April 10, 2025

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-CboeBZX-2024-126

Dear Ms. Countryman:

Better Markets[1] appreciates the opportunity to comment on a proposed rule change filed by Cboe BZX Exchange, Inc. (Cboe), to list and trade shares of the BondBloxx Private Credit Trust (Trust).[2] The Trust intends to invest in private credit assets.[3] Private credit involves lending by non-bank institutions.[4] Since private lenders are not regulated, "they take on risk traditional banks can't or won't."[5] This makes private credit risky for retail investors. Because the Trust will be available to retail investors, the Commission should reject the proposed rule change.

The issue for retail investors is that private credit funds typically invest in illiquid debt investments.[6] "Private loans by their very nature rarely trade. That means fund managers do not have market data to rely on for objective valuations."[7] As a result, the loans that private credit funds make are difficult to value in the best of times.[8] So nobody really knows how to value the loans. The upshot is that the valuation of the loans can vary widely based on who is doing the

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[1] Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

[2] File No. SR-CboeBZX-2024-126.

[3] *Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the BondBloxx Private Credit Trust*, 90 Fed. Reg. 13,257, 13,257 (Mar. 20, 2025).

[4] Sam Boocker and David Wessel, *What is private credit? Does it pose financial stability risks?*, Brookings (Feb. 2, 2024), https://www.brookings.edu/articles/what-is-private-credit-does-it-pose-financial-stability-risks/.

[5] Blaine Townsend, *Private Credit: Coming Soon to a Portfolio Near You*, Kiplinger (Feb. 7, 2025), https://www.kiplinger.com/investing/private-credit-coming-soon-to-a-portfolio-near-you.

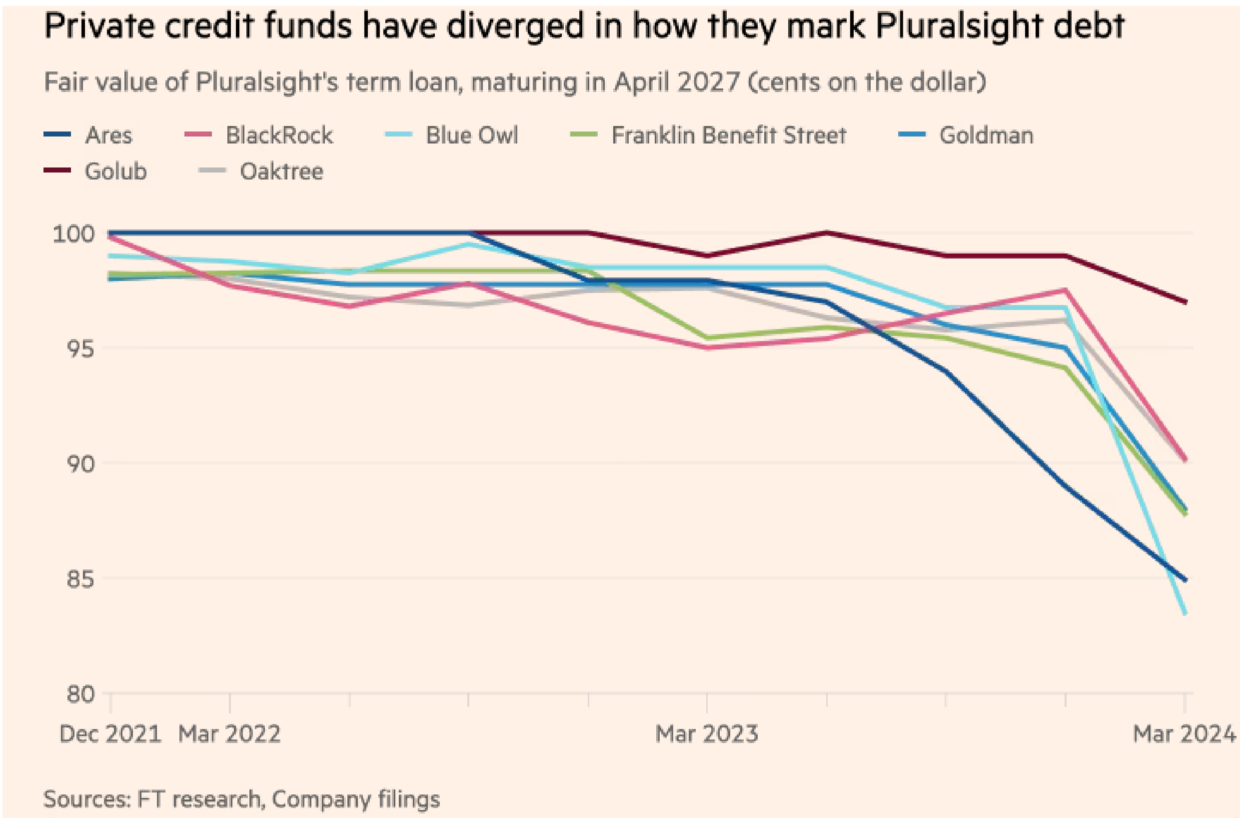
[6] Elisabeth de Fontenay and Yaron Nili, *Side Letter Governance*, 100 Wash. U. L. Rev. 907, 922 n.65 (2023).

[7] Eric Platt and Amelia Pollard, *A messy loan restructuring highlights risk lurking in private credit*, Financial Times (July 10, 2024), https://www.ft.com/content/b10dbb08-c745-40d0-a7fc-9b4024f1fd10.

[8] Matt Wirz, *Wall Street Races to Bring Private Credit to the Masses*, The Wall Street Journal (Oct. 3, 2024), https://www.wsj.com/finance/investing/wall-street-races-to-bring-private-credit-to-the-masses-8a25b624.

valuation.[9] Because nobody knows the loans' true valuation, it is unclear how anybody can know what the loans are worth.[10] This "poses a problem for investors, who could be left in the dark or potentially misled if a lender or buyout firm has been overly optimistic about its portfolio."[11]

A good example is the loss suffered by Vista Equity Partners, a private equity firm. In 2024, Vista lost its $4 billion investment in Pluralsight, a software company.[12] Vista bought Pluralsight in 2021, and private credit firms extended loans to Pluralsight as part of Vista's buyout. The loans were novel because they were based not on Pluralsight's cash flow or earnings but on how fast its revenue was growing. Regulated banks are unable to provide this type of credit because it is deemed too risky. Unsurprisingly, the valuation of Pluralsight's debt varied widely. The gulf widened as the company ran into trouble when its revenue fell. [13]



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[9] Silas Brown et al., *Flawed Valuations Threaten $1.7 Trillion Private Credit Boom*, Bloomberg (Feb. 27, 2024), https://www.bloomberg.com/news/articles/2024-02-28/how-private-credit-market-boom-is-hiding-potential-valuation-problems?sref=mQvUqJZj.

[10] *Id.*

[11] Eric Platt and Amelia Pollard, *A messy loan restructuring highlights risk lurking in private credit*, Financial Times (Jul. 10, 2024), https://www.ft.com/content/b10dbb08-c745-40d0-a7fc-9b4024f1fd10.

[12] Eric Platt, Sujeet Indap, and Amelia Pollard, *Vista and co-investors lose $4bn in Pluralsight restructuring*, Financial Times (Aug. 22, 2024), https://www.ft.com/content/cfbc4e2c-5205-4698-a50c-7264b69b3db7.

[13] Platt and Pollard, supra note 11.

Because the loans were not publicly traded, the extent to which they were under stress did not materialize until it became clear Vista might lose the business.[14] This is a common problem with private credit, as the lack of clarity on what an asset is worth means that the absence of a consensus may hide troubled loans.[15] The divergent valuations in the case of Vista's investment in Pluralsight thus illustrate one of the major risks of private credit: "the inherent difficulty of valuing non-traded loans, which could expose investors in these funds to unforeseen losses."[16]

The episode highlights the risk that some private credit valuations are "untethered to reality."[17] And the losses here were suffered by institutional investors. One can only imagine how retail investors would fare investing in a fund with the majority of its assets in private credit.

The proposal does nothing to quell these concerns. It states that the Trust "values its assets using market quotations when they are readily available" but admits that the "private credit assets that the Trust may hold may not have readily available market quotations and typically are fair valued based on prices provided by a third-party pricing service."[18] Although "fair value represents the amount that the Trust could reasonably expect to receive if its assets were sold at the time of valuation," the proposal admits further that "fail valuation involves subjective judgments, and it is possible that the fair value determined for an asset may differ materially from the value that could be realized upon the sale of such asset."[19]

The fact that private credit loans rarely trade also means that, in addition to valuation difficulties, they are illiquid. So "investors acquiring these loans should expect to hold them to maturity or face steep losses in need of an emergency exit."[20] But retail investors "are more likely to 'have liquidity needs that institutional investors typically do not.'"[21] And it is unclear how retail investors can easily withdraw money from funds loaded with illiquid assets.[22] This is

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[14] *Id.*

[15] Silas Brown et al., *Flawed Valuations Threaten $1.7 Trillion Private Credit Boom*, Bloomberg (Feb. 27, 2024), https://www.bloomberg.com/news/articles/2024-02-28/how-private-credit-market-boom-is-hiding-potential-valuation-problems?sref=mQvUqJZj.

[16] Platt and Pollard, supra note 11.

[17] *Id.*

[18] *Notice of Filing of a Proposed Rule Change to List and Trade Shares of the BondBloxx Private Credit Trust Under BZX Rule l4.11(f), Trust Issued Receipts*, 89 Fed. Reg. 106,648, 106,550-51 (Dec. 30, 2024).

[19] *Id.* at 106,551.

[20] Fang Cai and Sharjil Haque, *Private Credit: Characteristics and Risks*, FEDS Notes (Feb. 23, 2024), https://www.federalreserve.gov/econres/notes/feds-notes/private-credit-characteristics-and-risks-20240223.html.

[21] Edward F. Greene, et al., *The Need for a Comprehensive Approach to Capital Markets Regulation*, 2021 Colum. Bus. L. Rev. 714, 742 (2022) (quoting Elisabeth D. de Fontenay, et al., Comment Letter On Concept Release on Harmonization of Securities Offering Exemptions 3-4 (Sept. 24, 2019), https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1010&context=research-data).

[22] Lydia Beyoud, *Apollo's Race Toward Private-Credit ETFs to Face SEC Scrutiny*, Bloomberg (Nov. 1, 2024), https://finance.yahoo.com/news/apollo-race-toward-private-credit-142000095.html.

why Jaime Dimon has said that "'there could be hell to pay'" if retail investors get access to private credit assets that tend to be less liquid than traditional financial assets.[23]

Indeed, retail investors are unlikely to understand that an exchange-traded product (ETP) like the Trust may have liquidity concerns. They may believe that the Trust is akin to the exchange-traded funds (ETFs) that have become ubiquitous in investment portfolios and that are normally highly liquid. A private credit ETF would itself be "a potential mismatch" because ETFs "are open-end funds that must manage daily flows" whereas private credit is "generally slow to trade."[24] The risks are even greater in an ETP like the Trust because it "does not have the same legal protections as funds registered under the Investment Company Act of 1940," as are ETFs.[25] So retail investors "may not fully understand the investment risks or the restrictions on redemptions from an illiquid asset class" like private credit assets in an ETP.[26]

Again, the proposal does little to quell these concerns. It recognizes that "there is limited sell-side liquidity available in the market for Private Credit Assets."[27] Its solution "to address concerns that may arise from the relative illiquidity of the secondary market for selling Private Credit Assets" and to "facilitate redemptions in the Trust" is to hold approximately 20% of the assets in the Trust in cash or cash equivalents"—what it calls the "Liquidity Sleeve."[28]

The proposal states that BondBloxx "expects that it will generally be able to fulfill redemption orders using this position" and that BondBloxx could increase this percentage during times of potentially high redemptions.[29] Nonetheless, the proposal admits that the remaining 80% of the Trust's holdings will consist of Private Credit Assets.[30] Seemingly recognizing that the Trust may not actually be able to fulfill all redemption orders with an 80/20 split in its holdings between illiquid and liquid assets, the proposal states that in this event the Trust may sell private credit assets in the secondary market to raise cash or arrange a line of credit or other financing using the portfolio of private credit assets as collateral.[31] These options, however, "will likely come at a cost to the Trust or may not be available to the Trust depending on market

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[23] Hannah Levitt, *Dimon Says 'Could be Hell to Pay' if Private Credit Sours*, Bloomberg (May 29, 2024), https://www.bloomberg.com/news/articles/2024-05-29/dimon-says-there-could-be-hell-to-pay-if-private-credit-sours?sref=mQvUqJZj.

[24] Brian Moriarty, *New Private Credit Funds Want Your Money. Here's Why You Should Be Cautious*, Morningstar (Mar. 28, 2025), https://www.morningstar.com/alternative-investments/private-credit-funds-want-your-money-heres-why-you-should-be-cautious.

[25] *Id.*

[26] Robin Wigglesworth, *Private credit is even larger than you think*, Financial Times (Apr. 17, 2024), https://www.ft.com/content/bf3f3e70-e849-41db-9a29-f2e5ed988e97.

[27] 89 Fed. Reg. at 106,649.

[28] *Id.* at 106,649-50.

[29] *Id.* at 106,650.

[30] *Id.*

[31] *Id.*

conditions."[32] So in the event that these mechanisms are not sufficient to accommodate redemptions in the Trust, the proposal states that "redemptions may be suspended until the Trust accumulates enough cash to facilitate additional redemptions," which the proposal states without explanation that BondBloxx "does not expect to last for longer than approximately 2.5 months."[33]

In soliciting comments on the proposal, the Commission recognizes that the rules of a national securities exchange must be designed to "'protect investors and the public interest.'"[34] But the combination of illiquid, opaque, and hard-to-value assets that would be in the Trust is why private credit is normally sold only to institutional and other accredited investors. They are deemed to be able to "fend for themselves." On the other hand, retail investors need the disclosures that come with public securities. They are not supposed to be subjected to an industry that is "unregulated and not very transparent."[35] Yet the Trust seeks to bring loans "that have primarily been available to institutional investors" to retail investors.[36] The Commission should not allow this end run around the securities laws and should reject the proposed rule change.

Conclusion

We hope these comments are helpful as the Commission considers the proposal.

Sincerely,

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[32] *Id.*

[33] *Id.*

[34] 90 Fed. Reg. 13,259.

[35] Townsend, supra note 5.

[36] 89 Fed. Reg. at 106,649 (quoting 15 U.S.C. 78f(b)(5)).