



January 28, 2021

Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-CboeBZX-2020-070, Amendment No. 1

Dear Secretary:

On January 28, 2021, Cboe BZX Exchange, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) Amendment No. 1 to SR-CboeBZX-2020-070 in order to clarify certain points and add additional details. This Amendment No. 1 to SR-CboeBZX-2020-070 amends and replaces in its entirety the proposal as originally submitted on September 4, 2020. The Exchange submitted proposal SR-CboeBZX-2020-070 in order to list and trade shares of the -1x Short VIX Futures ETF, a series of VS Trust, under Rule 14.11(f)(4), Trust Issued Receipts. In order to provide notice for public review of this Amendment No. 1, in addition to posting on the Exchange’s public website, the Exchange is filing this comment letter with the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kyle Murray', with a stylized flourish at the end.

Kyle Murray
Vice President, Associate General Counsel

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 57	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2020 - * 070	Amendment No. (req. for Amendments *) 1
Filing by Cboe BZX Exchange, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text"/>				
Contact Information				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	Kyle	Last Name *	Murray	
Title *	VP, Associate General Counsel			
E-mail *	<input type="text"/>			
Telephone *	<input type="text"/>	Fax	<input type="text"/>	
Signature				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	01/28/2021	VP, Associate General Counsel		
By	Kyle Murray	<input type="text"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to list and trade shares of the -1x Short VIX Futures ETF, a series of VS Trust, under Rule 14.11(f)(4) (“Trust Issued Receipts”). The shares of the Fund are referred to herein as the “Shares.”

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on December 9, 2019.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, Counsel, (913) 815-7203.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

This Amendment No. 1 to SR-CboeBZX-2020-070 amends and replaces in its entirety the proposal as originally submitted on September 4, 2020. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade Shares of the -1x Short VIX Futures ETF (the “Fund”) under Rule 14.11(f)(4), which governs the listing and trading of Trust

Issued Receipts¹ on the Exchange.²

The Fund seeks to provide daily investment results (before fees and expenses), as further described below, that correspond to the performance of a benchmark that seeks to offer short exposure to market volatility through publicly traded futures markets. The benchmark for the Fund is the Short VIX Futures Index (the “Index” or ticker symbol SHORTVOL).³ The Index measures the daily inverse (i.e., the opposite) performance of a theoretical portfolio of first- and second-month futures contracts on the Cboe Volatility Index (“VIX”).⁴

The Fund will primarily invest in VIX futures contracts traded on the Cboe Futures Exchange, Inc. (“CFE”) (hereinafter referred to as “VIX Futures Contracts”) based on components of the Index to pursue its investment objective. In the event accountability rules, price limits, position limits, margin limits or other exposure limits

¹ Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

² The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR-BZX-2012-044).

³ The Index is sponsored by Cboe Global Indexes (the “Index Sponsor”). The Index Sponsor is not a registered broker-dealer, but is affiliated with a broker-dealer. The Index Sponsor has implemented and will maintain a fire wall with respect to the broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index.

⁴ The VIX is an index designed to measure the implied volatility of the S&P 500 over 30 days in the future. The VIX is calculated based on the prices of certain put and call options on the S&P 500. The VIX is reflective of the premium paid by investors for certain options linked to the level of the S&P 500.

are reached with respect to VIX Futures Contracts, Volatility Shares LLC (the “Sponsor”) may cause the Fund to obtain exposure to the Index through Over-the-Counter (OTC) swaps referencing the Index or particular VIX Futures Contracts comprising the Index (hereinafter referred to as “VIX Swap Agreements”). The Fund may also invest in VIX Swap Agreements if the market for a specific VIX Futures Contract experiences emergencies (e.g., natural disaster, terrorist attack or an act of God) or disruptions (e.g., a trading halt or a flash crash) or in situations where the Sponsor deems it impractical or inadvisable to buy or sell VIX Futures Contracts (such as during periods of market volatility or illiquidity).

The Sponsor, a Delaware limited liability company, serves as the Sponsor of VS Trust (the “Trust”). The Sponsor is a commodity pool operator.⁵ Tidal ETF Services LLC serves as the administrator (the “Administrator”) and U.S. Bank National Association serves as custodian of the Fund and its Shares. U.S. Bancorp Fund Services, LLC serves as the sub-administrator (the “Sub-Administrator”) and transfer agent. Wilmington Trust Company, a Delaware trust company, is the sole trustee of the Trust.

If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a “fire wall” between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund’s portfolio. The Sponsor is not a broker-dealer

⁵ The Fund has filed a registration statement on Form S-1 under the Securities Act of 1933, dated August 26, 2020 (File No. 333-248430) (“Registration Statement”). The description of the Fund and the Shares contained herein are based on the Registration Statement. The Registration Statement for the Fund is not yet effective and the Fund will not trade on the Exchange until such time that the Registration Statement is effective.

or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

The VIX Swap Agreements in which the Fund may invest may be cleared or non-cleared. The Fund will collateralize its obligations with Cash and Cash Equivalents⁶ consistent with the 1940 Act and interpretations thereunder.

The Fund will only enter into VIX Swap Agreements with counterparties that the Sponsor reasonably believes are capable of performing under the contract and will post as collateral as required by the counterparty. The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Sponsor will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Sponsor will review approved counterparties using various factors, which may include the counterparty's reputation, the Sponsor's past experience with the counterparty and the price/market actions of debt of the counterparty.

The Fund may use various techniques to minimize OTC counterparty credit risk

⁶ For purposes of this proposal, the term "Cash and Cash Equivalents" shall have the definition provided in Exchange Rule 14.11(i)(4)(C)(iii), applicable to Managed Fund Shares.

including entering into arrangements with its counterparties whereby both sides exchange collateral on a mark-to-market basis. Collateral posted by the Fund to a counterparty in connection with uncleared VIX Swap Agreements is generally held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund.

In addition to VIX Swap Agreements, if the Fund is unable to meet its investment objective through investments in VIX Futures Contracts, the Fund may also obtain exposure to the Index through listed VIX options contracts traded on the Cboe Exchange, Inc. (“Cboe”) (hereinafter referred to as “VIX Options Contracts”).

The Fund may also invest in Cash and Cash Equivalents that may serve as collateral in the above referenced VIX Futures Contracts, VIX Swap Agreements, and VIX Option Contracts (collectively referred to as the “VIX Derivative Products”).

If the Fund is successful in meeting its objective, its value (before fees and expenses) on a given day should gain approximately as much on a percentage basis as the level of the Index when it rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of the Index when it declines. The Fund primarily acquires short exposure to the VIX through VIX Futures Contracts, such that the Fund has exposure intended to approximate the Index at the time of the net asset value (“NAV”) calculation of the Fund. However, as discussed above, in the event that the Fund is unable to meet its investment objective solely through the investment of VIX Futures Contracts, it may invest in VIX Swap Agreements or VIX Options Contracts. The Fund may also invest in Cash or Cash Equivalents that may serve as collateral to the Fund’s investments in VIX Derivative Products.

The Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations with a view toward obtaining positive results under all market conditions. Rather, the Fund seeks to remain fully invested at all times in VIX Derivative Products (and Cash and Cash Equivalents as collateral)⁷ that provide exposure to the Index consistent with its investment objective without regard to market conditions, trends or direction.

In seeking to achieve the Fund's investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with the Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Fund's investments in accordance with its investment objective.

VIX Futures Contracts

The Index is comprised of, and the value of the Fund will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and as such will behave differently than current, or spot, VIX, as illustrated below.

While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). For example, a VIX Futures Contract purchased in March that

⁷ Supra note 6.

expires in May, in effect, is a forward contract on what the level of the VIX, as a measure of 30-day implied volatility of the S&P 500, will be on the May expiration date. The forward volatility reading of the VIX may not correlate directly to the current volatility reading of the VIX because the implied volatility of the S&P 500 at a future expiration date may be different from the current implied volatility of the S&P 500. As a result, the Index and the Fund should be expected to perform very differently from the inverse of the VIX over all periods of time. To illustrate, on December 4, 2019, the VIX closed at a price of 14.8 and the price of the February 2020 VIX Futures Contracts expiring on February 19, 2020 was 18.125. In this example, the price of the VIX represented the 30-day implied, or “spot,” volatility (the volatility expected for the period from December 5, 2019 to January 5, 2020) of the S&P 500 and the February VIX Futures Contracts represented forward implied volatility (the volatility expected for the period from February 19 to March 19, 2020) of the S&P 500.

Short VIX Futures Index

The Index is designed to express the daily inverse performance of a theoretical portfolio of first- and second-month VIX Futures Contracts (the “Index Components”), with the price of each VIX Futures Contract reflecting the market’s expectation of future volatility. The Index seeks to reflect the returns that are potentially available from holding an unleveraged short position in first- and second- month VIX Futures Contracts by measuring its daily performance from the weighted average price of VIX Futures Contracts. While the Index does not correspond to the inverse of the VIX, as it seeks short exposure to VIX, the value of the Index, and by extension the Fund, will generally rise as the VIX falls and fall as the VIX rises. Further, as described above, because VIX

Futures Contracts correlate to future volatility readings of VIX, while the VIX itself correlates to current volatility, the Index and the Fund should be expected to perform significantly different from the inverse of the VIX.

Unlike the Index, the VIX, which is not a benchmark for the Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded exclusively on Cboe.

Calculation of the Index

The Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX Futures Contracts, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of approximately one month. The roll period usually begins on the Wednesday falling 30 calendar days before the S&P 500 option expiration for the following month (the “Cboe VIX Monthly Futures Settlement Date”), and runs to the Tuesday prior to the subsequent month’s Cboe VIX Monthly Futures Settlement Date.

The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. ET and at the close of trading on each Business Day⁸ by Bloomberg and Reuters.

⁸ A “Business Day” means any day other than a day when any of BZX, Cboe, CFE or other exchange material to the valuation or operation of the Fund, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Index is closed for regular trading.

Mitigating Price Impacts to VIX Futures Contract Prices at Times of FundRebalancing

The Fund's investment objective is a daily investment objective; that is, the Fund seeks to track the Index on a daily basis, not over longer periods. Accordingly, each day, the Fund will position its portfolio so that it can seek to track the Index. The direction and extent of the Index's movements each day will dictate the direction and extent of the Fund's portfolio rebalancing. For example, if the level of the Index falls on a given day, net assets of the Fund would fall. As a result, exposure to the Index, through futures positions held by the Fund, would need to be decreased. The opposite would be the case if the level of the Index rises on a given day.

The time and manner in which the Fund rebalances its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances, including the potential impact of the rebalance on the price of the VIX Futures Contracts. The Sponsor will seek to minimize the market impact of rebalances across all exchange traded products based on VIX Futures Contracts ("VIX ETPs") that it sponsors (the "Funds")⁹ on the price of VIX Futures Contracts by limiting the Funds' participation, on any given day, in VIX Futures Contracts to no more than ten percent (10%) of the contracts traded on CFE during any "Rebalance Period," defined as any fifteen minute period of continuous market trading.¹⁰ To limit

⁹ For purposes of this filing, the Funds include the Fund and the 2x Long VIX Futures ETF as proposed in SR-CboeBZX-2020-053, but may in the future include additional VIX ETPs sponsored by the Sponsor or its affiliates. See Securities Exchange Act Release No. 89234 (July 6, 2020), 85 FR 41644 (July 10, 2020).

¹⁰ In the event that the Funds expect to hit the ten percent threshold during the primary Rebalance Period from 3:45pm to 4:00pm ET, the Funds would extend

participation during periods of market illiquidity, the Sponsor, on any given day, may vary the manner and period over which all funds it sponsors are rebalanced, and as such, the manner and period over which the Fund is rebalanced. Funds will be allocated executions based on their percentage of notional transaction volume required.

In addition, the Index's use of a weighted average price reference, as described above, is expected to shift part of the present dependence of VIX ETPs on the TAS market, and reduce the potential impact of very short-term mispricing or manipulation on the daily price of the Funds. The weighted average price reference will also offer the Sponsor a larger window of time to rebalance the Fund, and the option to expand the Rebalance Period to limit market impact. These unique characteristics of the Funds, as well as the Sponsor's explicit commitment to cap participation in the VIX futures market during any Rebalance Period to no more than 10% for all Funds, should help reduce the market impact of all exposure to the VIX futures market, whether presently expressed through existing inverse or leverage VIX ETPs, short positions in long or leveraged ETPs, or even direct positions in VIX futures.

The Sponsor's proposed methodology for the Funds seeks to reduce the dependence of VIX ETPs on TAS by seeking to execute part of the Funds' daily rebalance outside of TAS and believes that this innovative approach will spread VIX futures trading activity over a longer period of time each day and should help to reduce

their respective rebalances into additional Rebalance Periods and the Trade At Settlement market ("TAS"). It is expected that this extension will provide the Funds with the flexibility to: begin rebalancing in an earlier period, end rebalancing in a later period, and execute contracts in TAS (each an "Extended Rebalance Period" and collectively the "Extended Rebalance Period") while remaining below the ten percent cap during any fifteen minute period of continuous market trading.

market impact during periods of market turmoil or disruption. The Sponsor believes its Funds will make a healthy contribution to the VIX ecosystem by both altering the way VIX-linked funds calculate performance and rebalance their portfolios.

Further to this point, the Sponsor expects that allowing the Funds to participate in an Extended Rebalance Period will minimize the impact on the price of VIX Futures Contracts, and particularly minimize any impact of large rebalances during periods of market illiquidity.¹¹ Accordingly, defining an explicit rebalancing methodology and limiting the Funds' participation in the VIX Futures Contracts should reduce the impact of the Fund's rebalancing on the price of VIX Futures Contracts.

The Sponsor believes that the Fund would enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX

¹¹ Research on the impact of the portfolio rebalancing of VIX Exchange Traded Products ("VIX ETPs") on VIX futures' prices suggests that large rebalancing trades from inverse and leveraged VIX ETPs have a smaller than expected price impact on VIX futures. See Brøgger, S.B., *The Market Impact of Uninformed Flows: Evidence from the VIX Futures Market* (2019). Available at: SSRN 3497537. This has been explained as resulting from the predictability of rebalancing flows from large VIX ETPs being priced into the VIX futures. See Todorov, K., *Passive Funds Actively Affect Prices: Evidence from the Largest ETF Markets* (2019). Unpublished working paper, London School of Economics. Further research shows that the presence of ETF flow in an underlying market actually improves underlying liquidity. In that study they found bid-ask spreads to be narrower, order book deeper, and market resiliency larger on days when ETFs performed a rebalance, finding that this increased liquidity stemmed from a larger number of trading accounts that supplied liquidity to exploit the predictable order flow from rebalancing ETFs. Accordingly, one can assume that liquidity in VIX Futures Contracts during the Fund's rebalancing period will be expected to grow, and this will reduce the fraction of the trading activity that the Fund's rebalance will contribute to the VIX futures market. Bessembinder, H., Carrion, A., Tuttle, L. and Venkataraman, K., *Liquidity, Resiliency and Market Quality Around Predictable Trades: Theory and Evidence*. *Journal of Financial Economics*, 121(1) (2016), pp.142-166.

Futures Contracts. For example, in surveying the history of VIX Futures Contracts trading back to March 26, 2004, the Fund expects that it would have participated in an Extended Rebalance Period on one or more days only in February 2018 and March 2020. The Funds' participation in an Extended Rebalance Period on these days would have ensured the Funds remained below ten percent (10%) of the contracts traded on CFE during the entire Rebalance Period and Extended Rebalance Period.

Purchases and Redemptions of Creation Units

The Fund will create and redeem Shares from time to time only in large blocks of a specified number of Shares or multiples thereof ("Creation Units"). A Creation Unit is a block of at least 10,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities.

On any Business Day, an authorized participant may place an order with the Sub-Administrator to create one or more Creation Units.¹² The total cash payment required to create each Creation Unit is the NAV of at least 10,000 Shares of the Fund on the purchase order date plus the applicable transaction fee.

The procedures by which an authorized participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an authorized participant may place an order with the Sub-Administrator to redeem one or more Creation Units. The redemption proceeds from the Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of the Fund requested in the authorized participant's redemption order as

¹² Authorized participants have a cut-off time of 2:00 p.m. ET to place creation and redemption orders.

of the time of the calculation of a Fund's NAV on the redemption order date, less transaction fees.

Availability of Information Regarding the Shares

The NAV for the Fund's Shares will be calculated by the Sub-Administrator once each Business Day and will be disseminated daily to all market participants at the same time.¹³ Pricing information for the Shares will be available on the Fund's website at www.volatilityshares.com, including: (1) the prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The closing prices and settlement prices of the Index Components (i.e., the first- and second-month VIX Futures Contracts) will also be readily available from the websites of CFE (<http://www.cfe.cboe.com>), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for component VIX Futures Contracts underlying the Index is available by subscription from Reuters and Bloomberg. Specifically, the level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. ET and at the close of trading on each Business Day by Bloomberg and Reuters.

¹³ NAV means the total assets of the Fund including, but not limited to, all Cash and Cash Equivalents or other debt securities less total liabilities of the Fund, consistently applied under the accrual method of accounting. The Fund's NAV is calculated at 4 p.m. ET.

The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The specific contract specifications of Index Components (i.e., first-month and second-month VIX Futures Contracts) underlying the Index are also available on Bloomberg and Reuters.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”). Quotation and last-sale information regarding VIX Futures Contracts and VIX Options Contracts will be available from the exchanges on which such instruments are traded. Quotation and last-sale information relating to VIX Options Contracts will also be available via the Options Price Reporting Authority. Quotation and last-sale information for VIX Swap Agreements will be available from nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements or from a broker-dealer who makes markets in such instruments. Quotation and last-sale information for VIX Swap Agreements will be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or broker-dealer who makes markets in such instruments. Pricing information regarding Cash Equivalents in which the Fund will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

In addition, the Fund’s website at www.volatilityshares.com will display the end of day closing Index level, and NAV per Share for the Fund. The Fund will provide website disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Derivative Products, and characteristics of such instruments, as well as Cash and Cash Equivalents held in the portfolio of the Fund. This

website disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Fund of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. The same portfolio information will be provided on the public website as well as in electronic files provided to authorized participants.

In addition, in order to provide updated information relating to the Fund for use by investors and market professionals, an updated Intraday Indicative Value (“IIV”) will be calculated. The IIV is an indicator of the value of the Fund’s holdings, which include the VIX Derivative Products and Cash and Cash Equivalents less liabilities of the Fund at the time the IIV is disseminated. The IIV will be calculated and widely disseminated by one or more major market data vendors every 15 seconds throughout Regular Trading Hours.¹⁴

In addition, the IIV will be published on the Exchange’s website and will be available through on-line information services such as Bloomberg and Reuters.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real time update of the NAV, which is calculated only once a day. The IIV also should not be viewed as a precise value of the Shares.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes will be included in the registration statement.

Initial and Continued Listing

¹⁴ As defined in Rule 1.5(w), the term “Regular Trading Hours” means the time between 9:30 a.m. and 4 p.m. ET.

The Shares of the Fund will conform to the initial and continued listing criteria under BZX Rule 14.11(f)(4). The Exchange represents that, for initial and continued listing, the Fund and the Trust must be in compliance with Rule 10A-3 under the Act. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the Sponsor of the Shares that the NAV per Share for the Fund will be calculated daily and will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 8:00 p.m. ET and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting

and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

Surveillance

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Trust Issued Receipts. All of the VIX Futures Contracts and VIX Options Contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁵ The Exchange, FINRA, on behalf of the Exchange, or both will communicate regarding trading in the Shares and the underlying listed instruments, including listed derivatives held by the Fund, with the ISG, other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying listed instruments, including listed derivatives, held by the Fund from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. All statements and representations made in this filing regarding the Index composition, description of the portfolio or

¹⁵ For a list of the current members and affiliate members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Fund's holdings may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference the Index, reference asset, and IIV, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Fund. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) Interpretation and Policy .01 of BZX Rule 3.7 which imposes a duty of due diligence on its Members to learn the essential facts relating to every customer prior to trading the Shares;¹⁶ (4) how information regarding the IIV and the

¹⁶ Specifically, in part, Interpretation and Policy .01 of Rule 3.7 states “[n]o Member shall recommend to a customer a transaction in any such product unless the Member has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.

Fund's holdings is disseminated; (5) the risks involved in trading the Shares during the Pre-Opening¹⁷ and After Hours Trading Sessions¹⁸ when an updated IIV will not be calculated or publicly disseminated; (6) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

Further, the Exchange states that FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged and inversed leveraged securities (which include the Shares) and options on such securities, as described in FINRA Regulatory Notices 09-31 (June 2009), 09-53 (August 2009), and 09-65 (November 2009) (collectively, "FINRA Regulatory Notices"). Members that carry customer accounts will be required to follow the FINRA guidance set forth in these notices. As noted above, the Fund will seek daily investment results, before fees and expenses, that correspond to the Index, which measures daily inverse performance of a theoretical portfolio of first- and second-month futures contracts on the VIX. The Fund does not seek to achieve its primary investment objective over a period of time greater than a single day. The return of the Fund for a period longer than a single day is the result of its return for each day compounded over the period and usually will differ in amount and possibly even direction from either the inverse of the VIX or the inverse of a portfolio of short-term VIX Futures Contracts for the same period. These differences can be significant.

In addition, the Information Circular will advise members, prior to the

¹⁷ The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. ET.

¹⁸ The After Hours Trading Session is from 4 p.m. to 8:00 p.m. ET.

commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Fund's Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

(b) Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹⁹ in general and Section 6(b)(5) of the Act²⁰ in particular in that it is 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 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.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule

¹⁹ 15 U.S.C. 78f.

²⁰ 15 U.S.C. 78f(b)(5).

14.11(f). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a “fire wall” between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund’s portfolio. The Sponsor is not a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying VIX Futures Contracts and VIX Options Contracts via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and

that the NAV and the Fund's holdings will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each Business Day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its website the holdings that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Pricing information will be available on the Fund's website including: (1) the prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Exchange Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to 14.11(f)(4)(C)(ii), which sets forth circumstances under which Shares of the Fund may be

halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation and last-sale information regarding VIX Futures Contracts and VIX Options Contracts will be available from the exchanges on which such instruments are traded. Quotation and last-sale information relating to VIX Options Contracts will also be available via the Options Price Reporting Authority. Quotation and last-sale information for VIX Swap Agreements will be available from nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements or from a broker-dealer who makes markets in such instruments. Quotation and last-sale information for VIX Swap Agreements will be valued on the basis of quotations or equivalent indication of value supplied by a third- party pricing service or broker-dealer who makes markets in such instruments. Pricing information regarding Cash Equivalents in which the Fund will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

Fund's investment objective is a daily investment objective; that is, the Fund seeks to track the Index on a daily basis, not over longer periods. Accordingly, each day, the Fund will position its portfolio so that it can seek to track the Index. The direction and extent of the Index's movements each day will dictate the direction and extent of the Fund's portfolio rebalancing. For example, if the level of the Index falls on a given day, net assets of the Fund would fall. As a result, exposure to the Index, through futures

positions held by the Fund, would need to be decreased. The opposite would be the case if the level of the Index rises on a given day.

The time and manner in which the Fund rebalances its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances, including the potential impact of the rebalance on the price of the VIX Futures Contracts. The Sponsor will seek to minimize the market impact of the Funds on the price of VIX Futures Contracts by limiting the Funds' participation, on any given day, in VIX Futures Contracts to no more than ten percent (10%) of the contracts traded on CFE during any Rebalance Period.²¹ To limit participation during periods of market illiquidity, the Sponsor, on any given day, may vary the manner and period over which all funds it sponsors are rebalanced, and as such, the manner and period over which the Fund is rebalanced.

In addition, the Index's use of a weighted average price reference, as described above, is expected to shift part of the present dependence of VIX ETPs on the TAS market, and reduce the potential impact of very short-term mispricing or manipulation on the daily price of the Funds. The weighted average price reference will also offer the Sponsor a larger window of time to rebalance the Fund, and the option to expand the Rebalance Period to limit market impact. These unique characteristics of the Funds, as well as the Sponsor's explicit commitment to cap participation in the VIX futures market

²¹ In the event that the Funds expect to hit the ten percent threshold during the primary Rebalance Period from 3:45pm to 4:00pm ET, the Funds would extend their respective rebalances into additional Rebalance Periods or may use TAS. It is expected that this extension will provide the Funds with the flexibility to: begin rebalancing in an earlier period, end rebalancing in a later period, and execute contracts in TAS while remaining below the ten percent cap during any fifteen minute period of continuous market trading.

during any Rebalance Period to no more than 10% for all Funds, should help reduce the market impact of all exposure to the VIX futures market, whether presently expressed through existing inverse or leverage VIX ETPs, short positions in long or leveraged ETPs, or even direct positions in VIX futures.

The Sponsor's proposed methodology for the Funds seeks to reduce the dependence of VIX ETPs on TAS by seeking to execute part of the Funds' daily rebalance outside of TAS and believes that this innovative approach will spread VIX futures trading activity over a longer period of time each day and should help to reduce market impact during periods of market turmoil or disruption. The Sponsor believes its Funds will make a healthy contribution to the VIX ecosystem by both altering the way VIX-linked funds calculate performance and rebalance their portfolios.

Further to this point, the Sponsor expects that allowing the Funds to participate in an Extended Rebalance Period will minimize the impact on the price of VIX Futures Contracts, and particularly minimize any impact of large rebalances during periods of market illiquidity. Accordingly, defining an explicit rebalancing methodology and limiting the Funds' participation in the VIX Futures Contracts should reduce the impact of the Fund's rebalancing on the price of VIX Futures Contracts.

The Sponsor believes that the Fund would enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX Futures Contracts. For example, in surveying the history of VIX Futures Contracts trading back to March 26, 2004, the Fund expects that it would have participated in an Extended Rebalance Period on one or more days only in February 2018 and March 2020. The Funds' participation in an Extended Rebalance Period on these days would have

ensured the Funds remained below ten percent (10%) of the contracts traded on CFE during the entire Rebalance Period and Extended Rebalance Period.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares. For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing of an additional exchange-traded product on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action on the proposed rule change specified in Section 19(b)(2) of the Act.²²

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

²² 15 U.S.C. 78s(b)(2).

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2020-070 Amendment No. 1]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of the -1x Short VIX Futures ETF, a Series of VS Trust, Under Rule 14.11(f)(4), Trust Issued Receipts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

This Amendment No. 1 to SR-CboeBZX-2020-070 amends and replaces in its entirety the proposal as originally submitted on September 4, 2020. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade Shares of the -1x Short VIX Futures ETF (the “Fund”) under Rule 14.11(f)(4), which governs the listing and trading of Trust

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Issued Receipts³ on the Exchange.⁴

The Fund seeks to provide daily investment results (before fees and expenses), as further described below, that correspond to the performance of a benchmark that seeks to offer short exposure to market volatility through publicly traded futures markets. The benchmark for the Fund is the Short VIX Futures Index (the “Index” or ticker symbol SHORTVOL).⁵ The Index measures the daily inverse (i.e., the opposite) performance of a theoretical portfolio of first- and second-month futures contracts on the Cboe Volatility Index (“VIX”).⁶

The Fund will primarily invest in VIX futures contracts traded on the Cboe Futures Exchange, Inc. (“CFE”) (hereinafter referred to as “VIX Futures Contracts”) based on components of the Index to pursue its investment objective. In the event accountability rules, price limits, position limits, margin limits or other exposure limits

³ Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

⁴ The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR-BZX-2012-044).

⁵ The Index is sponsored by Cboe Global Indexes (the “Index Sponsor”). The Index Sponsor is not a registered broker-dealer, but is affiliated with a broker-dealer. The Index Sponsor has implemented and will maintain a fire wall with respect to the broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index.

⁶ The VIX is an index designed to measure the implied volatility of the S&P 500 over 30 days in the future. The VIX is calculated based on the prices of certain put and call options on the S&P 500. The VIX is reflective of the premium paid by investors for certain options linked to the level of the S&P 500.

are reached with respect to VIX Futures Contracts, Volatility Shares LLC (the “Sponsor”) may cause the Fund to obtain exposure to the Index through Over-the-Counter (OTC) swaps referencing the Index or particular VIX Futures Contracts comprising the Index (hereinafter referred to as “VIX Swap Agreements”). The Fund may also invest in VIX Swap Agreements if the market for a specific VIX Futures Contract experiences emergencies (e.g., natural disaster, terrorist attack or an act of God) or disruptions (e.g., a trading halt or a flash crash) or in situations where the Sponsor deems it impractical or inadvisable to buy or sell VIX Futures Contracts (such as during periods of market volatility or illiquidity).

The Sponsor, a Delaware limited liability company, serves as the Sponsor of VS Trust (the “Trust”). The Sponsor is a commodity pool operator.⁷ Tidal ETF Services LLC serves as the administrator (the “Administrator”) and U.S. Bank National Association serves as custodian of the Fund and its Shares. U.S. Bancorp Fund Services, LLC serves as the sub-administrator (the “Sub-Administrator”) and transfer agent. Wilmington Trust Company, a Delaware trust company, is the sole trustee of the Trust.

If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a “fire wall” between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund’s portfolio. The Sponsor is not a broker-dealer

⁷ The Fund has filed a registration statement on Form S-1 under the Securities Act of 1933, dated August 26, 2020 (File No. 333-248430) (“Registration Statement”). The description of the Fund and the Shares contained herein are based on the Registration Statement. The Registration Statement for the Fund is not yet effective and the Fund will not trade on the Exchange until such time that the Registration Statement is effective.

or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

The VIX Swap Agreements in which the Fund may invest may be cleared or non-cleared. The Fund will collateralize its obligations with Cash and Cash Equivalents⁸ consistent with the 1940 Act and interpretations thereunder.

The Fund will only enter into VIX Swap Agreements with counterparties that the Sponsor reasonably believes are capable of performing under the contract and will post as collateral as required by the counterparty. The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Sponsor will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Sponsor will review approved counterparties using various factors, which may include the counterparty's reputation, the Sponsor's past experience with the counterparty and the price/market actions of debt of the counterparty.

The Fund may use various techniques to minimize OTC counterparty credit risk

⁸ For purposes of this proposal, the term "Cash and Cash Equivalents" shall have the definition provided in Exchange Rule 14.11(i)(4)(C)(iii), applicable to Managed Fund Shares.

including entering into arrangements with its counterparties whereby both sides exchange collateral on a mark-to-market basis. Collateral posted by the Fund to a counterparty in connection with uncleared VIX Swap Agreements is generally held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund.

In addition to VIX Swap Agreements, if the Fund is unable to meet its investment objective through investments in VIX Futures Contracts, the Fund may also obtain exposure to the Index through listed VIX options contracts traded on the Cboe Exchange, Inc. (“Cboe”) (hereinafter referred to as “VIX Options Contracts”).

The Fund may also invest in Cash and Cash Equivalents that may serve as collateral in the above referenced VIX Futures Contracts, VIX Swap Agreements, and VIX Option Contracts (collectively referred to as the “VIX Derivative Products”).

If the Fund is successful in meeting its objective, its value (before fees and expenses) on a given day should gain approximately as much on a percentage basis as the level of the Index when it rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of the Index when it declines. The Fund primarily acquires short exposure to the VIX through VIX Futures Contracts, such that the Fund has exposure intended to approximate the Index at the time of the net asset value (“NAV”) calculation of the Fund. However, as discussed above, in the event that the Fund is unable to meet its investment objective solely through the investment of VIX Futures Contracts, it may invest in VIX Swap Agreements or VIX Options Contracts. The Fund may also invest in Cash or Cash Equivalents that may serve as collateral to the Fund’s investments in VIX Derivative Products.

The Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations with a view toward obtaining positive results under all market conditions. Rather, the Fund seeks to remain fully invested at all times in VIX Derivative Products (and Cash and Cash Equivalents as collateral)⁹ that provide exposure to the Index consistent with its investment objective without regard to market conditions, trends or direction.

In seeking to achieve the Fund's investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with the Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Fund's investments in accordance with its investment objective.

VIX Futures Contracts

The Index is comprised of, and the value of the Fund will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and as such will behave differently than current, or spot, VIX, as illustrated below.

While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). For example, a VIX Futures Contract purchased in March that

⁹ Supra note 8.

expires in May, in effect, is a forward contract on what the level of the VIX, as a measure of 30-day implied volatility of the S&P 500, will be on the May expiration date. The forward volatility reading of the VIX may not correlate directly to the current volatility reading of the VIX because the implied volatility of the S&P 500 at a future expiration date may be different from the current implied volatility of the S&P 500. As a result, the Index and the Fund should be expected to perform very differently from the inverse of the VIX over all periods of time. To illustrate, on December 4, 2019, the VIX closed at a price of 14.8 and the price of the February 2020 VIX Futures Contracts expiring on February 19, 2020 was 18.125. In this example, the price of the VIX represented the 30-day implied, or “spot,” volatility (the volatility expected for the period from December 5, 2019 to January 5, 2020) of the S&P 500 and the February VIX Futures Contracts represented forward implied volatility (the volatility expected for the period from February 19 to March 19, 2020) of the S&P 500.

Short VIX Futures Index

The Index is designed to express the daily inverse performance of a theoretical portfolio of first- and second-month VIX Futures Contracts (the “Index Components”), with the price of each VIX Futures Contract reflecting the market’s expectation of future volatility. The Index seeks to reflect the returns that are potentially available from holding an unleveraged short position in first- and second- month VIX Futures Contracts by measuring its daily performance from the weighted average price of VIX Futures Contracts. While the Index does not correspond to the inverse of the VIX, as it seeks short exposure to VIX, the value of the Index, and by extension the Fund, will generally rise as the VIX falls and fall as the VIX rises. Further, as described above, because VIX

Futures Contracts correlate to future volatility readings of VIX, while the VIX itself correlates to current volatility, the Index and the Fund should be expected to perform significantly different from the inverse of the VIX.

Unlike the Index, the VIX, which is not a benchmark for the Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded exclusively on Cboe.

Calculation of the Index

The Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX Futures Contracts, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of approximately one month. The roll period usually begins on the Wednesday falling 30 calendar days before the S&P 500 option expiration for the following month (the “Cboe VIX Monthly Futures Settlement Date”), and runs to the Tuesday prior to the subsequent month’s Cboe VIX Monthly Futures Settlement Date.

The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. ET and at the close of trading on each Business Day¹⁰ by Bloomberg and Reuters.

¹⁰ A “Business Day” means any day other than a day when any of BZX, Cboe, CFE or other exchange material to the valuation or operation of the Fund, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Index is closed for regular trading.

Mitigating Price Impacts to VIX Futures Contract Prices at Times of FundRebalancing

The Fund's investment objective is a daily investment objective; that is, the Fund seeks to track the Index on a daily basis, not over longer periods. Accordingly, each day, the Fund will position its portfolio so that it can seek to track the Index. The direction and extent of the Index's movements each day will dictate the direction and extent of the Fund's portfolio rebalancing. For example, if the level of the Index falls on a given day, net assets of the Fund would fall. As a result, exposure to the Index, through futures positions held by the Fund, would need to be decreased. The opposite would be the case if the level of the Index rises on a given day.

The time and manner in which the Fund rebalances its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances, including the potential impact of the rebalance on the price of the VIX Futures Contracts. The Sponsor will seek to minimize the market impact of rebalances across all exchange traded products based on VIX Futures Contracts ("VIX ETPs") that it sponsors (the "Funds")¹¹ on the price of VIX Futures Contracts by limiting the Funds' participation, on any given day, in VIX Futures Contracts to no more than ten percent (10%) of the contracts traded on CFE during any "Rebalance Period," defined as any fifteen minute period of continuous market trading.¹² To limit

¹¹ For purposes of this filing, the Funds include the Fund and the 2x Long VIX Futures ETF as proposed in SR-CboeBZX-2020-053, but may in the future include additional VIX ETPs sponsored by the Sponsor or its affiliates. See Securities Exchange Act Release No. 89234 (July 6, 2020), 85 FR 41644 (July 10, 2020).

¹² In the event that the Funds expect to hit the ten percent threshold during the primary Rebalance Period from 3:45pm to 4:00pm ET, the Funds would extend

participation during periods of market illiquidity, the Sponsor, on any given day, may vary the manner and period over which all funds it sponsors are rebalanced, and as such, the manner and period over which the Fund is rebalanced. Funds will be allocated executions based on their percentage of notional transaction volume required.

In addition, the Index's use of a weighted average price reference, as described above, is expected to shift part of the present dependence of VIX ETPs on the TAS market, and reduce the potential impact of very short-term mispricing or manipulation on the daily price of the Funds. The weighted average price reference will also offer the Sponsor a larger window of time to rebalance the Fund, and the option to expand the Rebalance Period to limit market impact. These unique characteristics of the Funds, as well as the Sponsor's explicit commitment to cap participation in the VIX futures market during any Rebalance Period to no more than 10% for all Funds, should help reduce the market impact of all exposure to the VIX futures market, whether presently expressed through existing inverse or leverage VIX ETPs, short positions in long or leveraged ETPs, or even direct positions in VIX futures.

The Sponsor's proposed methodology for the Funds seeks to reduce the dependence of VIX ETPs on TAS by seeking to execute part of the Funds' daily rebalance outside of TAS and believes that this innovative approach will spread VIX futures trading activity over a longer period of time each day and should help to reduce

their respective rebalances into additional Rebalance Periods and the Trade At Settlement market ("TAS"). It is expected that this extension will provide the Funds with the flexibility to: begin rebalancing in an earlier period, end rebalancing in a later period, and execute contracts in TAS (each an "Extended Rebalance Period" and collectively the "Extended Rebalance Period") while remaining below the ten percent cap during any fifteen minute period of continuous market trading.

market impact during periods of market turmoil or disruption. The Sponsor believes its Funds will make a healthy contribution to the VIX ecosystem by both altering the way VIX-linked funds calculate performance and rebalance their portfolios.

Further to this point, the Sponsor expects that allowing the Funds to participate in an Extended Rebalance Period will minimize the impact on the price of VIX Futures Contracts, and particularly minimize any impact of large rebalances during periods of market illiquidity.¹³ Accordingly, defining an explicit rebalancing methodology and limiting the Funds' participation in the VIX Futures Contracts should reduce the impact of the Fund's rebalancing on the price of VIX Futures Contracts.

The Sponsor believes that the Fund would enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX

¹³ Research on the impact of the portfolio rebalancing of VIX Exchange Traded Products ("VIX ETPs") on VIX futures' prices suggests that large rebalancing trades from inverse and leveraged VIX ETPs have a smaller than expected price impact on VIX futures. See Brøgger, S.B., *The Market Impact of Uninformed Flows: Evidence from the VIX Futures Market* (2019). Available at: SSRN 3497537. This has been explained as resulting from the predictability of rebalancing flows from large VIX ETPs being priced into the VIX futures. See Todorov, K., *Passive Funds Actively Affect Prices: Evidence from the Largest ETF Markets* (2019). Unpublished working paper, London School of Economics. Further research shows that the presence of ETF flow in an underlying market actually improves underlying liquidity. In that study they found bid-ask spreads to be narrower, order book deeper, and market resiliency larger on days when ETFs performed a rebalance, finding that this increased liquidity stemmed from a larger number of trading accounts that supplied liquidity to exploit the predictable order flow from rebalancing ETFs. Accordingly, one can assume that liquidity in VIX Futures Contracts during the Fund's rebalancing period will be expected to grow, and this will reduce the fraction of the trading activity that the Fund's rebalance will contribute to the VIX futures market. Bessembinder, H., Carrion, A., Tuttle, L. and Venkataraman, K., *Liquidity, Resiliency and Market Quality Around Predictable Trades: Theory and Evidence*. *Journal of Financial Economics*, 121(1) (2016), pp.142-166.

Futures Contracts. For example, in surveying the history of VIX Futures Contracts trading back to March 26, 2004, the Fund expects that it would have participated in an Extended Rebalance Period on one or more days only in February 2018 and March 2020. The Funds' participation in an Extended Rebalance Period on these days would have ensured the Funds remained below ten percent (10%) of the contracts traded on CFE during the entire Rebalance Period and Extended Rebalance Period.

Purchases and Redemptions of Creation Units

The Fund will create and redeem Shares from time to time only in large blocks of a specified number of Shares or multiples thereof ("Creation Units"). A Creation Unit is a block of at least 10,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities.

On any Business Day, an authorized participant may place an order with the Sub-Administrator to create one or more Creation Units.¹⁴ The total cash payment required to create each Creation Unit is the NAV of at least 10,000 Shares of the Fund on the purchase order date plus the applicable transaction fee.

The procedures by which an authorized participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an authorized participant may place an order with the Sub-Administrator to redeem one or more Creation Units. The redemption proceeds from the Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of the Fund requested in the authorized participant's redemption order as

¹⁴ Authorized participants have a cut-off time of 2:00 p.m. ET to place creation and redemption orders.

of the time of the calculation of a Fund's NAV on the redemption order date, less transaction fees.

Availability of Information Regarding the Shares

The NAV for the Fund's Shares will be calculated by the Sub-Administrator once each Business Day and will be disseminated daily to all market participants at the same time.¹⁵ Pricing information for the Shares will be available on the Fund's website at www.volatilityshares.com, including: (1) the prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

The closing prices and settlement prices of the Index Components (i.e., the first- and second-month VIX Futures Contracts) will also be readily available from the websites of CFE (<http://www.cfe.cboe.com>), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for component VIX Futures Contracts underlying the Index is available by subscription from Reuters and Bloomberg. Specifically, the level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. ET and at the close of trading on each Business Day by Bloomberg and Reuters.

¹⁵ NAV means the total assets of the Fund including, but not limited to, all Cash and Cash Equivalents or other debt securities less total liabilities of the Fund, consistently applied under the accrual method of accounting. The Fund's NAV is calculated at 4 p.m. ET.

The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The specific contract specifications of Index Components (i.e., first-month and second-month VIX Futures Contracts) underlying the Index are also available on Bloomberg and Reuters.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”). Quotation and last-sale information regarding VIX Futures Contracts and VIX Options Contracts will be available from the exchanges on which such instruments are traded. Quotation and last-sale information relating to VIX Options Contracts will also be available via the Options Price Reporting Authority. Quotation and last-sale information for VIX Swap Agreements will be available from nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements or from a broker-dealer who makes markets in such instruments. Quotation and last-sale information for VIX Swap Agreements will be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or broker-dealer who makes markets in such instruments. Pricing information regarding Cash Equivalents in which the Fund will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

In addition, the Fund’s website at www.volatilityshares.com will display the end of day closing Index level, and NAV per Share for the Fund. The Fund will provide website disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Derivative Products, and characteristics of such instruments, as well as Cash and Cash Equivalents held in the portfolio of the Fund. This

website disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Fund of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. The same portfolio information will be provided on the public website as well as in electronic files provided to authorized participants.

In addition, in order to provide updated information relating to the Fund for use by investors and market professionals, an updated Intraday Indicative Value (“IIV”) will be calculated. The IIV is an indicator of the value of the Fund’s holdings, which include the VIX Derivative Products and Cash and Cash Equivalents less liabilities of the Fund at the time the IIV is disseminated. The IIV will be calculated and widely disseminated by one or more major market data vendors every 15 seconds throughout Regular Trading Hours.¹⁶

In addition, the IIV will be published on the Exchange’s website and will be available through on-line information services such as Bloomberg and Reuters.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real time update of the NAV, which is calculated only once a day. The IIV also should not be viewed as a precise value of the Shares.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes will be included in the registration statement.

Initial and Continued Listing

¹⁶ As defined in Rule 1.5(w), the term “Regular Trading Hours” means the time between 9:30 a.m. and 4 p.m. ET.

The Shares of the Fund will conform to the initial and continued listing criteria under BZX Rule 14.11(f)(4). The Exchange represents that, for initial and continued listing, the Fund and the Trust must be in compliance with Rule 10A-3 under the Act. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the Sponsor of the Shares that the NAV per Share for the Fund will be calculated daily and will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 8:00 p.m. ET and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting

and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

Surveillance

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Trust Issued Receipts. All of the VIX Futures Contracts and VIX Options Contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁷ The Exchange, FINRA, on behalf of the Exchange, or both will communicate regarding trading in the Shares and the underlying listed instruments, including listed derivatives held by the Fund, with the ISG, other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying listed instruments, including listed derivatives, held by the Fund from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. All statements and representations made in this filing regarding the Index composition, description of the portfolio or

¹⁷ For a list of the current members and affiliate members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Fund's holdings may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference the Index, reference asset, and IIV, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Fund. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) Interpretation and Policy .01 of BZX Rule 3.7 which imposes a duty of due diligence on its Members to learn the essential facts relating to every customer prior to trading the Shares;¹⁸ (4) how information regarding the IIV and the

¹⁸ Specifically, in part, Interpretation and Policy .01 of Rule 3.7 states “[n]o Member shall recommend to a customer a transaction in any such product unless the Member has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.

Fund's holdings is disseminated; (5) the risks involved in trading the Shares during the Pre-Opening¹⁹ and After Hours Trading Sessions²⁰ when an updated IIV will not be calculated or publicly disseminated; (6) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

Further, the Exchange states that FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged and inversed leveraged securities (which include the Shares) and options on such securities, as described in FINRA Regulatory Notices 09-31 (June 2009), 09-53 (August 2009), and 09-65 (November 2009) (collectively, "FINRA Regulatory Notices"). Members that carry customer accounts will be required to follow the FINRA guidance set forth in these notices. As noted above, the Fund will seek daily investment results, before fees and expenses, that correspond to the Index, which measures daily inverse performance of a theoretical portfolio of first- and second-month futures contracts on the VIX. The Fund does not seek to achieve its primary investment objective over a period of time greater than a single day. The return of the Fund for a period longer than a single day is the result of its return for each day compounded over the period and usually will differ in amount and possibly even direction from either the inverse of the VIX or the inverse of a portfolio of short-term VIX Futures Contracts for the same period. These differences can be significant.

In addition, the Information Circular will advise members, prior to the

¹⁹ The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. ET.

²⁰ The After Hours Trading Session is from 4 p.m. to 8:00 p.m. ET.

commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Fund's Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²¹ in general and Section 6(b)(5) of the Act²² in particular in that it is 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 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.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule

²¹ 15 U.S.C. 78f.

²² 15 U.S.C. 78f(b)(5).

14.11(f). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a “fire wall” between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund’s portfolio. The Sponsor is not a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying VIX Futures Contracts and VIX Options Contracts via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and

that the NAV and the Fund's holdings will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each Business Day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its website the holdings that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Pricing information will be available on the Fund's website including: (1) the prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Exchange Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to 14.11(f)(4)(C)(ii), which sets forth circumstances under which Shares of the Fund may be

halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation and last-sale information regarding VIX Futures Contracts and VIX Options Contracts will be available from the exchanges on which such instruments are traded. Quotation and last-sale information relating to VIX Options Contracts will also be available via the Options Price Reporting Authority. Quotation and last-sale information for VIX Swap Agreements will be available from nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements or from a broker-dealer who makes markets in such instruments. Quotation and last-sale information for VIX Swap Agreements will be valued on the basis of quotations or equivalent indication of value supplied by a third- party pricing service or broker-dealer who makes markets in such instruments. Pricing information regarding Cash Equivalents in which the Fund will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

Fund's investment objective is a daily investment objective; that is, the Fund seeks to track the Index on a daily basis, not over longer periods. Accordingly, each day, the Fund will position its portfolio so that it can seek to track the Index. The direction and extent of the Index's movements each day will dictate the direction and extent of the Fund's portfolio rebalancing. For example, if the level of the Index falls on a given day, net assets of the Fund would fall. As a result, exposure to the Index, through futures

positions held by the Fund, would need to be decreased. The opposite would be the case if the level of the Index rises on a given day.

The time and manner in which the Fund rebalances its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances, including the potential impact of the rebalance on the price of the VIX Futures Contracts. The Sponsor will seek to minimize the market impact of the Funds on the price of VIX Futures Contracts by limiting the Funds' participation, on any given day, in VIX Futures Contracts to no more than ten percent (10%) of the contracts traded on CFE during any Rebalance Period.²³ To limit participation during periods of market illiquidity, the Sponsor, on any given day, may vary the manner and period over which all funds it sponsors are rebalanced, and as such, the manner and period over which the Fund is rebalanced.

In addition, the Index's use of a weighted average price reference, as described above, is expected to shift part of the present dependence of VIX ETPs on the TAS market, and reduce the potential impact of very short-term mispricing or manipulation on the daily price of the Funds. The weighted average price reference will also offer the Sponsor a larger window of time to rebalance the Fund, and the option to expand the Rebalance Period to limit market impact. These unique characteristics of the Funds, as well as the Sponsor's explicit commitment to cap participation in the VIX futures market

²³ In the event that the Funds expect to hit the ten percent threshold during the primary Rebalance Period from 3:45pm to 4:00pm ET, the Funds would extend their respective rebalances into additional Rebalance Periods or may use TAS. It is expected that this extension will provide the Funds with the flexibility to: begin rebalancing in an earlier period, end rebalancing in a later period, and execute contracts in TAS while remaining below the ten percent cap during any fifteen minute period of continuous market trading.

during any Rebalance Period to no more than 10% for all Funds, should help reduce the market impact of all exposure to the VIX futures market, whether presently expressed through existing inverse or leverage VIX ETPs, short positions in long or leveraged ETPs, or even direct positions in VIX futures.

The Sponsor's proposed methodology for the Funds seeks to reduce the dependence of VIX ETPs on TAS by seeking to execute part of the Funds' daily rebalance outside of TAS and believes that this innovative approach will spread VIX futures trading activity over a longer period of time each day and should help to reduce market impact during periods of market turmoil or disruption. The Sponsor believes its Funds will make a healthy contribution to the VIX ecosystem by both altering the way VIX-linked funds calculate performance and rebalance their portfolios.

Further to this point, the Sponsor expects that allowing the Funds to participate in an Extended Rebalance Period will minimize the impact on the price of VIX Futures Contracts, and particularly minimize any impact of large rebalances during periods of market illiquidity. Accordingly, defining an explicit rebalancing methodology and limiting the Funds' participation in the VIX Futures Contracts should reduce the impact of the Fund's rebalancing on the price of VIX Futures Contracts.

The Sponsor believes that the Fund would enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX Futures Contracts. For example, in surveying the history of VIX Futures Contracts trading back to March 26, 2004, the Fund expects that it would have participated in an Extended Rebalance Period on one or more days only in February 2018 and March 2020. The Funds' participation in an Extended Rebalance Period on these days would have

ensured the Funds remained below ten percent (10%) of the contracts traded on CFE during the entire Rebalance Period and Extended Rebalance Period.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares. For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing of an additional exchange-traded product on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-CboeBZX-2020-070 Amendment No. 1 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-2020-070 Amendment No. 1.

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, D.C. 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; 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-CboeBZX-2020-070 Amendment No. 1 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Secretary

²⁴ 17 CFR 200.30-3(a)(12).