC venue, should effectively eliminate the ability of market participants to manipulate the market with small trades as may be the case on any individual exchange. The OTC desks that comprise the MVBTCO with which the Trust intends to effect transactions are well established institutions that comply with AML and KYC regulatory requirements with respect to trading counterparties and include entities that are regulated by the SEC and FINRA as registered broker-dealers and affiliates of broker-dealers. As noted in the Order, it is the Sponsor's position that the OTC desks have a better measure of the market than any exchange-specific reference price, whether individually or indexed across multiple exchanges, a position further addressed below and that the Sponsor has expanded upon in its own comment letter in response to the Order. The geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to

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<sup>3</sup> The Commission has interpreted the terms "significant market" and "market of significant size" to include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.

<sup>4</sup> For additional information regarding the bitcoin futures market, please refer to the Proposal and the comment letter submitted by the Sponsor on June 28, 2019.

manipulate the price of bitcoin and, in many instances, the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity futures markets. There are a number of reasons this is the case, including that there is not inside information about revenue, earnings, corporate activities, or sources of supply; it is generally not possible to disseminate false or misleading information about bitcoin in order to manipulate; manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; a substantial over-the-counter market provides liquidity and shock-absorbing capacity; bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, bitcoin is arguably less susceptible to manipulation than other commodities that underlie already approved ETPs; there may be inside information relating to the supply of the physical commodity such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity that simply are inapplicable as it relates to bitcoin. Further, the Exchange believes that the fragmentation across bitcoin platforms, 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. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. For all of these reasons, the Exchange believes that bitcoin is not particularly susceptible to manipulation, especially as compared to other approved ETP reference assets.

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

**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?**

**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?**

As described above and throughout the Proposal, Cboe believes that the Proposal is consistent with the Securities Exchange Act of 1934 (the "Act"). For additional detail about the MVBTCO, its constituents, its methodology, the OTC market, the Trust's OTC transactions,

alternate pricing mechanisms for valuing the Trust's holdings, and the Trust's insurance coverage, please refer to the comment letter submitted by the Sponsor on June 28, 2019.

**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?**

Cboe firmly believes that trading in the Shares will operate in a manner nearly identical to any other ETP that offers creation and redemption to Authorized Participants. While bitcoin as an underlying reference asset does raise certain unique issues, such unique issues do not include the fundamental economic incentives that the arbitrage mechanism provides to Authorized Participants and other arbitrageurs to keep the price of an ETP in line with its NAV. Given the liquidity and nature of quoting in the OTC bitcoin market along with the availability of information described above and the comment letter submitted by the Sponsor, Cboe believes that Authorized Participants and other market makers will be able to engage in arbitrage, make efficient and liquid markets, and generally keep the price of the Shares in line with NAV.

**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?**

Cboe has in place a comprehensive surveillance-sharing agreement with Gemini Exchange and is working with other bitcoin exchanges to obtain a comprehensive surveillance-sharing

agreement. Information obtained directly from bitcoin exchanges combined with the information available to the Exchange through the Intermarket Surveillance Group related to trading in bitcoin derivatives and trading in the Shares will allow the Exchange to both detect and deter manipulative trading activity in the Shares.

**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?**

The Exchange believes that the Shares would not be appropriate for all investors, however, it also believes that comprehensive risk disclosure as provided in the applicable regulatory documentation backstopped by rigorous broker-dealer evaluation of the suitability of a particular product for a client provides a sufficient framework for investor protection. Making the initial per-share price equal to 25 bitcoin further protects against less sophisticated investors purchasing the Shares and, to the extent that broker-dealers decide to offer fractional shares to unsophisticated retail investors, they would go beyond ignoring their obligations to actively flouting the requirement that they evaluate the suitability of a particular product for a client.

Cboe notes that investors currently have access to ETPs that track the price of sugar, dry bulk shipping, corn, and even livestock, among other less traditional commodities that present similarly difficult questions about suitability and appropriateness for investors. Just as with these more obscure commodity-related ETPs, the Shares may serve a purpose in a reasonably constructed investment portfolio while simultaneously not being appropriate for all investors. The combination of risk disclosure obligations for the Trust, the requirement that broker-dealers perform comprehensive analysis about the suitability of a particular product for their customers, and the large share price for the Shares will provide sufficient investor information and protection while allowing appropriate investors to gain exposure to cryptocurrency-related assets through well-regulated and transparent vehicles.

**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?**

The Trust currently expects that there will be at least 100 Shares outstanding at the time of commencement of trading on the Exchange, which the Exchange believes to be sufficient to provide adequate market liquidity. Assuming a bitcoin price of \$10,000 and approximately 25 bitcoin per Share, the Shares would be approximately \$250,000 each. With a minimum of 100 Shares outstanding, the market value of all Shares outstanding would be approximately \$25,000,000. The Exchange rules related to requiring at least 50,000 shares and a minimum market value of \$1,000,000 are designed to ensure that there are sufficient shares and market value outstanding to facilitate the creation and redemption process and ensure that the arbitrage mechanism will keep the price of a series of Commodity-Based Trust Shares in line with its NAV and prevent manipulation in the shares. The Exchange, however, believes that such policy concerns are otherwise mitigated. The lower number of Shares is merely a function of price that will have no impact on the creation and redemption process and the arbitrage mechanism. Whether the Shares are priced equal to 25 bitcoin with a Basket of 5 Shares or the Shares are priced equal to .025 bitcoin with a Basket of 5,000 Shares, the cost to an AP to create or redeem will be the exact same and such a creation and redemption will have the same proportional impact on Shares and market value outstanding. Because the creation units and redemption units for most exchange-traded products are between 5,000 and 50,000 shares, it makes sense to apply a minimum number of shares outstanding to such products. Where a creation unit is 5 shares, the policy concerns that these requirements are designed to address are mitigated even where there are significantly fewer shares outstanding.

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Cboe appreciates the opportunity to reply to the request for comments in the Order. As discussed above, Cboe believes that the Proposal is consistent with the Act and that the



Shares offer a much needed regulated and exchange-listed investment vehicle that provides exposure to bitcoin. As such, Cboe encourages the Commission to approve the Proposal. Cboe welcomes the opportunity to provide the Commission with any additional information that it might find useful or to further discuss any of the issues raised herein.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kyle Murray". The signature is fluid and cursive, with a large loop at the end.

Kyle Murray  
Assistant General Counsel