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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90659; File No. SR-CboeBZX-2020-070]

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 the -1x Short VIX Futures ETF, a Series of VS Trust, Under Rule 14.11(f)(4) ("Trust Issued Receipts")

December 14, 2020.

I. Introduction

On September 4, 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")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the -1x Short VIX Futures ETF ("Fund"), a series of VS Trust ("Trust"), under BZX Rule 14.11(f)(4) (Trust Issued Receipts). The proposed rule change was published for comment in the Federal Register on September 23, 2020.[3] On October 30, 2020, 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] The Commission has received no comments on the proposed rule change. The Commission is publishing this

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 89901 (Sept. 17, 2020), 85 FR 59836 ("Notice").

4 15 U.S.C. 78s(b)(2).

5 See Securities Exchange Act Release No. 90292, 85 FR 70678 (Nov. 5, 2020). The Commission designated December 22, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

order to solicit comments on the proposed rule change from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund[7] under BZX Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts[8] on the Exchange. The Fund seeks to provide daily investment results (before fees and expenses) that correspond to the performance of the Short VIX Futures Index (SHORTVOL) ("Index").[9]

Volatility Shares LLC ("Sponsor"), a Delaware limited liability company and a commodity pool operator, serves as the Sponsor of the Trust.[10] Tidal ETF Services LLC serves as the administrator; U.S. Bank National Association serves as custodian of the Fund and the Shares; U.S. Bancorp Fund Services, LLC serves as the sub-administrator and transfer agent; and Wilmington Trust Company is the sole trustee of the Trust.

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6 15 U.S.C. 78s(b)(2)(B).

7 The Trust has filed a registration statement on Form S-1 under the Securities Act of 1933, dated August 26, 2020 (File No.333-248430) ("Registration Statement"). The Fund will not trade on the Exchange until the Registration Statement is effective.

8 Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in "Financial Instruments," defined in Rule 14.11(f)(4)(A)(iv) as any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

9 The Index is sponsored by Cboe Global Indexes. The Index sponsor is not a registered broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to the broker-dealer affiliate regarding access to information concerning the composition of 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.

10 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.

The Index measures the daily inverse performance of a theoretical portfolio of first- and second-month futures contracts on the Cboe Volatility Index ("VIX").[11] The Index is comprised of VIX futures contracts ("VIX Futures Contracts").[12] Specifically, the Index components represent the prices of the two near-term VIX Futures Contracts, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts, resulting in a constant weighted average maturity of approximately one month.[13] The Index seeks to reflect the returns that are potentially available from holding an unleveraged short position in first- and second- month VIX Futures Contracts.[14]

To pursue its investment objective, the Fund would primarily invest in VIX Futures Contracts based on components of the Index. The Fund would primarily acquire short exposure to the VIX through VIX Futures Contracts, such that the Fund has exposure intended to approximate the Index at the time of the net asset value ("NAV") calculation of the Fund.[15] However, in the event that the Fund is unable to meet its investment objective solely through

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11 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.

12 VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and as such, will behave differently than current, or spot, VIX. 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 at a particular time in the future (on the expiration date).

13 The roll period usually begins on the Wednesday falling 30 calendar days before the S&P 500 option expiration for the following month ("Cboe VIX Monthly Futures Settlement Date") and runs to the Tuesday prior to the subsequent month's Cboe VIX Monthly Futures Settlement Date.

14 The Exchange states that because VIX Futures Contracts correlate to future volatility readings of VIX, while the VIX itself correlates to current volatility, the Index and the Fund should be expected to perform significantly different from the inverse of the VIX over all periods of time. Further, unlike the Index, the VIX, which is not a benchmark for the Fund, is calculated based on the prices of certain put and call options on the S&P 500. While the Index does not correspond to the inverse of the VIX, as it seeks short exposure to VIX, the value of the Index, and by extension the Fund, will generally rise as the VIX falls and fall as the VIX rises.

15 The Exchange states the Fund's NAV will be calculated at 4:00 p.m. E.T.

investment in VIX Futures Contracts, it may invest in over-the-counter swaps referencing the Index or referencing particular VIX Futures Contracts comprising the Index ("VIX Swap Agreements")[16] or in listed VIX options contracts ("VIX Options Contracts," and, together with VIX Futures Contracts and VIX Swap Agreements, "VIX Derivative Products"). The Fund may also invest in Cash or Cash Equivalents[17] that may serve as collateral to the Fund's investments in VIX Derivative Products.[18]

The Fund would not be actively managed but rather would seek to remain fully invested in VIX Derivative Products (and Cash and Cash Equivalents as collateral) that provide exposure to the Index consistent with its investment objective without regard to market conditions, trends or direction. The Fund's investment objective is a daily investment objective; that is, the Fund

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16 The VIX Swap Agreements in which the Fund may invest may or may not be cleared. The Fund would only enter into VIX Swap Agreements with counterparties that the Sponsor reasonably believes are capable of performing under the contract and will post collateral as required by the counterparty. The Fund would seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Sponsor would evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Sponsor would review approved counterparties using various factors, which may include the counterparty's reputation, the Sponsor's past experience with the counterparty and the price/market actions of debt of the counterparty. The Fund may use various techniques to minimize OTC counterparty credit risk including entering into arrangements with counterparties whereby both sides exchange collateral on a mark-to-market basis. Collateral posted by the Fund to a counterparty in connection with uncleared VIX Swap Agreements is generally held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund.

17 For purposes of the proposal, "Cash and Cash Equivalents" are short-term instruments with maturities of less than 3 months, including the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

18 The Fund would collateralize its obligations with Cash and Cash Equivalents consistent with the 1940 Act and interpretations thereunder.

seeks to track the Index on a daily basis, not over longer periods.[19] Accordingly, each day, the Fund will position its portfolio so that it can seek to track the Index. The direction and extent of the Index's movements each day will dictate the direction and extent of the Fund's portfolio rebalancing. For example, if the level of the Index falls on a given day, net assets of the Fund would fall. As a result, exposure to the Index, through futures positions held by the Fund, would need to be decreased. The opposite would be the case if the level of the Index rises on a given day.

The time and manner in which the Fund would 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 would seek to minimize the market impact of Fund rebalances on the price of VIX Futures Contracts by limiting the Fund's participation, on any given day, in VIX Futures Contracts to no more than one-quarter of the contracts traded on Cboe Futures Exchange during any "Rebalance Period" (defined by the Index methodology as 3:45 p.m. – 4 p.m., E.T.) ("VIX Futures Contracts Limitation"). If the Fund's portfolio rebalance exceeds one-quarter of the futures' volume between 3:45 p.m. and 4 p.m., E.T., the Sponsor would extend the rebalance period (the "Extended Rebalance Period) to include, for example, the period between 4 p.m. and 4:15 p.m., E.T. and the Trade At Settlement market ("TAS").

The Sponsor expects that allowing the Fund to participate in an Extended Rebalance Period would minimize the impact on the price of VIX Futures Contracts, and particularly minimize any impact of large Fund rebalances during periods of market illiquidity.[20] The

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19 The Exchange states that return of the Fund for a period longer than a single day is the result of its return for each day compounded over the period and usually would differ in amount and possibly even direction from either the inverse of the VIX or the inverse of a portfolio of short-term VIX Futures Contracts for the same period. These differences can be significant.

20 The Sponsor believes that the Fund would enter an Extended Rebalance Period most often during periods of extraordinary volatility or illiquidity in VIX futures contracts.

Exchange states that defining an explicit rebalancing methodology and limiting the Fund's participation in the VIX Futures Contracts should reduce the impact of the Fund's rebalancing on the price of VIX Futures Contracts.

III. Proceedings to Determine Whether to Approve or Disapprove SR-CboeBZX-2020-070 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[21] 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 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,[22] 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."[23]

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 is consistent with

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21 15 U.S.C. 78s(b)(2)(B).

22 Id.

23 15 U.S.C. 78f(b)(5).

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.[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 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,[25] in addition to any other comments they may wish to submit about the proposed rule change. In this regard, the 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 the performance of an index that measures the daily inverse 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

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24 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).

25 See supra note 3.

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 whether the Sponsor's proposed VIX Futures Contracts Limitation would sufficiently minimize the 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. Please include File Number SR-CboeBZX-2020-070 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-2020-070. 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-2020-070 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.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

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26 17 CFR 200.30-3(a)(57).