

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102991; File No. SR-CboeBZX-2025-059]

### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Related to the 2x Long VIX Futures ETF (“UVIX”) and the -1x Short VIX Futures ETF (“SVIX”)**

May 5, 2025.

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> notice is hereby given that on March 21, 2025, Cboe BZX Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“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**

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change related to the 2x Long VIX Futures ETF (“UVIX”) and the -1x Short VIX Futures ETF (“SVIX”) (each a “Fund” and, collectively, the “Funds”), shares of which have been approved by the Commission to list and trade on the Exchange as Trust Issued Receipts pursuant to BZX Rule 14.11(f)(4), in order to amend certain representations from the original filings.

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

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

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Commission issued final approval of the rule filings proposing to list and trade shares of SVIX (the “SVIX Filing”)<sup>3</sup> and UVIX (the “UVIX Filing,”<sup>4</sup> and collectively with the SVIX Filing, the “Filings”) on the Exchange pursuant to Exchange Rule 14.11(f)(4), Trust Issued Receipts, on October 1, 2021.<sup>5</sup>

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<sup>3</sup> See Securities Exchange Act Release Nos 91264 (March 5, 2021) 86 FR 13939 (March 11, 2021) (SR-CboeBZX-2020-070) (Notice of Filing of Amendment Nos. 1 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3, To List and Trade Shares of the -1x Short VIX Futures ETF Under BZX Rule 14.11(f)(4) (Trust Issued Receipts)) (the “SVIX Notice and Approval Order”).

<sup>4</sup> See Securities Exchange Act Release Nos 91265 (March 5, 2021) 86 FR 13922 (March 11, 2021) (SR-CboeBZX-2020-053) (Notice of Filing of Amendment Nos. 2 and 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 4, To List and Trade Shares of the 2x Long VIX Futures ETF Under BZX Rule 14.11(f)(4) (Trust Issued Receipts)) (the “UVIX Notice and Approval Order”).

<sup>5</sup> See Securities Exchange Act Release Nos. 93230 (October 1, 2021) 89 FR 2387 (January 12, 2024) (SR-CboeBZX-2020-070) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3, To List and Trade Shares of the -1x Short VIX Futures ETF Under BZX Rule 14.11(f)(4) (Trust Issued Receipts))(the “SVIX Order Setting Aside Action”); and 93229 (October 1, 2021) 89 FR 3008 (January 17, 2024) (SR-CboeBZX-2020-053) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment Nos.

Both Filings include representations that limit the Funds participation in Cboe Volatility Index (“VIX”) futures contracts traded on the Cboe Futures Exchange, Inc. (“CFE”) (hereinafter referred to as “VIX Futures Contracts”) to no more than ten percent (10%) during any “Rebalance Period,” defined as any fifteen minute period of continuous market trading.<sup>6</sup> The Exchange is not aware of any existing comparable restrictions on market participation for: (i) any other single exchange-traded investment product not registered under the Investment Company Act of 1940 (the “Investment Company Act”) (“ETP”); (ii) any exchange-traded note (“ETN”); or (iii) any exchange-traded fund registered under the Investment Company Act (“ETF”), regardless of underlying or reference asset by way of an exchange rule filing, and especially not across numerous existing and future products as is the case under the Approval Orders. More importantly, no competitor ETP, ETN, or ETF nor any sponsor or investment adviser of any such ETP, ETN, or ETF that would or could invest in VIX Futures Contracts, are subject to similar restrictions on VIX Futures Contracts participation.

By way of example, the equivalent rule filings for ProShares Ultra VIX Short-Term Futures ETF (“UVXY”),<sup>7</sup> ProShares Short VIX Short-Term Futures ETF (“SVXY”),<sup>8</sup> ProShares

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2 and 4, To List and Trade Shares of the 2x Long VIX Futures ETF Under BZX Rule 14.11(f)(4) (Trust Issued Receipts))(the “UVIX Order Setting Aside Action”).

<sup>6</sup> This restriction applies “across all exchange traded products based on VIX Futures Contracts (“VIX ETPs”) that Volatility Shares LLC (the “Sponsor”) sponsors.” See note 21 and accompanying text of the Approval Orders **Error! Bookmark not defined.**

<sup>7</sup> See Securities Exchange Act Nos. 90685 (December 16, 2020) 85 FR 83650 (December 22, 2020) (SR-CboeBZX-2020-092) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF, Each a Series of ProShares Trust II, Under Rule 14.11(f)(4) (Trust Issued Receipts); 63317 (November 16, 2010) 75 FR 71158 (November 22, 2010) (SR-NYSEArca-2010-101) (Proposal to list and trade Shares of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF); 63610 (December 27, 2010) 76 FR 199 (January 3, 2011) (SR-NYSEArca-2010-101) (Order approving the listing and trading of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF).

<sup>8</sup> See Securities Exchange Act No. 90691 (December 16, 2020) 85 FR 83643 (December 22, 2020) (SR-CboeBZX-2020-093) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-

VIX Mid-Term Futures ETF (“VIXM”), and ProShares VIX Short-Term Futures ETF (“VIXY”) were approved with no comparable restrictions on market participation, either on a per Fund basis, collective Fund basis or sponsor-wide basis.

UVXY seeks leveraged results of 1.5x whereas UVIX seeks leveraged results of 2x, and that SVXY seeks inverse results of -0.5x whereas SVIX seeks inverse results of -1x. However, it is critical to note that, from a futures market impact perspective, a \$100 million fund with a 1.5x objective will have substantially the same market impact as a \$75 million fund with a 2x objective. Similarly, a \$100 million fund with a -0.5x objective will have substantially the same market impact as a \$50 million fund with a -1x objective. Although asset levels of UVXY and SVXY, when compared with those of UVIX and SVIX, have varied over time, there are periods – including recent periods – when UVXY and SVXY have had larger market impacts on the VIX Futures Contracts market than UVIX and SVIX, respectively. The Exchange notes that VIXY and VIXM also, though not leveraged or inverse products, buy and sell VIX futures contracts and, therefore, impact those markets.

In addition, ETFs listed generically do not typically require exchange rule filings to list and trade. For example, the Simplify Volatility Premium ETF, which operates pursuant to Rule 6c-11 under the Investment Company Act can operate and approach any size without the kind of participation restrictions imposed by the Notice and Approval Orders. Similarly, ETNs also do not require separate listing rules, and so ETNs such as the iPath Series B S&P 500 VIX Mid-Term Futures ETN, iPath Series B S&P 500 Short-Term Futures ETN, and JP Morgan Chase’s

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Term Futures ETF, Each a Series of ProShares Trust II, Under Rule 14.11(f)(4), Trust Issued Receipts).

Inverse VIX Short-Term Futures ETN also can operate and approach any size without participation restrictions.<sup>9</sup>

As a result, the Approval Orders have created an unfair playing field by applying restrictions to the Funds and their Sponsor but no other ETP, ETN, or ETF that references or invests in VIX Futures Contracts, or any of their sponsors. The Exchange also believes that these restrictions create potential negative outcomes for the Funds, their shareholders and the Funds' sponsor, Volatility Shares LLC (the "Sponsor"). For example, since the imposition of the market participation restrictions, the Sponsor has received multiple communications from potential investors and existing shareholders stating that the imposition of the participation limits creates inferior products due to the lack of certainty and confidence in Fund performance at times when the 10% threshold is approached or exceeded. These potential investors and existing shareholders have also stated that they will look to other products for investment instead of the Funds.

Therefore, the Exchange is proposing to modify the following paragraphs from each Notice and Approval Order that prohibits each Fund's participation in VIX Futures Contracts during the Rebalance Period.

Specifically, the UVIX Notice and Approval Order stated:<sup>10</sup>

The time and manner in which the Fund will rebalance 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

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<sup>9</sup> ETNs are not pooled investment vehicles, but rather debt instruments issued by large financial services companies, and, therefore, do not directly invest in reference assets. However, the issuer of the ETN often will hedge its exposure to the underlying asset referenced by the ETN by purchasing and selling such underlying reference assets. Accordingly, that activity may not only have market impacts but also potential impacts on the market price of the ETN itself. See e.g., Pricing Supplement dated February 26, 2025 of iPath Series B S&P 500 VIX Short-Term Futures ETN, at page PS-21; available at <https://ipathetn.cib.barclays/ipath/details/341408/download-content/7824661>.

<sup>10</sup> See UVIX Approval Order at 13924. See also UVIX Order Setting Aside Action at 55874.

of rebalances across all Funds<sup>11</sup> 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 VIX Futures Contracts traded on Cboe Futures Exchange, Inc. ("CFE") during any "Rebalance Period," defined as any fifteen minute period of continuous market trading.<sup>12</sup> 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. The Sponsor believes that the Fund will enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX Futures Contracts. In the event that the Fund participates in an Extended Rebalance Period, the Fund represents that it will notify the Exchange and the Commission of such participation as soon as practicable, but no later than 9:00 a.m. E.T. on the trading day following the event.

The Exchange proposes to replace the above paragraph with the following:

The time and manner in which the Fund will rebalance 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. 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. The Sponsor believes that the Fund will enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX Futures Contracts.

Similarly, the SVIX Notice and Approval Order stated:<sup>13</sup>

The time and manner in which the Fund will rebalance 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

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<sup>11</sup> For purposes of the filing, the Exchange states that the Funds include the Fund and the -1x Short VIX Futures ETF as proposed in SR-CboeBZX-2020-070, but may in the future include additional VIX ETPs sponsored by the Sponsor or its affiliates. See Securities Exchange Act Release No. 89901 (September 17, 2020), 85 FR 59843 (September 23, 2020).

<sup>12</sup> In the event that the Funds expect to hit the ten percent threshold during the primary Rebalance Period from 3:45 p.m. to 4:00 p.m. E.T., the Funds will extend their respective rebalances into additional Rebalance Periods and the TAS market. 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. The Funds will be allocated executions based on their percentage of notional transaction volume required.

<sup>13</sup> See SVIX Approval Order at 13941. See also SVIX Order Setting Aside Action at 55882-55883.

ETPs”) that it sponsors (“Funds”)<sup>14</sup> on the price of VIX Futures Contracts by limiting the Funds' participation, on any given day, in VIX Futures Contracts to no more than 10% of the VIX Futures Contracts traded on Cboe Futures Exchange, Inc. (“CFE”) during any “Rebalance Period,” defined as any fifteen minute period of continuous market trading.<sup>15</sup> 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. The Sponsor believes that the Fund will enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX Futures Contracts. In the event that the Fund participates in an Extended Rebalance Period, the Fund represents that it will notify the Exchange and the Commission of such participation as soon as practicable, but no later than 9:00 a.m. E.T. on the trading day following the event.

The Exchange proposes to replace the above paragraph with the following:

The time and manner in which the Fund will rebalance 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. 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. The Sponsor believes that the Fund will enter an Extended Rebalance Period most often during periods of extraordinary market conditions or illiquidity in VIX Futures Contracts.

The Sponsor will continue to operate each Fund in a manner that seeks to minimize market impact across the Funds. For example, the Sponsor’s products already differ from previous and existing VIX ETPs in their approach to mitigating market impact by using a valuation method that is an average price over a longer time period instead of exclusively at the

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<sup>14</sup> For purposes of the filing, the Exchange states that the Funds include the Fund and the 2x Long VIX Futures ETF (“Long Fund”), but may in the future include additional VIX ETPs sponsored by the Sponsor or its affiliates. See Securities Exchange Act Release No. 93229 (Oct. 1, 2021) (SR-CboeBZX-2020-053) (“Long VIX Approval”).

<sup>15</sup> In the event that the Funds expect to hit the 10% threshold during the primary Rebalance Period from 3:45 p.m. to 4:00 p.m. ET, the Funds will extend their respective rebalances into additional Rebalance Periods and the Trade at Settlement (“TAS”) market. 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 10% cap during any 15-minute period of continuous market trading.

4:00 p.m. ET settlement price. The Sponsor owes the Funds a fiduciary duty and operates the Funds accordingly.<sup>16</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>17</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>18</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the Exchange is not aware of any comparable restrictions on market participation for any single ETP, ETN, or ETF regardless of underlying asset that has been implemented by way of an exchange rule filing and especially not across numerous products as is the case for the Funds. More importantly, competitor ETPs, ETNs, or ETFs, or their sponsors or advisers, are not subject to these same restrictions on participation.<sup>19</sup> First, this creates an unfair playing field for the Funds and, by arbitrarily singling out only the Funds and the Sponsor,

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<sup>16</sup> The Sponsor, as a commodity pool operator (“CPO”) owes a fiduciary duty to the commodity pools it operates, i.e., the Funds. The U.S. Commodity Futures Trading Commission has recognized that CPOs hold fiduciary relationships in soliciting and advising commodity clients and in handling the funds of commodity pool participants. See generally, *Weinberg v. NFA*, CFTC Dkt. Nos. CRAA 86-1 & CRAA 86-2 (June 6, 1986) (stating that commodity pool operators “held fiduciary relationships in soliciting and advising commodity clients and in handling the money of commodity pool participants”).

<sup>17</sup> 15 U.S.C. 78f(b).

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

<sup>19</sup> See supra notes 7 and 8.

creates a competitive advantage for their competitors. Second, the cap applying only to the Funds and the Sponsor does not actually provide any of the potential protections that the cap was perhaps intended to provide – regardless of how much and when the Funds are able to execute trades, competitors remain free to execute trades during whichever periods and at whatever size they deem appropriate. The result is that competitors operate with a competitive advantage which potentially leads to greater assets under management than the Funds, which, in turn, results in more volume needing to be executed in a way that is not subject to the caps. Finally, these anti-competitive and ineffective restrictions on executions actually could lead to negative impacts on investors. For example, in a scenario where a rebalance needed to be extended so as not to exceed 10% cap, the investor is likely to experience a deviation from the Funds’ investment objectives.

Based on the foregoing, the Exchange believes that the proposal is consistent with the Act as it would eliminate the status quo – the caps restrict free competition among issuers, cannot accomplish their supposed policy goals because they do not apply uniformly, and ultimately leave investors exposed to potentially negative outcomes.

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 purposes of the Act. As noted above, the proposed amendment is intended to allow the Funds to better compete in the marketplace and to operate more efficiently.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeBZX-2025-059 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-2025-059. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2025-059 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

**Sherry R. Haywood,**  
*Assistant Secretary.*

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<sup>20</sup> 17 CFR 200.30-3(a)(12).