

May 19, 2021

Ms. Vanessa Countryman
Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington DC 20850

Re: Order Scheduling Filing of Statements on Review, Securities Exchange Act of 1934, Release No. 91501; and Order Scheduling Filing of Statements on Review, Securities Exchange Act of 1934, Release No. 91502

Dear Ms. Countryman:

Volatility Shares LLC (“Volatility Shares”) submits this statement in response to three letters¹ filed expressing opposition to the approval by the U.S. Securities and Exchange Commission (the “Commission”), through delegated authority to the Commission’s Division of Trading and Markets (“Trading and Markets”), of a proposed rule change by Cboe BZX Exchange, Inc. (the “Listing Exchange”) to list and trade shares of the -1x Short VIX Futures ETF (“SVIX”)² and 2x Long VIX Futures ETF (“UVIX”).³

Of the arguments made in the Letters, we either strongly disagree or believe that they are wholly irrelevant or moot. On the topic of leverage, for example, almost all have been made previously – *e.g.*, that leveraged and inverse funds do not perform over long periods (they are not designed to do that). More importantly, the Commission recently determined to permit leveraged and inverse exchange-traded funds (“Leveraged ETFs”) to operate under Rule 6c-11 under the Investment Company Act of 1940.⁴ The Commission has allowed, and continues to

¹ Letter from Americans for Financial Reform Education Fund (May 7, 2021); available at: <https://www.sec.gov/comments/sr-cboebzx-2020-070/srcboebzx2020070-8776553-237692.pdf>; and Letter from Healthy Markets Association (May 7, 2021); available at: <https://www.sec.gov/comments/sr-cboebzx-2020-070/srcboebzx2020070-8776543-237690.pdf>; Letter from Better Markets, Inc (May 7, 2021); available at: <https://www.sec.gov/comments/sr-cboebzx-2020-070/srcboebzx2020070-8774518-237647.pdf> (collectively, the “Letters”).

² See Securities Exchange Act of 1934 Release No. 91264 (March 5, 2021), 86 FR 13939 (March 11, 2021) (the “SVIX Approval Order”).

³ See Securities Exchange Act of 1934 Release No. 91265 (March 5, 2021), 86 FR 13922 (March 11, 2021) (the “UVIX Approval Order”, and together with the SVIX Approval Order, the “Approval Orders”).

⁴ Use of Derivatives by Registered Investment Companies and Business Development Companies (IC-34084 (November 2, 2020) (“We are amending rule 6c-11 to include leveraged/inverse ETFs within the scope of that rule,

allow, leveraged and inverse exchange-traded products that are not registered investment companies (together with Leveraged ETFs, “Leveraged ETPs”) to operate, including those whose benchmark references VIX futures.⁵ The courts, too, have previously affirmed the adequacy of the disclosure contained in the registration statements of these products.⁶ And so with regard to Leveraged ETPs, we think the Commission should consider these questions asked and answered. Otherwise, to disapprove a listing of a Leveraged ETP on the basis that it seeks leveraged returns would appear arbitrary given the Commission’s previous and recent statements and approvals on Leveraged ETPs.

With respect to positions espoused in the Letters that suggest SVIX and UVIX should have been disapproved because of the failure of other VIX-based Leveraged ETPs, the Letters miss a key point: lessons learned from the failures of previous products are at the very heart of the new methodology underlying UVIX and SVIX. With that new methodology, we expect less volatile products with minimal impacts to the underlying VIX futures and the broader market. Equally, Trading and Markets staff and staff from the Division of Economic and Risk Analysis came to the same conclusion after undertaking nearly two years of review, independent analysis and evaluation.

But we should not be having this debate now. There were numerous opportunities within the statutory framework for these parties to have commented. They could have commented, with respect to either the UVIX Approval Order or the SVIX Approval Order, when the rule was first published in the federal register, or when proceedings were instituted, or when those periods of review were extended, or during any of the many number of times when the Commission sought public comment as part of the statutory process outlined in Section 19(b) of the Securities Exchange Act of 1934. However, the parties writing the Letters utilized none of those opportunities to express their views but instead are contributing to the further elongation of the statutory process. We think this only further highlights the relevancy of the arguments we made in our previous letter, which is that there is a clear and unambiguous statutory process that must be followed, and that the Commission’s review of the Approval Orders, including consideration of further comment Letters, appears to us to fall outside that statutory scheme.

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provided that they comply with the applicable provisions of rule 18f-4. Rule 6c-11 permits ETFs that satisfy certain conditions to operate without obtaining an exemptive order from the Commission.”)

⁵ Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List and Trade Shares of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-Term Futures ETF, Each a Series of ProShares Trust II, Under Rule 14.11(f)(4), Trust Issued Receipts (December 16, 2020); available at: <https://www.sec.gov/rules/sro/cboebzx/2020/34-90691.pdf>

⁶ *In Re ProShares Trust Securities Litigation*, 728 F.3d 96 (2nd Cir. July 22, 2013).

Please do not hesitate to contact me at [REDACTED] should you have any questions or would like to discuss this matter.

Sincerely,



Stuart Barton, PhD, CFA
Chief Investment Officer

cc: Chairman Gary Gensler
Commissioner Caroline A. Crenshaw
Commissioner Allison Herren Lee
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman
Michael A. Conley, Acting General Counsel, Office of the General Counsel
Barry Pershkov, Chapman and Cutler LLP
Giovanni P. Prezioso, Cleary Gottlieb Steen & Hamilton LLP
Morrison Warren, Chapman and Cutler LLP