

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84231; File No. SR-CboeBZX-2018-040)

September 20, 2018

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 SolidX Bitcoin Shares Issued by the VanEck SolidX Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

On June 20, 2018, 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 list and trade shares of SolidX Bitcoin Shares (“Shares”) issued by the VanEck SolidX Bitcoin Trust (“Trust”) under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the Federal Register on July 2, 2018.³

On August 7, 2018, 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 As of September 19, 2018, the Commission has received more than 1,400 comment letters on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 83520 (June 26, 2018), 83 FR 31014 (July 2, 2018) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 83792 (Aug. 7, 2018), 83 FR 40112 (Aug. 13, 2018). The Commission designated September 30, 2018, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

proposed rule change.⁶ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal⁸

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.⁹ Each Share will represent a fractional undivided beneficial interest in the Trust's net assets. SolidX Management LLC will be the sponsor of the Trust ("Sponsor"). The Trust will be responsible for custody of the Trust's bitcoin. The Bank of New York Mellon will be the Administrator, transfer agent, and the custodian, with respect to cash, of the Trust. Foreside Fund Services, LLC will be the marketing agent in connection with the creation and redemption of baskets of Shares. Van Eck Securities Corporation will provide assistance in the marketing of the Shares.¹⁰

⁶ All comments on the proposed rule change are available on the Commission's website at <https://www.sec.gov/comments/sr-cboebzx-2018-040/cboebzx2018040.htm>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ The Commission notes that additional information regarding the Trust and the Shares, including investment strategies, calculation of net asset value ("NAV") and intra-day indicative value ("IIV"), creation and redemption procedures, and additional background information about bitcoins and the Bitcoin network, among other things, can be found in the Notice (see supra note 3) and the registration statement filed with the Commission on Form S-1 (File No. 333-212479) under the Securities Act of 1933 ("Registration Statement"), as applicable.

⁹ See BZX Rule 14.11(e)(4) (permitting the listing and trading of "Commodity-Based Trust Shares," defined as a security (a) that is used by a trust which holds a specified commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity).

¹⁰ See Notice, supra note 3, at 31015.

According to the Exchange, the investment objective of the Trust is for the Shares to reflect the performance of the price of bitcoin, less the expenses of the Trust's operations. The Trust is not actively managed and will not engage in activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of bitcoin.¹¹ The Administrator will generally use the closing price set for bitcoin by the MVIS Bitcoin OTC Index ("MVBTCO") to calculate the Fund's NAV on each business day that the Exchange is open for regular trading, as promptly as practicable after 4:00 p.m. E.T.¹²

According to the Exchange, the MVBTCO represents the value of one bitcoin in U.S. dollars at any point in time. The Exchange represents that the MVBTCO calculates the intra-day price of bitcoin every 15 seconds and a closing price as of 4:00 p.m. E.T., each weekday and that the intra-day levels of the MVBTCO incorporate the real-time price of bitcoin based on executable bids and asks derived from constituent bitcoin over-the-counter ("OTC") platforms that have entered into an agreement with MV Index Solutions GmbH ("MVIS") to provide such information. According to the Exchange, the intra-day price and closing level of the MVBTCO is calculated using a proprietary methodology collecting executable bid/ask spreads and calculating a mid-point price from several U.S.-based bitcoin OTC platforms. The Exchange represents that

¹¹ See id. at 31015.

¹² See id. at 31020. In the event that the Sponsor determines that this valuation method has failed, the Sponsor will determine the bitcoin market price on the valuation date according to a set of alternative methods to be used in the following order: (a) the mid-point price of the bid/ask spread as of 4:00 p.m. E.T. obtained by the Sponsor from any bitcoin OTC platform that is part of the MVBTCO index; (b) the volume-weighted average price over the 24-hour period ending at 4:00 p.m. E.T. as published by a public data feed that is calculated based upon a volume-weighted average bitcoin price obtained from the major U.S. dollar-denominated bitcoin exchanges and that the Sponsor determines is reasonably reliable; and (c) the Sponsor's best judgment of a good faith estimate of the bitcoin market price. Greater detail concerning the alternative pricing procedures if the MVBTCO cannot be utilized as the basis for NAV calculations can be found in the Notice. See id. at 31019–20.

bitcoin OTC platforms included in the MVBTCO are U.S.-based entities that are well established institutions and include entities that are regulated by the Commission and the Financial Industry Regulatory Authority (“FINRA”) as registered broker-dealers and affiliates of broker-dealers. According to the Exchange, the logic utilized for the derivation of the intra-day and daily closing index level for the MVBTCO is intended to analyze actual executable bid/ask spread data, verify and refine the data set, and yield an objective, fair-market value of one bitcoin priced in U.S. dollars.¹³ The Trust’s website will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange’s Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.).¹⁴

The Exchange states that the Trust intends to achieve its investment objective by investing substantially all of its assets in bitcoin traded primarily in the OTC markets, but that the Trust may also invest in bitcoin traded on domestic and international bitcoin exchanges, depending on liquidity and other factors at the Trust’s discretion.¹⁵ According to the Exchange, while the Trust expects to conduct its trading primarily on the OTC platforms that comprise the MVBTCO, the Trust also maintains an internal proprietary database, which it does not share with anyone, of potential OTC bitcoin trading counterparties, including hedge funds, family offices, private wealth managers, and high-net-worth individuals. The Exchange represents that all such potential counterparties will be subject to the Trust’s anti-money laundering (“AML”) and know your customer (“KYC”) compliance procedures. According to the Exchange, the Trust will begin trading with such potential OTC counterparties as their trading capabilities become viable; the

¹³ See id. at 31017–18.

¹⁴ See id. at 31023.

¹⁵ See id. at 31015.

Trust will also add additional potential counterparties to its internal proprietary database as it becomes aware of additional market participants; and the Trust will decide which OTC counterparties it will trade with based on its ability to fill orders at the best available price among OTC market participants.¹⁶ The Exchange represents that the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. According to the Exchange, investors and market participants will be able throughout the trading day to compare the market price of the Shares to the Shares' IIV.¹⁷

According to the Exchange, the Trust will issue and redeem "Baskets," each equal to a block of 5 Shares.¹⁸ The creation and redemption of a Basket will require the delivery to the Trust, or distribution by the Trust, of the number of whole and fractional bitcoins or the U.S. dollar equivalent represented by each Basket being created or redeemed. Only "Authorized Participants" may place orders to create and redeem Baskets.¹⁹ According to the Exchange, the Trust will not normally hold cash or any other assets, but may hold a very limited amount of cash in connection with the creation and redemption of Baskets and to pay the Trust's expenses.²⁰

The Exchange represents that, in addition to its security system, the Trust will maintain comprehensive insurance coverage underwritten by various insurance carriers. The purpose of the insurance is to protect investors against loss or theft of the Trust's bitcoin. The Exchange represents that the insurance will cover loss of bitcoin by, among other things, theft, destruction,

¹⁶ See id. at 31017.

¹⁷ See id. at 31021.

¹⁸ See id. According to the Exchange, as of the date of the Registration Statement, each Share represents approximately 25 bitcoins. See id.

¹⁹ See id.

²⁰ See id. at 31015.

bitcoin in transit, computer fraud, and other loss of the private keys that are necessary to access the bitcoin held by the Trust, subject to certain terms, conditions, and exclusions that are discussed in the Registration Statement. According to the Exchange, the insurance policy will carry initial limits of \$25 million in primary coverage and \$100 million in excess coverage, with the ability to increase coverage depending on the value of the bitcoin held by the Trust. According to the Exchange, to the extent the value of the Trust's bitcoin holdings exceeds the total \$125,000,000 of insurance coverage, the Sponsor has made arrangements for additional insurance coverage with the goal of maintaining insurance coverage at a one-to-one ratio with the Trust's bitcoin holdings valued in U.S. dollars, such that for every dollar of bitcoin held by the Trust there is an equal amount of insurance coverage.²¹

According to the Exchange, the Trust currently expects that there will be at least 100 Shares outstanding at the time of commencement of trading on the Exchange, which the Exchange asserts to be sufficient to provide adequate market liquidity. The Exchange states that BZX Rules 14.11(e)(4)(E)(ii)(b) and (c) provide that the Exchange will commence delisting proceedings for a series of Commodity-Based Trust Shares where the applicable trust has fewer than 50,000 receipts or the market value of all receipts issued and outstanding is less than \$1,000,000, respectively, following the initial 12 month period following commencement of trading on the Exchange. The Exchange is proposing that BZX Rule 14.11(e)(4)(E)(ii)(b) would not apply to the Shares because the Exchange believes that such policy concerns are otherwise mitigated. According to the Exchange, the lower number of Shares is merely a function of price that will have no impact on the creation and redemption process and the arbitrage mechanism,

²¹ See id. at 31019.

and the Exchange proposes that it would not commence delisting proceedings for the Shares if the Shares do not satisfy BZX Rule 14.11(e)(4)(E)(ii)(b).²²

According to the Exchange, the Sponsor expects that the dissemination of information on the Trust's website, along with quotations for and last-sale prices of transactions in the Shares and the IIV and NAV of the Trust, will help to reduce the ability of market participants to manipulate the bitcoin market or the price of the Shares, and that the Trust's arbitrage mechanism will facilitate the correction of price discrepancies between bitcoin and the Shares. The Exchange states that the Sponsor believes that demand from new, larger investors accessing bitcoin through investment in the Shares will broaden the investor base in bitcoin, which could further reduce the possibility of collusion among market participants to manipulate the bitcoin market, and that the Sponsor expects that the Shares will be purchased primarily by institutional and other substantial investors (such as hedge funds, family offices, private wealth managers, and high-net-worth individuals), which will provide additional liquidity and transparency to the bitcoin market in a regulated vehicle such as the Trust.²³

The Exchange also asserts that the policy concerns related to an underlying reference asset and its susceptibility to manipulation are mitigated as it relates to bitcoin because the very nature of the bitcoin ecosystem makes manipulation of bitcoin difficult. The Exchange argues that, particularly, in the OTC markets, the dual elements of principal-to-principal trading combined with the large size at which trades are effected should effectively eliminate the ability of market participants to manipulate the market with small trades as may be the case on any individual exchange. The Exchange further asserts that the OTC desks that comprise the

²² See id. at 31024.

²³ See id. at 31018.

MVBTCO with which the Trust intends to effect transactions are well established institutions that comply with AML and KYC regulatory requirements with respect to trading counterparties and include entities that are regulated by the Commission and FINRA as registered broker-dealers and affiliates of broker-dealers. According to the Exchange, it is the Sponsor's position that the OTC desks have a better measure of the market than any exchange-specific reference price, whether individually or indexed across multiple exchanges.²⁴

The Exchange argues that the geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin and that, in many instances, the bitcoin market is generally less susceptible to manipulation than the equity, fixed income, and commodity-futures markets. The Exchange submits a number of arguments for why this is the case, asserting that there is no inside information about revenue, earnings, corporate activities, or sources of supply; that it is generally not possible to disseminate false or misleading information about bitcoin in order to manipulate; that manipulation of the price on any single venue would require manipulation of the global bitcoin price in order to be effective; that a substantial OTC market provides liquidity and shock-absorbing capacity; that bitcoin's 24/7/365 nature provides constant arbitrage opportunities across all trading venues; and that it is unlikely that any one actor could obtain a dominant market share.²⁵

Further, the Exchange asserts that bitcoin is arguably less susceptible to manipulation than other commodities that underlie exchange-traded products ("ETPs") because there may be inside information relating to the supply of the physical commodity (such as the discovery of new sources of supply or significant disruptions at mining facilities that supply the commodity)

²⁴ See id. at 31025.

²⁵ See id.

that simply are inapplicable to bitcoin. Further, the Exchange asserts that the fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity unlikely. Moreover, according to the Exchange, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin on any single venue would require manipulation of the global bitcoin price in order to be effective. The Exchange argues that arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, asserts the Exchange, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.²⁶

The Exchange asserts 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. According to the Exchange, trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The Exchange further represents that, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements and that, if the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12.²⁷

²⁶ See id.

²⁷ See id. at 31024–25.

The Exchange represents that it may obtain information regarding trading in the Shares and listed bitcoin derivatives via the Intermarket Surveillance Group (“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 represents that it may obtain information about bitcoin transactions, trades, and market data from bitcoin exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement as well as certain additional information that is publicly available through the Bitcoin blockchain. The Exchange notes that it has entered into a comprehensive surveillance sharing agreement with the Gemini Exchange.²⁸

II. Proceedings to Determine Whether to Approve or Disapprove SR-CboeBZX-2018-040 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁹ to determine whether the proposed rule change 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 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,³⁰ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act,

²⁸ See id. at 31025.

²⁹ 15 U.S.C. 78s(b)(2)(B).

³⁰ Id.

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.”³¹

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,³² 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:

1. What are commenters’ views of the Exchange’s assertions that bitcoin is arguably less susceptible to manipulation than other commodities that underlie ETPs; that the geographically diverse and continuous nature of bitcoin trading makes it difficult and prohibitively costly to manipulate the price of bitcoin; that trading on inside information regarding bitcoin is unlikely; that the fragmentation across bitcoin markets, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity unlikely; that manipulation of the price on any single venue would require manipulation of the global bitcoin price to be effective; that a substantial OTC bitcoin market provides liquidity and shock-absorbing capacity; that bitcoin’s “24/7/365 nature” provides constant arbitrage opportunities across all trading venues; and that it is unlikely that any one actor could obtain a dominant market share?

2. What are commenters’ views on the Sponsor’s assertion, described by the Exchange in the Notice, that “the OTC desks have a better measure of the market than any

³¹ 15 U.S.C. 78f(b)(5).

³² See Notice, supra note 3.

exchange-specific reference price, whether individually or indexed across multiple exchanges”?

What are commenters’ views on the Exchange’s representation that, in the OTC markets, the dual elements of principal-to-principal trading combined with the large size at which trades are effected should effectively eliminate the ability of market participants to manipulate the market with small trades as may be the case on any individual exchange? What is the current typical number and volume of transactions on the OTC market? What are commenters’ views on whether the liquidity of the OTC bitcoin market, which would be used as the reference market for pricing the proposed ETP’s holdings, is sufficient for efficient bitcoin price discovery? What are commenters’ views on whether the liquidity of the OTC bitcoin market is sufficient to support efficient arbitrage between the price of the Shares and the spot price of bitcoin? What are the numbers of active traders, market makers, and other liquidity providers on the OTC bitcoin market? To what extent is trading in the OTC bitcoin market subject to regulation?

3. The Exchange asserts that the dissemination of information on the Trust’s website, along with quotations for and last-sale prices of transactions in the Shares and the IIV and NAV of the Trust, will help to reduce the ability of market participants to manipulate the bitcoin market or the price of the Shares and that the Trust’s arbitrage mechanism will facilitate the correction of price discrepancies in bitcoin and the Shares. In addition, the Exchange asserts that demand from new, larger investors accessing bitcoin through investment in the Shares will broaden the investor base in bitcoin, which could further reduce the possibility of collusion among market participants to manipulate the bitcoin market. The Exchange further states that the exploitation of arbitrage opportunities by Authorized Participants and their clients and customers will tend to cause the public trading price to track NAV per Share closely over time. What are commenters’ views regarding these statements? For example, do commenters agree or disagree

with the assertion that Authorized Participants and other market makers will be able to engage in arbitrage and to make efficient and liquid markets in the Shares at prices generally in line with the NAV?

4. What are commenters' views, generally, on whether the proposed ETP would be susceptible to manipulation?

5. What are commenters' views on whether and to what extent bitcoin futures markets generally, and current volume on those markets specifically, affect the susceptibility of bitcoin to manipulation? What are commenters' views on whether and to what extent other listed bitcoin derivatives, and the current volume on the markets for those derivatives, affect the susceptibility of bitcoin to manipulation?

6. What are commenters' views on the Trust's proposal to value its bitcoin holdings based on an index—the MVBTCO—that is calculated through a proprietary, non-public methodology that uses the privately reported bid/ask spreads of an unidentified set of U.S.-based market-makers in the OTC marketplace, which, the Exchange says, has no formal structure and no open-outcry meeting place? Is the use of a non-public proprietary index to value holdings based on OTC activity an appropriate means to calculate the NAV of an ETP? What are commenters' views on whether determining NAV based on the index value at 4:00 p.m. E.T. might, or might not, create an opportunity for manipulation of the NAV or of the Shares?

7. What are commenters' views on the statement in the Notice that, according to the Sponsor, the MVBTCO's methodology decreases the influence on the MVBTCO of any particular OTC platform that diverges from the rest of the data points used by the MVBTCO, which reduces the possibility of an attempt to manipulate the price of bitcoin as reflected by the MVBTCO?

8. What are commenters' views on each of the set of alternative means by which the Trust proposes to value its holdings in the event that the Sponsor determines that the MVBTCO, or another alternate pricing mechanism, has failed or is unavailable?

9. The Exchange represents that, while the Trust intends to conduct the majority of its trading in the OTC market on the OTC platforms that comprise the MVBTCO, the Trust also will maintain an internal proprietary database, which it will not share with anyone, of potential OTC bitcoin trading counterparties, including hedge funds, family offices, private wealth managers, and high-net-worth individuals. The Exchange further states that OTC bitcoin trading is typically private and not regularly reported, and that the Trust does not intend to report its OTC trading. What are commenters' views on how the Trust's unreported OTC trades may affect the calculation of the Trust's NAV and the ability of market makers to engage in arbitrage?

10. What are commenters' views on the relationship between trading in the OTC bitcoin market and the wider global bitcoin market? What are commenters' views on the circumstances pursuant to which the OTC bitcoin market may trade at a premium or discount to the global bitcoin market? What are commenters' views on whether or not the OTC bitcoin market would provide a measure of insulation from erratic or dislocated trading in the global bitcoin market?

11. What are commenters' views on the cost and the efficiency of arbitrage across the various global markets for bitcoin? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin market, the bitcoin markets' susceptibility to manipulation, and thus the suitability of bitcoin as an underlying asset for an ETP?

12. What are commenters' views on the Exchange's representation that the Sponsor estimates that the U.S. dollar OTC bitcoin trading volume globally represents on average approximately 50% of the trading volume of bitcoin traded globally in U.S. dollars on U.S.-dollar-denominated bitcoin exchanges? Is the volume of U.S. dollar trading of bitcoin—which excludes bitcoin trading against other sovereign currencies or digital assets—a meaningful or appropriate measure of bitcoin market volume? Why or why not?

13. What are commenters' views on whether the Exchange has entered into a surveillance-sharing agreement with a regulated market of significant size related to bitcoin? What are commenters' views on the current regulation of bitcoin-related markets? What are commenters' views on whether markets for listed bitcoin derivatives—such as bitcoin futures markets—are markets of significant size? What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would also have to trade on a regulated bitcoin-related market with which the Exchange has a surveillance sharing agreement? What are commenters' views on whether trading in the proposed ETP would be the predominant influence on prices in a regulated, bitcoin-related market with which the Exchange has a surveillance-sharing agreement?

14. The Exchange represents that it has entered into a comprehensive surveillance-sharing agreement with the Gemini Exchange. What are commenters' views on whether the Gemini Exchange is a market of significant size? What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would also have to trade on the Gemini Exchange? What are commenters' views on whether trading in the proposed ETP would be the predominant influence on prices in the Gemini Exchange?

15. According to the Exchange, the Shares will be purchased primarily by institutional and other substantial investors (such as hedge funds, family offices, private wealth managers, and high-net-worth individuals), which will provide additional liquidity and transparency to the bitcoin market in a regulated vehicle such as the Trust. The Exchange asserts that, with an estimated initial per-share price equivalent to 25 bitcoins, the Shares will be cost-prohibitive for smaller retail investors while allowing larger and generally more sophisticated institutional investors to gain exposure to the price of bitcoin through a regulated product, eliminating the complications and reducing the risk associated with buying and holding bitcoin. What are commenters' views of the Exchange's assertions that transacting in the Shares will be geared toward more sophisticated institutional investors and will be cost-prohibitive for smaller retail investors? What are commenters' views regarding whether broker-dealers are likely to offer fractional shares in the Trust to retail investors, permitting retail investment with a smaller financial commitment? What are commenters' views of the Exchange's assertions that the Sponsor believes that demand from new, larger investors accessing bitcoin through investment in the Shares will broaden the investor base in bitcoin, which could further reduce the possibility of collusion among market participants to manipulate the bitcoin market, in light of the possibility that broker-dealers may offer fractional shares to their customers?

16. The Exchange represents that that there will be at least 100 Shares outstanding at the time of commencement of trading on the Exchange and that this amount of Shares outstanding at the commencement of trading will be sufficient to provide adequate market liquidity. What are commenters' views on the Exchange's assertion that a minimum of 100 Shares outstanding at the time of commencement of trading will be sufficient to provide

adequate market liquidity? What are commenters' views on whether the 100-share minimum would affect the arbitrage mechanism?

17. What are commenters' views on the Exchange's assertion that, even though the Trust would not comply with the minimum number of shares outstanding required by Exchange rules, the policy concerns underlying that requirement would be otherwise mitigated in the case of the Trust, because the lower number of Shares is merely a function of the price of the Shares and will have no effect on the creation and redemption process or on arbitrage?

18. The Exchange states that the Trust will maintain crime, excess crime, and excess vault risk insurance coverage underwritten by various insurance carriers that will cover the entirety of the Trust's bitcoin holdings. The Exchange further states that, while the Trust is confident in its system for securing its bitcoin, insurance coverage of all of the Trust's bitcoin holdings eliminates exposure to the risk of loss to investors through fraud or theft, which in turn eliminates most of the custodial issues associated with a series of Commodity-Based Trust Shares based on bitcoin. What are commenters' views of whether the proposed insurance coverage would affect trading in the Shares or in the underlying bitcoins? What are commenters' views regarding the Trust's proposed security, control, and insurance measures?

III. 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 proposal is consistent with Section 6(b)(5) or any other provision of the Act, and 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.³³

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal 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].

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-2018-040 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-2018-040. 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

³³ 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).

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-2018-040 and should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Brent J. Fields
Secretary

³⁴ 17 CFR 200.30-3(a)(57).