



May 7, 2021

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Securities Exchange Act Release Nos. 91264 and 91265; File Nos. SR-CboeBZX-2020-070 and SR-CboeBZX-2020-053, respectively; Statement in Support of Approval Orders (pursuant to Securities Exchange Act Release Nos. 34-91502 and 91501, respectively)**

Dear Ms. Countryman:

Cboe BZX Exchange, Inc. (“Cboe” or the “Exchange”) submits this statement in support of the actions made pursuant to delegated authority by the Division of Trading and Markets of the Securities and Exchange Commission (the “Commission”) to approve file numbers SR-CboeBZX-2020-070 and SR-CboeBZX-2020-053 (the “Proposals”) on March 5, 2021<sup>1</sup> to allow Cboe BZX Exchange, Inc. (the “Exchange”) to list and trade shares of the -1x Short VIX Futures ETF (“SVIX”) and 2x Long VIX Futures ETF (“UVIX” and, collectively with SVIX, the “Funds”) on the Exchange pursuant to BZX Rule 14.11(f)(4). Cboe believes that the Proposals are consistent with the Securities Exchange Act of 1934 (the “Act”) and were appropriately approved for the reasons articulated in the Approval Orders. In particular, Cboe agrees with the Commission Staff’s determination that the rebalancing methodology developed and to be employed by the Funds may serve to mitigate the concerns raised by the Commission in

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<sup>1</sup> See Securities Exchange Act Release Nos. 91264 (March 5, 2021), 86 FR 13939 (March 11, 2021) (the “SVIX Approval Order”) and 91265 (March 5, 2021), 86 FR 13922 (March 11, 2021) (the “UVIX Approval Order”, and together with the SVIX Approval Order, the “Approval Orders”).



the Order Instituting Proceedings.<sup>2</sup> As a result, shares of the Funds should be permitted to list on the Exchange.

Cboe also believes that the Funds would represent positive additions to the volatility trading ecosystem and provide investors with new tools to implement investment strategies to which they might not otherwise have access. As proposed, the Funds would seek to provide investors with greater short (SVIX) and long (UVIX) exposure than ETPs currently available on U.S. exchanges.<sup>3</sup>

As explained in the Proposals and the Approval Orders, the rebalancing mechanism to be used by the Funds is designed to reduce the Funds' individual and collective impact on the volatility market and the associated potentially negative impact on the Funds. Cboe believes that the concerns raised in the OIP have been sufficiently addressed and that the Proposals are consistent with the Act and were appropriately approved. In particular, Cboe believes that the Staff of the Division of Trading and Markets and the Department of Economic and Risk

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<sup>2</sup> See Securities Exchange Act Release Nos. 90118 (October 7, 2020), 85 FR 64563 (October 13, 2020) and 90659 (December 14, 2020), 85 FR 82536 (December 18, 2020) (collectively, the "OIPs"). In the OIPs, the Commission specifically requested that commenters address the sufficiency of the Exchange's statements in support of the Proposals, particularly whether: (i) the Exchange's Proposals to list and trade shares of the Funds are 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 are consistent with the maintenance of a fair and orderly market under the Act; (ii) the Exchange has adequately described the potential impact of sudden fluctuations in market volatility on the Index and on each of the Fund's operation and performance for the Commission to make a determination under Section 6(b)(5) of the Act, particularly regarding each 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 each Fund's daily rebalance.

<sup>3</sup> Currently, the ProShares Ultra VIX Short-Term Futures ETF seeks to provide 1.5x and the ProShares Short VIX Short-Term Futures ETF seeks to provide -0.5x exposure to the S&P 500 VIX Short-Term Futures Index. As proposed, UVIX would seek to provide 2x the daily return of Long VIX Futures Index, which measures the daily performance of a theoretical portfolio of first- and second-month futures contracts on the VIX Index and SVIX would track the Short VIX Futures Index, which offers 1x the daily inverse performance of a theoretical portfolio of first- and second-month futures contracts on the VIX Index.



Analysis carefully evaluated the Proposals and the rebalancing methodology devised by the Funds that occurred over more than a year<sup>4</sup>, to address these potential concerns. The resulting rebalancing methodology is reasonably designed and applies to each Fund individually and creates participation limits calculated across both of the Funds. Specifically, Cboe quotes the language included in both Approval Orders:

The Commission believes that the Exchange’s proposal regarding the rebalancing methodology of the Fund is reasonably designed to help mitigate the potential market impact of the Fund’s daily rebalance demand during periods when there are large percentage increases in volatility. The Fund’s proposed rebalancing process, including the Sponsor’s commitment to cap participation in the VIX Futures Contracts market during any Rebalance Period to no more than 10% for all Funds, should help to temper the impact of the Funds’ rebalances on the price of VIX Futures Contracts, particularly during periods of market volatility or illiquidity.<sup>5</sup>

The Approval Orders then address the cross-Fund limits specifically:

The Commission believes the 10% 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. Therefore, the Commission believes the Exchange’s proposal is adequately designed to address the market impact concern articulated in the OIP. The Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, including the protection of investors and the public interest.

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Cboe appreciates the opportunity to submit this statement in support of the Approval Orders. As discussed above, Cboe believes that the Proposals are consistent with the Act, were appropriately approved by the Commission Staff pursuant to delegated authority, and that the rebalancing methodology employed by the Funds may serve to mitigate the concerns raised in the OIP. As such, Cboe encourages the Commission to approve the Proposals. Cboe

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<sup>4</sup> The filing for SVIX was originally submitted on January 2, 2020, and was subsequently withdrawn and re-filed as the proposal approached the 240<sup>th</sup> day following publication in the Federal Register. See Securities Exchange Act Release No. 89795 (September 9, 2020), 85 FR 57273 (September 15, 2020).

<sup>5</sup> See SVIX Approval Order at 13942 and UVIX Approval Order at 13925.



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,

A handwritten signature in blue ink, appearing to read "Kyle Murray". The signature is fluid and cursive, with a large loop at the end.

Kyle Murray  
Vice President, Associate General Counsel