SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100473; File No. SR-CboeBZX-2024-055)

July 9, 2024

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, to Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 From the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 25, 2024, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to exempt closed-end management investment companies registered under the Investment Company Act of 1940 from the annual meeting of shareholders requirement set forth in Exchange Rule 14.10(f). On July 2, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amendment No. 1 replaced and superseded the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. ("BZX" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to exempt closed-end management investment companies registered under the Investment Company Act of 1940 from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

the annual meeting of Shareholders requirement set forth in Exchange Rule 14.10(f). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 1 to SR-CboeBZX-2024-055 amends and replaces in its entirety the proposal as originally submitted on June 25, 2024. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

Exchange Rule 14.10(f) requires that each Company[3] listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of Shareholders[4] no later than one year after the end of the Company's fiscal year-end, unless such Company is a limited partnership that meets the requirements of Rule 14.10(e)(1)(D)(iii). Now, the Exchange is

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[3] See Exchange Rule 14.1(a)(3).

[4] "Shareholder" mans a record or beneficial owner of a security listed or applying to list. See Exchange Rule 14.1(a)(28).

proposing to exempt closed-end management investment companies registered under the Investment Company Act of 1940 ("Closed-End Funds") from the requirements of Rule 14.10(f). The annual meeting requirement applicable to Closed-End Funds originates only from exchange listing rules and is not otherwise required under the Investment Company Act of 1940 ("1940 Act") or applicable state laws. Furthermore, under Exchange Rules Closed-End Funds are the only registered investment companies that are required to hold annual Shareholder meetings. The Exchange believes that the burdens of the annual meeting requirement on Closed-End Funds outweigh the benefits, and as discussed more fully below, the Exchange believes that other provisions of the 1940 Act preserve Shareholder interests that the annual meeting requirement is intended to protect.

Background

Generally, the main purpose of an annual meeting is to allow Shareholders to elect the directors who are responsible for the oversight of the company and its strategic direction. The annual meeting requirement dates back to 1909 and derives from a provision included in individually negotiated listing agreements on New York Stock Exchange ("NYSE").[5] NYSE began listing investment companies in 1929, by which time the annual Shareholder meeting requirement was enmeshed in its listing rules and therefore also applied to investment companies. Since that time, the annual meeting requirement has been memorialized across all listing exchange rules applicable to Closed-End Funds, including Exchange Rules.[6]

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5 See Special Study Group of the Committee on Federal Regulation of Securities, ABA Section of Business Law, Special Study on Market Structure, Listing Standards and Corporate Governance, 57 Bus. Law. 1487, 1497 (2002).

6 The Exchange adopted listing standards for Closed-End Funds in 2018, which were based on existing criteria applicable to Closed-End Funds listed on NYSE American LLC ("NYSE American"). See Securities Exchange Act Nos. 83596 (July 5, 2018) 83 FR 32162 (July 11, 2018) (SR-CboeBZX-2018-047) (Notice of Filing of a Proposed Rule Change To Amend BZX Rule 14.8, General Listings Requirements-Tier I); 84377 (October 5, 2018) 83 FR 51747 (October 12, 2018) (Notice of Filing of Amendment Nos. 2 and 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment

The listing rules of exchanges, including the Exchange, are the only authority that require listed Closed-End Funds to hold annual shareholder meetings. As such, the Exchange proposes to eliminate such requirement for the reasons set forth below.

1. 1940 Act

Although the annual Shareholder meeting requirement dates back to 1909, the requirement was not memorialized in the 1940 Act. The 1940 Act is generally designed to protect the interests of Shareholders with respect to all critical aspects of the structure and operation of a fund. Nonetheless, when Congress considered requiring that registered investment companies hold annual meetings it declined to adopt the requirement.[7]

While the 1940 Act does not require an annual Shareholder meeting, it otherwise provides various mechanisms designed to protect the interest of Closed-End Fund Shareholder interests.

a. 1940 Act Preserves Shareholders' Ability to Elect Directors

Like other types of corporations, trusts, or partnerships, an investment company must be operated for the benefit of its owners. Unlike most business organizations, however, investment companies are typically organized and operated by an investment adviser that is responsible for the day-to-day operations of the fund. In most cases, the investment adviser is separate and distinct from the fund it advises, with primary responsibility and loyalty to its own Shareholders.

Nos. 2 and 4, To Amend BZX Rule 14.8, General Listings Requirements-Tier I, To Adopt Listing Standards for Closed-End Funds).

7 See Investment Trusts and Investment Companies: Hearings on H.R. 10065 Before the House Subcomm. on Interstate and Foreign Commerce, 76th Cong., 3d Sess. 43 (1940) at 502 (testimony of Merrill Griswold, Chairman, Massachusetts Investors Trust of Boston) (noting that the initial bill proposed to give shareholders the right to elect directors at annual meetings). Commission staff also later confirmed that the 1940 Act does not impose a requirement to hold annual meetings in a 1986 no-action letter. See John Nuveen & Co. Inc. (pub. avail. Nov. 18, 1986). The letter took the position that the necessity for annual meetings was generally a question of state law.

Because the structure of a fund differs from a company, the board of directors plays an important role in fund governance by overseeing the performance of service providers that run the fund's day-to-day operations (including the fund's adviser) and monitoring for potential conflicts of interests.

The 1940 Act protects Closed-End Fund Shareholders by preserving their ability to elect directors who are responsible for the oversight of the fund. Specifically, the 1940 Act requires a Closed-End Fund to hold a Shareholder meeting in two instances: (1) to elect the initial board of directors; and (2) to fill all existing vacancies on the board if Shareholders have elected less than a majority of the board. Further, the 1940 Act requires that Shareholders fill any director vacancies if they have elected less than two-thirds of the directors holding office.[8]

The Exchange believes these provisions are designed to provide Shareholders with a say on fund management while also protecting Shareholders from ceding control of an investment company to a new board without any Shareholder notice or action. Through these requirements, the Exchange believes the 1940 Act ensures that fund Shareholders retain the direct ability to meet and determine important corporate governance decisions when, as Congress determined, they are appropriate. In the Exchange's view, this reflects an important distinction from operating companies, who are not subject to these requirements under the 1940 Act, and whose Shareholders do not have these rights under federal securities laws.

b. 1940 Act Requires Independent Directors to Approve Significant Actions

Given the structure of investment companies, conflicts of interest can arise because the interest of the investment adviser is to maximize its own profits for the benefit of its owners, which may conflict with its duty to act in the best interests of the investment company and its

[8] See Section 16(a) of the 1940 Act.

Shareholders. Therefore, the board of directors, and particularly "independent directors"[9] play a critical role in policing potential conflicts of interest between the investment company and its investment adviser and affiliates. The 1940 Act requires at least 40 percent of the board of directors be comprised of independent directors.[10] However, certain exemptive rules upon which Closed-End Funds frequently rely require that a fund's board have at least a majority of independent directors.[11]

To further protect Shareholder interests, the 1940 Act also requires that a majority of independent directors approve significant actions, especially those that involve a potential conflict of interest such as approval of the investment advisory agreement between a fund and its investment adviser.[12] Specifically, the following types of actions require approval of a majority of a fund's independent directors:

- Approval of advisory agreement (Section 15);
- Approval of underwriting agreement (Section 15);
- Selection of independent public accountant (Section 32);

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9 An independent director is a person other than an "interested person" as defined in Section 2(a)(19) of the 1940 Act. In general, under the 1940 Act, an independent director cannot currently have, or at any time during the previous two years have had, as significant business relationship with the fund's adviser, principal underwriter (distributor), or affiliates. An independent director also cannot own any stock of the investment adviser or certain related entities, such as parent companies or subsidiaries.

10 See Section 10(a) of the 1940 Act.

11 See 1940 Act Rule 10f-3 (permitting a fund to participate in an offering when an affiliated broker-dealer is part of the underwriting syndicate); 1940 Act Rule 15a-4(b)(2) (permitting a fund to enter into an interim advisory contract without shareholder approval following a change in control of the adviser); 1940 Act Rule 17a-7 (permitting a fund to engage in cross-trades with affiliates); 1940 Act Rule 17a-8 (permitting mergers between affiliated funds without shareholder approval); 1940 Act Rule 17d-1(d)(7) (permitting a fund to share joint insurance policies with affiliates); 1940 Act Rule 17e-1 (permitting a fund to pay commissions to affiliated brokers); 1940 Act Rule 17g-1(j) (permitting a fund to share a joint fidelity bond with affiliates); and 1940 Act Rule 23c-3 (permitting a closed-end fund to periodically repurchase shares from investors). See also Rule 0-1(7) under the 1940 Act.

12 See Section 15 of the 1940 Act.

- Acquisition of securities by a fund from an underwriting syndicate of which the fund's adviser or certain other affiliates are members (Rule 10f-3(h));
- The purchase or sale of securities between investment companies that have the same investment adviser (Rule 17a-7(e));
- Mergers or asset acquisitions involving investment companies that have the same investment adviser (Rule 17a-8(a));
- Use of an affiliated broker-dealer to effect portfolio transactions on a national securities exchange (Rule 17e-1(b)); and
- Approval of the fund's fidelity bond coverage (Rule 17g-1(d)).

The Exchange notes that in in certain circumstances the SEC has observed independent directors can provide greater protection to Shareholders than an annual shareholder vote. For example, when the SEC adopted Rule 32a-4 under the 1940 Act to allow a fund to avoid seeking ratification of the fund's independent public accountant at annual meetings it stated:[13]

> Section 32(a)(2) of the Act requires that the selection of a fund's independent public accountant be submitted to shareholders for ratification or rejection. New rule 32a-4 exempts a fund from this requirement if the fund has an audit committee consisting entirely of independent directors to oversee the fund's auditor. The new rule could provide significant benefits to shareholders. Many believe shareholder ratification of a fund's independent auditor has become a perfunctory process, with votes that are rarely contested. As a consequence, we believe that the ongoing oversight provided by an independent audit committee can provide greater protection to shareholders than shareholder ratification of the choice of auditor.

[13] See Section 10(a) of the 1940 Act; Role of Independent Directors of Investment Companies, SEC Release No. IC-24816 (Jan. 2, 2001), available at https://www.sec.gov/rules/final/34-43786.htm ("2001 Release").

c. The 1940 Act Requires a Shareholder Vote on Material Governance and Policy Changes

In addition to Shareholder vote requirements for approving certain measures, the 1940 Act further protects Shareholders by explicitly requiring investment companies to obtain Shareholder approval for most material governance or policy changes. Specifically, the following types of changes require Shareholder approval:

- A new investment management agreement or a material amendment to an investment management agreement (Section 15);
- A change from closed-end to open-end status, or vice versa (Section 13);
- A change from diversified company to non-diversified company (Section 13);
- A change in a policy with respect to borrowing money, issuing senior securities, underwriting securities that other persons issue, purchasing or selling real estate or commodities or making loans to other persons, except in each case in accordance with the recitals of policy contained in its registration statement in respect thereto (Section 13);
- A deviation from a policy in respect of concentration of investments in any particular industry or fundamental investment policy (Section 13); and
- A change in the nature of the investment company's business so as to cease to be an investment company (Section 13).

The 1940 Act Shareholder vote to approve such changes requires the following:

> …The vote of a majority of the outstanding voting securities of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such

company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.[14]

Given this, the voting standard under (A) above requires the fund to meet a de facto quorum of at least 50 percent of all outstanding shares to even hold the vote, and to pass the vote the fund must receive an affirmative vote of 67 percent of the shares present. Alternatively, the standard under (B) above requires a majority of all outstanding voting securities. The Exchange believes the voting standard for investment companies is thus higher than most standard operating companies and illustrates the 1940 Act's strong protections for Shareholders.

d. Exchange-Listed Closed-End Funds are the Only Registered Investment Companies that are Required to Hold Annual Shareholder Meetings

Closed-End Funds are the only form of registered investment company listed on the Exchange required to hold annual Shareholder meetings under Exchange Rules. Specifically, the Exchange recently changed its rules to provide that Derivative Securities[15] listed on the Exchange are exempt from the annual Shareholder meeting requirement.[16] Thus, while exchange-listed Closed-End Funds are subject to the requirements discussed above and their Shareholders benefit from the protections and reports that the 1940 Act mandates, they are the

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14 See Section 2(a)(42) of the 1940 Act

15 Rule 14.10(e)(1)(F)(ii) provides that "Derivative Securities" is defined as the following: Commodity Futures Trust Shares (Rule 14.11(e)(7)), Commodity Index Trust Shares (Rule 14.11(e)(6)), Commodity-Based Trust Shares (Rule 14.11(e)(4)), Commodity-Linked Securities (Rule 14.11(d)(K)(ii)), Currency Trust Shares (Rule 14.11(e)(5)), Equity Gold Shares (Rule 14.11(e)(2), Equity Index-Linked Securities (Rule 14.11(d)(K)(i)), ETF Shares (Rule 14.11(l)), Fixed Income Index-Linked Securities (Rule 14.11(d)(K)(iii)), Futures-Linked Securities (Rule 14.11(d)(K)(iv)), Index Fund Shares (Rule 14.11(c)), Index-Linked Exchangeable Notes (Rule 14.11(e)(1), Managed Fund Shares (Rule 14.11(i)), Managed Portfolio Shares (Rule 14.11(k)), Managed Trust Securities (Rule 14.11(e)(10)), Multifactor Index-Linked Securities (Rule 14.11(d)(K)(v)), Partnership Units (Rule 14.11(e)(8)), Portfolio Depository Receipts (Rule 14.11(b)), SEEDS (Rule 14.11(e)(12)), Tracking Fund Shares (Rule 14.11(m)), Trust Certificates (Rule 14.11(e)(3), and Trust Issued Receipts (Rule 14.11(f)). Derivative Securities are currently the only products registered under the 1940 Act that are listed on the Exchange. There are currently no Closed-End Funds listed on the Exchange.

16 See Securities Exchange Act Release No. 99524 (February 13, 2024) 89 FR 12919 (February 20, 2024) (SR-CboeBZX-2024-010).

only form of registered investment company required to hold annual Shareholder meetings because of Exchange rules.

Proposal

Rule 14.10(e) provides for the exemptions from the corporate governance rules afforded to certain types of companies. Specifically, Rule 14.10(e)(1)(E) sets forth exemptions from the corporate governance rules specifically applicable to management investment companies. The Exchange proposes to adopt Rule 14.10(e)(1)(E)(iv) which would provide that management investment companies that are Closed-End Funds, as defined in Rule 14.8(a), are exempt from the requirements relating to Meetings of Shareholders (as set forth in Rule 14.10(f)). The Exchange also proposes to amend Interpretation and Policy .13 (Management Investment Companies) and .15 (Meetings of Shareholders or Partners) to reiterate that that Closed-End Funds are exempt from the Meetings of Shareholders requirement under Rule 14.10(f).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Exchange Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be 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

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

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.

The Exchange believes that the proposal protects investors and the public interest because it exempts Closed-End Funds from the burdensome annual Shareholder meeting requirement, which the Exchange believes is unnecessary given the investor protections afforded under the 1940 Act. Specifically, the Exchange believes that because the 1940 Act preserves Shareholder ability to elect Directors, requires Independent Directors to approve significant actions, and requires a Shareholder vote on material governance and policy changes, the Exchange's requirement to hold an annual Shareholder meeting is unnecessary. The Exchange further believes that because no other registered investment companies listed on the Exchange are required to hold an annual Shareholder meeting, there is not a compelling reason for Closed-End Funds to be subject to such a requirement.

The Exchange also believes amending Rule 14.10 to explicitly provide that Closed-End Funds are exempt from the annual Shareholder meeting requirement are designed to promote transparency and clarity in the Exchange's Rules. The Exchange believes that with these changes, Rule 14.10 would clearly provide that Closed-End Funds are exempt from the annual Shareholder meeting requirements required under Rule 14.10(f).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The purpose of the proposal is to eliminate the burdensome and unnecessary annual Shareholder meeting requirement for Closed-End Funds and would apply equally to all similarly situated funds listed on the Exchange. Other listing venues can adopt similar rules if they so

desire. As such, the Exchange does not believe that the proposal imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-055 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeBZX-2024-055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-CboeBZX-2024-055 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

[19] 17 CFR 200.30-3(a)(12).