

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90118; File No. SR-CboeBZX-2020-053)

October 7, 2020

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the 2x Long VIX Futures ETF, a Series of VS Trust, Under Rule 14.11(f)(4) (Trust Issued Receipts)

I. Introduction

On June 23, 2020, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the 2x Long VIX Futures ETF (“Fund”), a Series of VS Trust (“Trust”). On June 26, 2020, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on July 10, 2020.<sup>3</sup> On August 13, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> This order institutes proceedings pursuant to Section

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

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

<sup>3</sup> See Securities Exchange Act Release No. 89234 (July 6, 2020), 85 FR 41644 (“Notice”). Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-cboebzx-2020-053/srcboebzx2020053.htm>.

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

<sup>5</sup> See Securities Exchange Act Release No. 89545, 85 FR 51124 (August 19, 2020). The Commission designated October 8, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of and Comment on the Proposal<sup>7</sup>

A. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to BZX Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts on the Exchange.

Volatility Shares LLC (“Sponsor”), a Delaware limited liability company, is the sponsor of the Trust.<sup>8</sup> The Sponsor is a commodity pool operator.<sup>9</sup> Tidal ETF Services LLC serves as the administrator, and U.S. Bank National Association serves as custodian of the Fund and its Shares. U.S. Bancorp Fund Services, LLC is the sub-administrator and transfer agent. Wilmington Trust Company, a Delaware trust company, is the sole trustee of the Trust.

The Fund will seek to provide a return that is 200% of the return of its benchmark index for a single day. Therefore, if the Fund is successful in meeting its objective, its value (before fees and expenses) on a given day should gain approximately 200% of the return of its

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<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> Additional information regarding the Fund, the Trust, and the Shares can be found in the Notice, supra note 3.

<sup>8</sup> 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.

<sup>9</sup> The Exchange represents that the Fund will file a registration statement on Form S-1 under the Securities Act of 1933, and that the Shares will not be listed on the Exchange until there is an effective registration statement for the Shares.

benchmark index for a single day; conversely, its value (before fees and expenses) should lose approximately 200% of the return of its benchmark index for a single day when it declines.

The benchmark index seeks to offer long exposure to market volatility through publicly traded futures markets. The benchmark for the Fund is the Long VIX Futures Index (“Index”), ticker symbol LONGVOL,<sup>10</sup> which measures the daily performance of a theoretical portfolio of first- and second-month futures contracts on the Cboe Volatility Index (“VIX”).<sup>11</sup> The Index is comprised of, and the value of the Fund will be based on, VIX futures contracts traded on the Cboe Futures Exchange, Inc. (“VIX Futures Contracts”).<sup>12</sup>

The Fund would primarily invest in 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 are reached with respect to VIX Futures Contracts, the Sponsor might cause the Fund to obtain exposure to the Index through over-the-counter swaps referencing the Index or particular VIX Futures Contracts comprising the Index (“VIX

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<sup>10</sup> The Index is sponsored by Cboe Global Indexes (“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.

<sup>11</sup> 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.

<sup>12</sup> VIX Futures Contracts are measures of the market’s expectation of the level of VIX at certain points in the future. 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 on the contracts’ expiration date.

Swap Agreements”).<sup>13</sup> The VIX Swap Agreements in which the Fund may invest may be cleared or non-cleared.

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. (“VIX Options Contracts”).

The Fund may also invest in Cash and Cash Equivalents that may serve as collateral for the VIX Futures Contracts, VIX Swap Agreements, and VIX Options Contracts (collectively, the “VIX Derivative Products”).<sup>14</sup>

The Fund would seek to remain fully invested at all times in VIX Derivative Products (as well as the Cash and Cash Equivalents that may serve as collateral) that provide exposure to the Index consistent with its investment objective without regard to market conditions, trends or direction. The Sponsor would rely upon a pre-determined model to reposition the Fund’s investments in accordance with its investment objective.

#### B. Comment on the Proposal

A commenter opposes the proposed rule change and states that 2x long volatility is not a profitable investment during bull markets. The commenter points to the predominantly negative

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<sup>13</sup> 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).

<sup>14</sup> “Cash and Cash Equivalents” means the instruments defined in BZX Rule 14.11(i)(4)(C)(iii).

annual returns of another exchange-traded product linked to long volatility, which the commenter characterizes as the predecessor to the Fund. The commenter also asserts that 2x long volatility does not make sense as a product, as volatility is already volatile.<sup>15</sup>

III. Proceedings to Determine Whether to Approve or Disapprove SR-CboeBZX-2020-053, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>16</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>17</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."<sup>18</sup>

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<sup>15</sup> See letter dated July 10, 2020 from John Motson, available at: <https://www.sec.gov/comments/sr-cboebzx-2020-053/srcboebzx2020053-7409699-219192.htm>.

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

<sup>17</sup> Id.

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

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>19</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In this regard, the

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<sup>19</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Commission seeks commenters' views regarding whether the Exchange's proposal to list and trade the Shares, which seek to provide daily investment results that correspond to 200% of the return of an index designed to measure the daily performance of a theoretical portfolio of first- and second-month VIX Futures Contracts, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and is consistent with the maintenance of a fair and orderly market under the Act. The Commission also seeks commenters' views regarding whether the Exchange has adequately described the potential impact of sudden fluctuations in market volatility on the Index and on the Fund's operation and performance for the Commission to make a determination under Section 6(b)(5) of the Act. In particular, the Commission seeks comment regarding the Fund's operation during periods with large percentage increases in volatility, and the potential market impact of the Fund's daily rebalance.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2020-053 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-2020-053. 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, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All



submissions should refer to File Number SR-CboeBZX-2020-053 and should be submitted by [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(57).