SecLenX

May 13, 2020

Office of the Secretary
Securities and Exchange Commission
100 F Street NE, Washington, DC 20549-1090

Comments pertaining to file number SR-CboeBZX-2020-036

Dear Secretary:

I appreciate the opportunity to participate in the rulemaking process, to address Rules 14.11 & 14.12 in a public and open forum, and ultimately to voice support for this filing. I would like to address two points related to the proposal: anti-competitiveness in the ETF industry, and the measurement of the liquidity of ETFs.

The issue of anti-competitiveness is important to address here as the beneficial owner requirement disproportionately punishes smaller companies without the resources to pay for aggressive distribution, and disincentivizes issuers from launching funds that can prove their merit purely by investment merit over the long term.

Please consider that:

- The Asset Management industry has a massive concentration issue. Currently, the largest 1% of asset managers oversee 61% of total industry assets. This has resulted in an unlevel playing field in every aspect of the industry.
- The ETF segment, in particular, has abysmal concentration statistics, as the five largest ETFs have the same amount of assets under management as the smallest 2,218 ETFs.
- The lack of intellectual property protection and willingness of the largest asset management firms to copy ideas from startups and small players has made the industry hostile towards innovators and entrepreneurs.
- Any rule that specifies a minimum number of beneficial shareholders protects incumbents and disincentivizes issuers from investing in products for the long-term.

Recognizing that the purpose of a beneficial holder minimum is likely to enforce some sort of minimum liquidity, I would ask the Commission to also consider:

- The number of Beneficial Owners is an imprecise measure of liquidity. ETF liquidity is best measured by
  - The quality of secondary markets on exchanges, particularly spreads and depth of book.

- The implied liquidity, or liquidity of the underlying basket.
    - The number of market participants able to jump in and make markets opportunistically both on the secondary markets and through direct brokerage
    - The number of beneficial owners that own an ETF – and not necessarily participating in the secondary market trading – has little value when evaluating ETF liquidity.
- Quite obviously if there are almost no Beneficial Owners then there are almost no investors being protected.
- Denying an asset management firm a future revenue opportunity and denying up to 49 investors the fund of their choosing is a cost that is not offset by an equal benefit.

Increasing the time-period to allow an ETF to gain the 50 minimum Beneficial Owners is a positive step, although eliminating the requirement altogether would be far more purposeful. Given the concentration issues in the asset management industry, the Commission should be incentivizing innovation rather than exacerbating the unlevel playing field.

The number of Beneficial Owners says little about the fund's liquidity, and even less about the efficacy of the strategy employed, and the appropriateness of the fund to the investors.

It takes several years for newly planted trees to bear fruit, and no one would suggest judging a tree's harvest after one year.

Thank you,

S. Phil Bak
Founder & CEO
SecLenX