Cboe Global Markets

RECEIVED
NOV 06 2018
OFFICE OF THE SECRETARY

November 5, 2018

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Securities Exchange Act Release No. 83913; File No. SR-CboeBZX-2018-001 Statement in Opposition to Disapproval Order (pursuant to Securities Exchange Act Release No. 34-84368)

Dear Mr. Fields:

Cboe Global Markets, Inc. ("Cboe") submits this statement in opposition to the action made pursuant to delegated authority by the Division of Trading and Markets of the Securities and Exchange Commission (the "Commission") to disapprove file number SR-CboeBZX-2018-001 (the "Proposal")[1] on August 22, 2018 in Securities Exchange Act Release No. 83548 (the "Disapproval Order").[2] If approved, the Proposal would allow the listing and trading of shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF (the "Proposed Funds") on Cboe BZX Exchange, Inc. (the "Exchange") pursuant to Rule 14.11(f)(4).

Cboe continues to believe that the Proposed Funds represent just another two of many exchange-traded products ("ETPs") already on the market that use futures contracts to get exposure to a particular commodity. All commodities have their own unique custody/delivery issues, but a futures-based product is able to avoid those complications and deliver an investor exposure to the underlying commodity. The Proposed Funds and the underlying bitcoin futures markets also appear to be consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act") as it has been applied to other recently approved commodity futures ETPs. Further, measurements of spreads and the size of trades in bitcoin futures indicate that the market bitcoin futures appears sufficiently tight and liquid to support ETPs.

---

1 See Securities Exchange Act Release Nos. 82484 (January 11, 2018), 83 FR 2704 (January 18, 2018) and 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018).

2 See Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018).

As such, Cboe submits this statement in opposition to the Disapproval Order and encourages the Commission to approve the Proposal.

Section 6(b)(5) Analysis

In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act and, as is applicable here, the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices. The Disapproval Order focuses on this particular language of Section 6(b)(5) of the Act and states that "the Exchange has offered no record evidence to demonstrate that bitcoin futures markets are "markets of significant size."" The Commission has interpreted the terms "significant market" and "market of significant size" to include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market. Leaving aside the dubious precedential history of this only recently articulated requirement,[3] Cboe believes that even under this standard the Commission should approve the Proposal.

Looking at the limited instances in which the Commission has included in the record for an approval order an affirmative statement about a "significant regulated market" provides some insight, but very little specificity as to how the standard is applied to proposals that are approved. Of particular interest is the approval order for the Breakwave Dry Bulk Shipping ETF (the "Shipping Futures ETF") which is designed to provide exposure to the daily change in the price of dry bulk freight futures: an ETP that provides exposure to a unique underlying instrument with no direct precedent for approval. Looking to the language in the approval order for the Shipping Futures ETF, the order states: "[t]he Commission notes that the Exchange has represented that the Freight Futures trade on well-established, regulated markets that are members of the ISG. The Commission finds that the Exchange will be able to share surveillance information with a significant regulated market for trading futures on dry bulk freight."[4] The Approval Order includes no additional analysis that specifically discusses

3 See Securities Exchange Act Release No. 80206 (March 10, 2017), 82 FR 14076 (March 16, 2017).

4 See Securities Exchange Act Release No. 82390 (December 22, 2017), 82 FR 61625 (December 28, 2017) (the "Approval Order") at 30.

whether the markets with which the listing exchange will be able to share surveillance information related to freight futures, which the Shipping Futures ETF will invest substantially all of its assets in,[5] are significant regulated markets. It's also worth noting that the Approval Order did not discuss whether the listing exchange established that other means to prevent fraudulent and manipulative acts and practices will be sufficient as it noted as a possibility in the Disapproval Order.[6]

Looking deeper, the Approval Order also states that:

> Freight Futures are financial instruments that trade off-exchange but then are cleared through an exchange. Market participants communicate their buy or sell orders through a network of execution brokers mainly through phone or instant messaging platforms with specific trading instructions related to price, size, and type of order. The execution broker receives such order and then attempts to match it with a counterpart. Once there is a match and both parties confirm the transaction, the execution broker submits the transaction details including trade specifics, counterparty details and accounts to the relevant exchange for clearing, thus completing a cleared block futures transaction. The exchange will then require the relevant member or FCM to submit the necessary margin to support the position similar to other futures clearing and margin requirements.[7]

That is to say, freight futures trades occur off-exchange and are coordinated through a broker network, mostly through phone and instant messaging, and it is only post-trade that any information is shared with a clearing exchange for the contracts to be cleared and for margin requirements to be communicated.

Additionally, the listing exchange represented that at least 90% of the net assets of the Fund in the aggregate invested in freight futures and exchange-traded options on freight futures shall be listed on a market that is a member of the ISG or is a market with which the Exchange has a CSSA.[8] The Approval Order also notes that the liquidity in freight futures has generally been constant over the last five years and open interest represents more than $3 billion.[9] The Approval Order didn't include any statistics about the daily market-wide trading volume, but

---

5 Id at 5.

6 See Disapproval Order at 3.

7 See Approval Order at 12.

8 Id at 27.

9 Id at 14.

the sponsor of the Shipping Futures ETF estimates a daily volume of $50-100 million in freight futures.[10]

While the Approval Order did include some background about the dry bulk freight industry, dry bulk freight charter rates, and the indexes designed to track those rates, there is no discussion or additional facts included that can be used to infer that the market for freight futures is a significant market. There was also no discussion about whether the capacity in which exchanges participate in the freight futures market constituted a regulated market. Because there's no specific mention of the factors used to determine that the freight futures market is significant and regulated, the best basis for comparing the Shipping Futures ETF proposal and the Proposal is to look to the most obvious factors. First, it's arguable based on the description in the Approval Order that the exchanges' role in the freight futures ecosystem is not even that of a market, but rather as a trade reporting facility and clearing venue. The Commission obviously determined that even the limited capacity in which the exchanges are involved in freight futures constituted a market, but comparing that capacity where message and phone based trades are reported after the fact to the exchange to the fully transparent order books in bitcoin futures, the regulatory role and the information available to surveil for manipulative activity are both significantly greater in the bitcoin futures markets at CFE and CME. Second, the ADV for bitcoin futures products in the third quarter of 2018 was more than $150 million per day as compared to the estimate of $50-100 million per day for freight futures. Finally, 100% of the Proposed Funds' derivatives holdings will trade on "well-established, regulated markets that are members of ISG" compared to 90% for the Shipping Futures ETF.

This analysis of the Approval Order is not to say that the Approval Order should not have been issued – to the contrary, Cboe is only asking that the Commission review the Proposal through the same lens that it has evaluated similar precedent and believes that such an analysis would result in an approval of the Proposal. Based on the information in the Approval Order and in the Proposal, including the fact that the Approval Order stated that the freight futures markets were significant and did not discuss other means to prevent fraudulent and manipulative activity inherent to the freight futures or underlying dry bulk shipping markets, Cboe believes that the bitcoin futures market is a significant, regulated market and therefore the Proposal should be approved.

---

10 See page 3 of the slide show available at: http://www.drybulketf.com/assets/ETFMG-BDRY-ETF-Investment-Strategy.pdf.

Bitcoin Futures and the Bitcoin Ecosystem

Based on research from GraniteShares LLC, the sponsor of the Proposed Funds, and supported by Graphs 1 and 2 provided in the Appendix, the front month contract, which are the contracts that the Proposed Funds would hold, on screen bid-ask spread for both CFE and CME have been relatively tight and stable, with the CFE spread generally ranging between 0.10% and 0.20%. Even while there's been a bit more range in the spread at CME, the spread has, with only one exception, remained below 0.40%, even through times of high volatility. Additionally, there have been a number of instances where trades of $250,000 or more have been executed at prices in line with current market conditions and without any significant impact to spreads, including more than ten instances on CFE, all of which occurred between the best bid and best offer.

Further, Cboe believes that there are a number of properties of bitcoin and the underlying ecosystem that make it arguably less susceptible to manipulation than other commodities that underlie already approved ETPs. For instance, 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 that simply are inapplicable as it relates to bitcoin. 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. 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, 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. The arbitrage process also has advantages in bitcoin as compared to other commodities, such as oil, because the homogeneity of bitcoin makes for a uniform worldwide market rather than regional semi-independent markets that result in non-fungibility and market fragmentation. For all of these reasons, the Exchange believes that bitcoin is no more susceptible to manipulation than other commodities, especially as compared to other approved ETP reference assets.

*****

Cboe appreciates the opportunity to submit this statement in opposition to the Disapproval Order. As discussed above, Cboe believes that the Proposal is consistent with the Act and that the Shares offer a much needed regulated and exchange-listed investment vehicle that provides exposure to bitcoin futures. As such, Cboe encourages the Commission to approve the Proposal. Cboe welcomes the opportunity to provide the Commission with any additional information that it might find useful or to further discuss any of the issues raised herein.

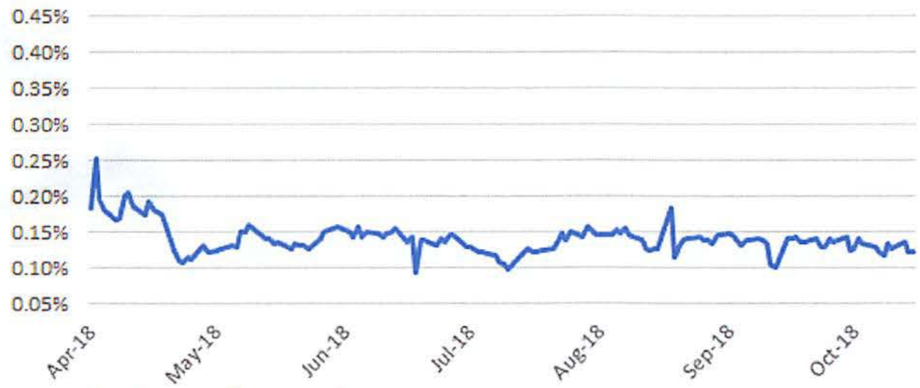
Sincerely,

Kyle Murray
Assistant General Counsel

APPENDIX

Graph 1:

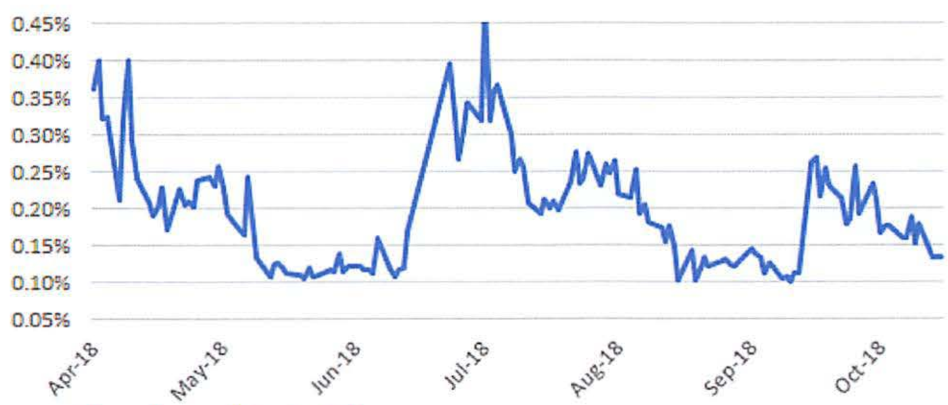
Average bid/ask spread in % for the CFE front month bitcoin futures contract



source: Bloomberg and GraniteSahres

Graph 2:

Average bid/ask spread in % for the CME front month bitcoin futures contract



source: Bloomberg and GraniteSahres