



August 9, 2021

Re: File Number SR-CboeBZX-2021-024
rule-comments@sec.gov

Dear Sir/Madam,

Introduction

Global Digital Finance (“GDF”) is an industry membership body that promotes the adoption of best practices for virtual assets and digital finance technologies through the development of conduct standards in a shared engagement forum with market participants, policymakers, and competent authorities. We appreciate the opportunity to submit comments to the Securities and Exchange Commission regarding its July 19, 2021 Federal Register Notice entitled: “Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.”¹

GDF General Views on Bitcoin ETFs

GDF considers that with appropriate industry best practices and regulation that U.S. investors should be able to invest in crypto assets, including Bitcoin, through Exchange Traded Funds (ETFs). But GDF does not represent Cboe BZX Exchange, Inc. (the “Exchange” - the company is not a GDF member) and does not take a specific position with respect to its application to list and trade shares of the WisdomTree Bitcoin Trust. Neither does GDF offer investment advice - we do not provide counsel regarding the Exchange or any other digital assets enterprise. Our general view is that investors could benefit from holding some digital assets in a well balanced portfolio depending on the investor’s risk tolerance and other financial factors but again, GDF does not provide specific investment advice. Instead, GDF offers general comments that we hope will inform SEC’s continued analysis of the Exchange’s application.

Bitcoin ETFs in Canada, Brazil and Dubai

GDF notes that Canada, Brazil and Dubai have approved crypto ETFs, apparently successfully. We encourage the Commission to review these jurisdictions’ experience. Our view is that the Commission will probably find that investors are adequately protected in those countries. There

¹ Securities and Exchange Commission July 19, 2021 Federal Register Notice
<https://www.federalregister.gov/documents/2021/07/19/2021-15194/self-regulatory-organizations-cboe-bzx-exchange-inc-order-instituting-proceedings-to-determine>



are certain advantages, particularly for “average” and perhaps first time crypto investors, to Bitcoin ETFs. They include but are not limited to not having to secure keys or digital wallets. Moreover, if funds are secured offline in cold storage - as is the case with at least three Canadian Bitcoin ETFs, there is greater protection from online hacking/theft. On the other hand, investors are still exposed to more volatility than they might be accustomed to, and they need to be careful to understand what fees they are incurring. ²

GDF Views Keyed to SEC Questions Reproduced in Italics

Note: SEC Footnotes Associated with Questions have been Excised

1. What are commenters’ views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters’ views generally on whether the Exchange’s proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters’ views generally with respect to the liquidity and transparency of the bitcoin markets, the bitcoin markets’ susceptibility to manipulation, and thus the suitability of bitcoin as an underlying asset for an exchange-traded product?

GDF considers that besides the SEC’s statutory obligations, that it might be helpful for the Commission to review the Exchange’s application taking into account two GDF Codes.

The first code entitled: “Introduction and Overarching Principles” provides generally applicable standards, including for funds. ³ Code adherents commit to complying with existing laws, rules or regulations. GDF does not support business models that are created to circumvent existing laws, rules, regulations or law enforcement. GDF therefore considers that as a threshold matter, the Commission should determine whether the Exchange’s business model and business compliance plan is consistent with the existing U.S. ETF framework.

The second Code is entitled: “Principles for Cryptoasset Funds and Fund Managers.” ⁴ The entire Code is relevant in this context, but we particularly point to 4.c., which says that valuations and Net Asset Value (NAV) calculations are to be “reported consistent with GAAP, IFRS or other accounting standards acceptable to investors in our primary jurisdiction.” So with

² “Top Bitcoin ETFs in Canada: Investing in Cryptocurrency,” Enoch Omololu, July 16, 2021
<https://www.savvynewcanadians.com/best-bitcoin-etfs-canada/>
SAVVY NEW CANADIANS

³ Global Digital Finance, “Code of Conduct: Introduction and Overarching Principles.”
https://www.gdf.io/wp-content/uploads/2021/02/0010_GDF_Overarching-Principles_Proof-V2-130819.pdf

⁴ Global Digital Finance, “Code of Conduct: Principles for Cryptoasset Funds and Fund Managers”
https://www.gdf.io/wp-content/uploads/2021/02/0010_GDF_Principles-for-Cryptoasset-Funds-and-Fund-Managers_v1-Proof-020819.pdf



respect to this issue, GDF considers that the SEC analysis should be based on whether the Exchange's stated valuation methodology is consistent with one or more of these accounting standards.

With respect to the question regarding Bitcoin markets, there is a lively debate between those who see zero or little value in digital assets, including Bitcoin, and those who see them as a legitimate asset class. For one summary of some of the arguments, a May 21, 2021 Goldman Sachs report is worth reviewing.⁵ GDF views digital assets as a legitimate asset class and considers that the industry can and should adhere to high regulatory standards in order for this view to become more prevalent. This is why GDF has developed 10 Codes for industry conduct and is continuing to develop Codes. GDF further notes that while it is true that Bitcoin is a volatile asset class, as of July 26, 2021 the value of all Bitcoins in the world was almost \$699 billion.⁶ The Money Project has calculated Bitcoin represents approximately 1.8% of the estimated value of "narrow money."⁷ It is also worth noting that polling has shown that 77% of more than 15,000 millennials surveyed across 18 countries say they want to learn more about cryptocurrencies.⁸ In addition, there is strong interest among traditional financial institutions in having the opportunity to offer digital assets to their clients. Taken together, all of this suggests that the SEC should find ways to approve high quality ETF applications. The public is clearly interested in this asset class. Coupled with appropriate protections, the SEC should approve strong applications and perhaps subject crypto ETFs to heightened monitoring during a transitional period.

2. What are commenters' views of the Exchange's assertion that regulatory and financial landscapes relating to bitcoin and other digital assets have changed significantly since 2016? Are the changes that the Exchange identifies sufficient to support the determination that the proposed listing and trading of the Shares are consistent with the Act? There is no doubt that the crypto assets financial landscape has changed dramatically since 2016.⁹ In 2017,

⁵ Goldman Sachs/Global Macro Research/Issue 98, May 21, 2021
<https://www.goldmansachs.com/insights/pages/crypto-a-new-asset-class-f/report.pdf>

⁶ CoinMarketCap, July 26, 2021
<https://coinmarketcap.com/>

⁷ Investopedia, "How Much of All Money Is in Bitcoin," Nathan Reiff, May 31, 2021
<https://www.investopedia.com/tech/how-much-worlds-money-bitcoin/>

⁸ CBS17.COM, "Poll: Most millennials are interested in learning more about crypto," Caslee Sims, May 11, 2021
<https://www.cbs17.com/news/check-this-out/poll-most-millennials-are-interested-in-learning-more-about-crypto/>

⁹ United States House of Representatives/Committee on Financial Services, Committee Memorandum, June 25, 2021
<https://financialservices.house.gov/uploadedfiles/hhrg-117-ba09-20210630-sd002.pdf>

cryptocurrencies represented around \$20 billion in value. This grew to \$260 billion in 2020 and over \$2 trillion in May 2021. Digital assets are quickly becoming as important as the value of gold held by private investors (about \$3 trillion), although the size of the crypto market is still small compared to traditional asset classes. For example, the U.S. fixed income market was worth about \$50 trillion as of May 2021. Besides the explosive growth in digital assets markets in the U.S. and around the world, the April 15, 2021 Federal Register Notice describes well regulatory developments in the U.S. since 2016.¹⁰ Again, without taking a position on the specifics of the Exchange's application, there is no doubt that the U.S. digital assets regulatory landscape has matured since 2016. True, there could and should be greater regulatory clarity and certainty in the U.S. - something GDF has advocated for since its creation in 2017 - but GDF considers that the overall regulatory framework in the U.S. is sufficiently developed to permit the SEC to approve strong ETF applications going forward. GDF posits that to the extent the SEC can determine that applicants comply with U.S. law and have policies and operations in place that are consistent with GDF's Codes of Conduct, applications should be considered favorably.

3. The Exchange states that "approving this proposal . . . [would] allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk" associated with exposure through other means. Further, the Exchange asserts that "the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues. What are commenters' views regarding such assertions?"

Again, without taking a position on the Exchange's application, the reality is that many U.S. investors are investing in products overseas which complicates U.S. regulatory reach, or investing in U.S. products that have historically exhibited significant premiums or discounts to net asset value, among other issues. To the extent that U.S. investors are able to use U.S. regulated ETFs, that should actually increase, rather than decrease, investor protection.

4. According to the Exchange, "[n]early every measurable metric related to [Chicago Mercantile Exchange's] Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year." Based on data provided and the academic research cited by the Exchange, do commenters agree that the Chicago Mercantile Exchange ("CME") now represents a regulated market of significant size? What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on CME to manipulate the Shares? What of the Exchange's assertion that the

combination of (a) CME bitcoin futures leading price discovery; (b) the overall size of the bitcoin market; and (c) the ability for market participants to buy or sell large amounts of bitcoin without significant market impact helps to prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or CME bitcoin futures markets?

As of May 21, 2021 the CME was number two “on the list of biggest bitcoin futures exchanges.”

¹¹ This represented roughly 15.5% of the total open interest in Bitcoin futures. So there is no doubt that the CME represents a regulated market of significant size. With respect to price discovery, GDF points to the October 14, 2020 Wilshire Phoenix study, which suggests that “CME Bitcoin Futures contribute more to price discovery than its related spot markets.” ¹² However, the crypto markets do change rapidly. There has been discussion that stablecoin issuance could have an impact on Bitcoin prices, complicating price discovery, although at least some research suggests that this is not the case. ¹³ For an opposing view, the Journal of Financial Stability says that the Chicago “CME bitcoin futures contribute far even less than the major bitcoin spot exchanges, contrasting previous research presented to the SEC for bitcoin ETF applications.” ¹⁴ Notwithstanding this debate, GDF tends to agree with JPMorgan that launching a bitcoin ETF in the U.S. “will be key to normalizing the pricing of bitcoin futures.” This is because an ETF would likely reduce the CME premium, i.e. “the difference between the futures-contract price for bitcoin and the current price as trade on major cryptocurrency exchanges” ¹⁵ through the additional liquidity in the marketplace from an ETF. As has been demonstrated by ETFs and the underlying market in other asset classes (e.g., fixed income), the additional access and liquidity through the bitcoin ETF may also take pressure off of the underlying market (i.e., bitcoin spot market) which could lead to even greater price stability in both the bitcoin futures and spot markets.

¹¹ Coindesk, Omar Godbole, May 21, 2021

<https://www.coindesk.com/chicago-mercantile-exchange-bitcoin-futures>

¹² Wilshire Phoenix, “Efficient Price Discovery in the Bitcoin Markets,” October 14, 2020, Authored by Alexander Chang, William Hermann, and William Cai

<https://www.wilshirephoenix.com/efficient-price-discovery-in-the-bitcoin-markets/>

¹³ “Stable coins don’t inflate crypto markets,” Richard K Lyons, Ganesh Viswanath-Natraj, April 17, 2020

<https://voxeu.org/article/stable-coins-dont-inflate-crypto-markets>

¹⁴ Journal of Financial Stability, “Price discovery in Bitcoin: The impact of unregulated markets,” Carl Alexander and Daniel F. Heck, October 2020

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3583843

¹⁵ Coindesk, “JPMorgan Says Bitcoin ETFs Could Shrink CME Futures Premium,” Omkar Godbole, April 12, 2021

<https://www.coindesk.com/jpmorgan-bitcoin-etfs-cme-futures-premium>



5. What are commenters' views on the Exchange's statement, generally, that bitcoin is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices exist to justify dispensing with the requisite surveillance sharing agreement with a regulated market of significant size related to bitcoin? What of the Exchange's assertion in support of such statement that significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly? What of the assertion that offering only in-kind creations and redemptions provides unique protections against potential attempts to manipulate the Shares and that the price the Sponsor uses to value the Trust's bitcoin "is not particularly important"?

There is no definitive answer here so far. With respect to the statement that the price the Sponsor uses to value the Trust's bitcoin "is not particularly important", the statement seems focused on only one aspect of the Bitcoin ETF market, which is the primary market and transactions with authorized participants. However, for secondary market participants (e.g., retail investors), the price source used by the Sponsor should be viewed as important because the value of an ETF (i.e., its NAV) has a relationship to the secondary market trading price, including for market makers and other liquidity participants in determining ETF pricing levels with respect to order flow, as well as for calculating premiums/discounts between NAV and the secondary market price. This is true for any ETF in the marketplace, but arguably the price source is even more important for a bitcoin ETF given the number of exchanges worldwide where bitcoin is traded and prices can differ, and further given the SEC's concerns as discussed above regarding potential bitcoin price manipulation. In light of the foregoing, the SEC should consider requiring a bitcoin ETF to use an independent pricing source to value the bitcoin held by the ETF that uses a methodology incorporating prices from select bitcoin exchanges, with a defined oversight process, with pricing criteria designed to mitigate the potential for manipulation (e.g., outlying bitcoin prices on an exchange or large trades or clusters of trades transacted over a short period of time will not have an undue influence on the pricing source).

We look forward to being part of a continued productive dialogue with the SEC to ensure policy continues to foster innovation.

Yours faithfully.

The GDF Board