

## MEMORANDUM

**To:** File No. SR-CboeBZX-2018-040

**From:** Christina Thomas  
Counsel to Commissioner Elad L. Roisman  
U.S. Securities and Exchange Commission

**Date:** October 9, 2018

**Re:** Meeting with Representatives of SolidX, VanEck, and CBOE

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On October 9, 2018, Commissioner Roisman and his counsels Dean Conway, Matthew Estabrook, and Christina Thomas met with the following representatives of SolidX, VanEck, and CBOE:

- Dan Gallancy, SolidX
- Dimitri Nemirovsky, SolidX
- Laura Morrison, CBOE
- Kyle Murray, CBOE
- Adam Phillips, VanEck

The parties discussed an application to list an exchange-traded fund that is currently pending with the Commission. The presentation below was provided to the Commissioner and his counsels.

# **VanEck SolidX Bitcoin Trust**

**Presentation for Commissioner Elad L. Roisman**

**October 9, 2018**

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## VANECK SOLIDX BITCOIN TRUST

### About us:

- SolidX began working on a bitcoin ETF in 2015, partnered with VanEck in 2017
- VanEck is an established issuer that manages over 70 funds with approximately \$46 billion in assets under management
- SolidX founders come from traditional financial and legal backgrounds and have been involved in the bitcoin ecosystem since 2011
- Cboe BZX is the listing exchange
- Share price will be ~\$200,000 (25 bitcoin per share)
- Trust will be insured against loss or theft of bitcoin

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## BRIEF HISTORY

- SolidX Bitcoin Trust filed its initial S-1 registration statement in March 2016 with the NYSE as the listing venue
- The NYSE filed its 19b-4 in July 2016
- SEC Staff disapproved the 19b-4 filing in March 2017, stating:
  - Filing not consistent with Section 6(b)(5) of the Securities Exchange Act
  - For commodity-trust ETPs approved to date:
    - There have been well-established, significant, regulated markets for futures
    - ETP-listing exchanges had entered into information sharing agreements with the futures markets
  - Information sharing agreements help ensure availability of information necessary to detect and deter potential manipulations and other abuses

“The Commission continues to believe that surveillance-sharing agreements between the exchange listing shares of a commodity-trust ETP and significant, regulated markets related to the underlying asset provide a ‘necessary deterrent to manipulation’”

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## **SIGNIFICANT CHANGES IN PRODUCT, MARKET STRUCTURE AND OVERALL CIRCUMSTANCES SINCE MARCH 2017 DISAPPROVAL**

1. Multiple CFTC regulated derivatives markets now exist for bitcoin
  - CME, Cboe, LedgerX
  - \$150-\$200 million combined daily trading volume of cleared bitcoin futures on CME and Cboe
2. Trust will use OTC bitcoin trading desk pricing
  - CFTC has jurisdiction over these desks, which are principal-to-principal and follow AML, KYC and BSA regulations, among others
  - OTC desk prices are not subject to manipulation in the absence of misconduct by the trading desks themselves
3. Proliferation of information sharing agreements
  - CME is an ISG member – Cboe can obtain information
  - ISAs in place with US-based bitcoin spot markets
  - ISAs in process with OTC bitcoin trading desks
4. With ~\$200,000 share price, VanEck SolidX Bitcoin Trust is not for retail

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## **SECTION 6(b)(5) OF THE SECURITIES EXCHANGE ACT PROVIDES THE CRITERIA FOR APPROVAL**

The criteria for approval of an exchange's 19b-4 rule change request comes from section 6(b)(5) of the Securities Exchange Act:

*The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; **and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the exchange***

***SolidX, VanEck and Cboe believe the Trust and the rule change request are indeed consistent with section 6(b)(5)***

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## **CBOE's RULES ARE CONSISTENT WITH SECTION 6(b)(5)**

Cboe rules are designed to:

- Prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade
- Foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities
- Remove impediments to and perfect the mechanism of a free and open market and a national market system
- Cboe's initial and continued listing standards, and obligations on registered market makers in the shares, are intended to deter market manipulation and other misconduct

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## STRUCTURE OF TRUST IS CONSISTENT WITH SECTION 6(b)(5): PUBLIC INTEREST – INSURANCE

*The rules of the exchange are designed ... in general,  
to **protect investors and the public interest...***

As of now, investors seeking price exposure to bitcoin lack precisely the protections described in 6(b)(5)

Approval of the Trust will ameliorate several crucial issues and protect the public interest

Bitcoin is a bearer asset. Holders face operational risk: theft, loss, destruction of cryptographic keys. The solution is to have insurance

- Assembled over the course of several years, the Trust has bound \$125 million of insurance capacity from a syndicate of A-rated underwriters
- Arrangements are in place to scale insurance capacity as the fund grows in AUM



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## STRUCTURE OF TRUST IS CONSISTENT WITH SECTION 6(b)(5): CLEARING

*The rules of the exchange are designed to ... foster cooperation and coordination with persons engaged in regulating, **clearing**, settling...*

As of now, no CCPs support the clearing of bitcoin

Investors are left facing absolute counterparty risk. Such risks are often unacceptable to many investors

An ETF provides a straightforward solution for investors seeking price exposure without facing counterparty risk, as the ETF would be cleared through DTCC

Furthermore, in creations and redemptions, the Trust always requires APs and trading counterparties to settle their leg of the trade before the Trust will do so

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## **MARCH 2017 DISAPPROVAL ORDER DETAILED PREREQUISITE NECESSARY FOR APPROVAL**

“The Commission notes that bitcoin is still in the relatively early stages of its development and that, over time, regulated bitcoin-related markets of significant size may develop. Should such markets develop, the Commission could consider whether a bitcoin ETP would, based on the facts and circumstances then presented, be consistent with the requirements of the Exchange Act”

***As issuers, we are concerned the SEC staff have created a moving target in their use of the word “significant”***

***The Staff have never provided guidance as to what “significant” means, enabling them to move the goal post indefinitely***

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## VANECK SOLIDX BITCOIN TRUST SHOULD BE APPROVED

Issues identified in disapproval order have been resolved

- There now exists a significant regulated derivatives market for bitcoin
- Relevant markets – Cboe, bitcoin futures, OTC desks – are regulated
- Concerns around price manipulation have been mitigated, consistent with approval of prior commodity-based ETPs
- Cboe's rules are designed to surveil for potential manipulation of Trust shares
- Promotes investor protection

To the extent necessary, we stand ready to make additional changes to the product structure consistent with Section 6(b)(5) of the Exchange Act to address any concerns of Commission or Staff

## THE PERSISTENT DOUBLE STANDARD

<b>ICO and altcoin offerings continue unabated</b>	<b>VanEck SolidX Bitcoin Trust in regulatory limbo</b>
Limited disclosures	Significant disclosures
No registration	Proper S-1 registration statement
Nebulous regulatory framework	Established regulations and safeguards
No investor protections	Enables investors to make informed investment decisions
Unknown issuers, inadequate capital markets capability	Established issuer with decades of experience
No proper clearing, full counterparty risk	Traditional clearing and settlement
Investor losses from fraud and operational risk	Insurance protects investors from operational risk
<b><u>1000+</u></b> ICOs and altcoins in the market	<b><u>ZERO</u></b> bitcoin ETPs in the market