

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103659; File No. SR-CboeBZX-2025-059]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Related to the 2x Long VIX Futures ETF and the -1x Short VIX Futures ETF

August 7, 2025.

On March 21, 2025, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain representations relating to the 2x Long VIX Futures ETF and the -1x Short VIX Futures ETF (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). The proposed rule change was published for comment in the Federal Register on May 9, 2025.³

On June 16, 2025, pursuant to Section 19(b)(2) of the Act,⁴ 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.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 102991 (May 5, 2025), 90 FR 19741 (“Notice”). The Commission has not received any comments regarding the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 103274, 90 FR 26352 (June 20, 2025) (designating August 7, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

The Commission is publishing this order to solicit comments on the proposed rule change from interested persons and to institute proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

I. Description of the Proposal

The Commission approved the listing and trading of the Funds on October 1, 2021.⁷

The Approval Orders include representations that Volatility Shares LLC (“Sponsor”) will limit the Funds’ participation in Cboe Volatility Index (“VIX”) futures contracts traded on the Cboe Futures Exchange, Inc. (“CFE”) (“VIX Futures Contracts”) to no more than 10% during any “Rebalance Period,” defined as any fifteen minute period of continuous market trading.⁸ 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 market (each, an “Extended Rebalance Period”).⁹ Further, in the event that either Fund participates in an Extended Rebalance Period, each Fund represented that it will notify the Exchange and the Commission of such participation as soon as practicable, but no later than 9:00 a.m. ET on the trading day following the event.¹⁰

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release Nos. 93229 (Oct. 1, 2021), 86 FR 55873 (Oct. 7, 2021) (Order Setting Aside Action by Delegated Authority and Approving 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)) (SR-CboeBZX-2020-053) (“Order Approving UVIX”); and 93229 (Oct. 1, 2021), 86 FR 55881 (Oct. 7, 2021) (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)) (SR-CboeBZX-2020-070) (“Order Approving SVIX,” and, together with the Order Approving UVIX, the “Approval Orders”).

⁸ See Order Approving SVIX, 86 FR at 55882; and Order Approving UVIX, 86 FR at 55874. This restriction applies “across all exchange traded products based on VIX Futures Contracts (‘VIX ETPs’) that [the Sponsor] sponsors.” See Order Approving SVIX, 86 FR at 55882; and Order Approving UVIX, 86 FR at 55874.

⁹ See Order Approving SVIX, 86 FR at 55882-83; and Order Approving UVIX, 86 FR at 55874.

¹⁰ See Order Approving SVIX, 86 FR at 55883; and Order Approving UVIX, 86 FR at 55874.

The Exchange is proposing to eliminate the 10% participation cap for the Funds' participation in VIX Futures Contracts during any Rebalance Period as well as the representation that the Funds will notify the Exchange and the Commission of the Funds' participation in any Extended Rebalance Period.

The Exchange proposes to instead provide, with respect to each Fund:

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.¹¹

The Exchange states that Sponsor will continue to operate each Fund in a manner that seeks to minimize market impact across the Funds, and by way of example, notes that the Sponsor's products differ from previous and existing VIX ETPs by using a valuation method that is an average price over a longer time period instead of exclusively at the 4:00 p.m. ET settlement price, which it believes mitigates market impact.¹² The Exchange represents that the Sponsor owes the Funds a fiduciary duty and operates the Funds accordingly.¹³

II. Proceedings to Determine Whether to Approve or Disapprove SR-CboeBZX-2025-059 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁴ to determine whether the proposed rule change should be approved or disapproved. Institution of

¹¹ See Notice, supra note 3, 90 FR at 19742-43.

¹² See Notice, supra note 3, 90 FR at 19743.

¹³ According to the Exchange, the Sponsor, as a commodity pool operator, owes a fiduciary duty to the commodity pools it operates, i.e., the Funds. See Notice, supra note 3, 90 FR at 19743.

¹⁴ 15 U.S.C. 78s(b)(2)(B).

such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. 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,¹⁵ 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."¹⁶

In its assessment of the original proposals, the Commission considered the potential for market disruption during periods with large percentage increases in volatility and, because of the potential for large, sudden moves in VIX levels, the potential for large spikes in rebalancing demand for VIX ETPs.¹⁷ In its Approval Orders, the Commission concluded that, based on the record at the time, the Exchange's proposals were reasonably designed to help mitigate the potential market impact on the Funds' daily rebalance demand during periods when there are large percentage increases in volatility.¹⁸ Specifically, the Commission concluded that the rebalance design of the Funds may help distribute rebalancing volume, and that the 10%

¹⁵ Id.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ See Order Approving SVIX, 86 FR at 55884; and Order Approving UVIX, 86 FR at 55875.

¹⁸ See Order Approving SVIX, 86 FR at 55884; and Order Approving UVIX, 86 FR at 55876.

participation cap strikes an appropriate balance between allowing the Funds to rebalance within a reasonably short period of time and managing the potential market impact of a large rebalance.¹⁹

Under the current proposal, the Exchange seeks to eliminate the 10% participation cap. In its statements in support of the Exchange’s original proposals to list and trade shares of the Funds, the Sponsor stated, among other things, that committing to a 10% participation cap for all VIX ETPs offered by the Sponsor should result in “an execution method that minimizes market impact and meaningfully lowers the chances of [the Funds] experiencing a significant disruption” and “less volatile products with minimal impacts to the underlying VIX futures and the broader market.”²⁰

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Given the previous statements made by the Sponsor and Exchange in support of the 10% participation cap, in conjunction with the Commission’s determination that such representation was consistent with Section 6(b)(5) of the Act, including the protection of investors and the public interest, what are commenters’ views on whether the Exchange has satisfied its burden in demonstrating that the elimination of the 10% participation cap is consistent with Section 6(b)(5) of the Act? Absent the 10%

¹⁹ See Order Approving SVIX, 86 FR at 55884; and Order Approving UVIX, 86 FR at 55876.

²⁰ See Order Approving SVIX, 86 FR at 55883 (citing Letter from Barry I. Pershkov, Partner, Chapman and Cutler LLP, on behalf of the Sponsor, dated May 7, 2021); and Order Approving UVIX, 86 FR at 55875 (citing Letter from Barry I. Pershkov, Partner, Chapman and Cutler LLP, on behalf of the Sponsor, dated May 7, 2021).

- participation cap, do the other aspects of the Funds' rebalancing methodology serve to mitigate the market impact concerns articulated in the Approval Orders?
2. In its Approval Orders, the Commission also stated that, although the Commission's findings in such order were based on the specific proposed rule changes filed with the Commission, including how the proposed rules operated under the then-current market conditions discussed in that order, the Commission recognized that, over time, market conditions in VIX ETP markets, and the related VIX Futures market, may change.²¹ What are commenters' views on whether market conditions or other circumstances have changed that would affect the Commission's review of the current proposal?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, 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 is consistent with Section 6(b)(5) of the Act²² 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 data, views, and arguments, the Commission

²¹ See Order Approving SVIX, 86 FR at 55884 n.48; and Order Approving UVIX, 86 FR at 55876 n.43.

²² 15 U.S.C. 78f(b)(5).

will consider, pursuant to Rule 19b-4 under the Act,²³ any request for an opportunity to make an oral presentation.²⁴

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF 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 AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

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. 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.

²³ 17 CFR 240.19b-4.

²⁴ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to 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 Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 filing 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*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,
Assistant Secretary.

²⁵ 17 CFR 200.30-3(a)(57).