



October 1, 2018

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Exchange-Traded Funds, File No. S7-15-18 (the “Release”)

Dear Mr. Fields:

Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to submit this comment letter in response to the request for comments in the Release and express its support regarding the Securities and Exchange Commission’s (the “Commission”) proposed new rule under the Investment Company Act of 1940 (the “Investment Company Act”) that would permit exchange-traded funds (“ETFs”) that satisfy certain conditions to operate without the requirement of obtaining an exemptive order (the “ETF Rule”).

Cboe operates four registered national securities exchanges in the U.S. for the trading of equity securities, one of which, Cboe BZX Exchange, Inc., (“Cboe Listings” or the “Exchange”) is a listing venue that currently lists 271 exchange-traded products (“ETPs”) from 52 sponsors. Cboe is a leading exchange operator for the trading of ETPs, with its four equity exchanges accounting for 20.4% of the daily trading volume in ETPs.¹ As such, Cboe is acutely interested in modernizing the regulatory framework for ETFs in order to help sponsors bring ETFs to market in a more consistent, transparent, and efficient manner and applauds the Commission for proposing the ETF Rule in an effort to accomplish such goals as it relates to the exemptive relief process under the Investment Company Act. Cboe further believes that now is an opportune time to review exchange listing requirements applicable to ETFs for the same reasons and encourages the Commission to work with exchanges in order to achieve similar goals related to listing ETFs on a national securities exchange.

As noted above, Cboe is submitting this comment letter in support of the proposed ETF Rule and to respond to certain specific topics for which comments were requested.

¹ Based on data from September, 2018.



Proposed Conditions for Reliance on ETF Rule

Issuance and Redemption of Shares

Cboe believes that the proposed requirements for the issuance and redemption process between ETFs and authorized participants are appropriate. Specifically, Cboe believes that creation unit size should remain flexible and that the ETF Rule should not identify specific size requirements because, as pointed out by the Commission, there is no incentive for setting very large or very small creation units in a way that would disrupt the arbitrage mechanism. Cboe also agrees with the proposed definition of “authorized participant.”

Listing on a National Securities Exchange

Cboe agrees that being listed and traded on a national securities exchange is a fundamental characteristic of an ETF and that the ETF Rule appropriately requires listing on a national securities exchange. As noted throughout this letter, Cboe is undertaking a wholesale review of exchange listing rules for ETFs and believes that there are a number of areas in which those rules could be optimized to help ETFs come to market in a more consistent, transparent, and efficient manner.

For background, prior to being listed on a national securities exchange, an ETF must: (i) satisfy the requirements of the Investment Company Act (which the ETF Rule is partly intended to address); and (ii) meet the listing requirements for a national securities exchange. In order to meet the listing requirements for a national securities exchange, an ETF must either fit within an exchange’s “generic” listing standards or separately be approved by the Commission under Section 19(b)(2) of the Act, which requires a separate filing to be submitted by the proposed listing exchange on Form 19b-4 and approved by the Commission. This rule filing process unnecessarily places the Commission as the gatekeeper for straight-forward products coming to market, often without any clear benefit to investors, especially given the extensive disclosure obligations applicable to ETFs under the Investment Company Act, and is frequently slow, inefficient, and results in inconsistently applied standards across ETFs.

Cboe encourages the Commission to work with listing exchanges in order to make the listing process more consistent, transparent, and efficient with the goal of removing itself wherever possible from the review of the appropriateness of listing specific ETF products. Consistent



with recent public comments from Commissioner Peirce,² Cboe believes that the Commission should instead defer to the exchanges' exercise of their self-regulatory authority to act as the gatekeeper in a manner similar to the current corporate listing structure. As increasing numbers of ETFs come to market and as investors grow increasingly comfortable with the ability ETFs provide for the execution of various investment strategies in a low-cost and transparent fashion, such an approach becomes ever more important in order to efficiently support innovation and competition among ETFs and sponsors and to reduce costs for investors. As such, Cboe encourages the Commission to evaluate exchange proposals to broaden their generic listing standards through this lens and to alleviate the Division of Trading and Markets' role as a gatekeeper in order to achieve efficiencies with exchange listing processes in a manner very similar to those which the ETF Rule is designed to accomplish.

Intraday Indicative Value

As noted in the Release, intraday indicative value ("IIV") is, at best, slow and likely stale and, at worst, confusing, inaccurate, and misleading. While IIVs for ETFs that consist only of U.S. equities tend to be more accurate, Cboe generally agrees with the sentiment expressed in the Release and supports the ETF Rule not requiring dissemination of an IIV, especially in light of the daily portfolio holdings disclosure requirement discussed below. With this in mind, Cboe Listings plans to file a proposal to eliminate the IIV dissemination requirement within its ETF listing requirements when the daily portfolio holding disclosure requirement is in place. It's worth noting, however, that it would not propose to prohibit the dissemination of IIV, so ETF sponsors would be free to have the IIV disseminated in the event that they deem that such information would be beneficial to market participants.

Portfolio Holdings

Cboe believes that daily portfolio transparency is an important tool to support the arbitrage mechanism and should be required for an ETF to meet the ETF Rule. Cboe also supports any effort to standardize the format in which portfolio components are made available.

Cboe notes, however, that there is significant room for innovation around portfolio transparency requirements for ETFs and that while daily portfolio transparency should be required in order to meet the ETF Rule, it does not mean that Cboe does not support

² See "Motherhood and Humble Pie: Remarks before the Cato Institute's FinTech Unbound Conference," (September 12, 2018). Available at: <https://www.sec.gov/news/speech/speech-peirce-091218>.



exemptive relief applications for ETFs that would not meet the proposed portfolio transparency requirements. To the contrary, Cboe continues to believe that semi-transparent ETFs will provide significant benefits to investors³ and encourages the Commission to move expeditiously toward allowing such products to come to market.

Baskets

Cboe supports the adoption of custom baskets under the ETF Rule in order to make such custom baskets available to all issuers rather than a select few where proper policies and procedures are in place.

Website Disclosure

Cboe supports the requirement for additional disclosures, but believes that the ETF Rule should include more specific standards for the data points that would be disclosed. Without standardization, such information will not allow for meaningful comparison across ETFs and/or sponsors. Cboe believes that the Commission should consider adopting the standards articulated in the comment letter from Dave Nadig⁴ as part of the final ETF Rule.

Index-based and Actively Managed ETFs

Cboe agrees with the Commission that the ETF Rule should eliminate the distinction between index-based and actively managed ETFs. Eliminating the distinction will allow for more fair and open competition among ETFs and sponsors, to the benefit of end investors. Further, Cboe does not believe that there are any policy issues unique to either index-based or actively managed ETFs that justify disparate treatment. As noted above, Cboe applauds the Commission for undertaking a review of the regulatory framework applicable to ETFs under the Investment Company Act and believes that it is similarly necessary to review the framework applicable to the exchange listing process. To this point, Cboe Listings has submitted several rule filings that would also eliminate certain disparate requirements for index-based and actively managed ETFs under its listing rules. Specifically, Cboe Listings has proposed to: (i) amend its generic listing standards to allow index-based ETFs to include

³ See Bats Global Markets, Inc. Comment Letter re: Exchange Act Release No. 77117, File No. SR-NYSEArca-2016-08 (July 1, 2016). Available at: http://cdn.cboe.com/resources/comment_letters/ETP-Comment-Letter-01-July-2016.pdf.

⁴ See Dave Nadig, Managing Director, ETF.com Comment Letter re: Exchange Traded Funds: File No. s7-15-18 (August 28, 2018). Available at: <https://www.sec.gov/comments/s7-15-18/s71518-173138.htm>.



derivatives in a manner consistent with what is already allowed for actively managed ETFs;⁵ and (ii) allow the portfolio holdings of index-based ETFs to determine compliance with the generic listing standards, consistent with the generic listing standards applicable to actively managed ETFs.⁶

Leveraged ETFs

Cboe agrees with the position taken in the proposed ETF Rule that leveraged ETFs should be treated differently than other index-based ETFs. Cboe does, however, believe that the definition of the term “leveraged ETF” is unnecessarily broad and would include certain ETFs that should be subject to the ETF Rule. Proposed Rule 6c-11(c)(4) specifically excludes from the ETF Rule any ETFs that “seek, directly or indirectly, to provide returns that exceed the performance of a market index by a specified multiple, or to provide returns that have an inverse relationship to the performance of a market index, over a fixed period of time.” Cboe does not believe that every ETF that seeks to provide returns that have an inverse relationship to the performance of a market index should be considered a leveraged ETF, but rather only those ETFs that seek to provide returns that exceed the performance of a market index by a *specified inverse multiple*. As proposed, however, leveraged ETFs could include ETFs that employ hedging strategies that actually act to reduce risk in the ETF and do not raise the same issues that are traditionally related to using leverage within an ETF. As such, Cboe recommends that the Commission either change the definition of “leveraged ETF” to include only those ETFs that seek to provide returns that exceed the performance of a market index by a specified multiple or otherwise make clearer the types of strategies that are intended to be captured by the definition of leveraged ETF. Left unchanged, the ETF Rule will disincentivize ETF sponsors from employing strategies that would act to reduce risk for investors.

Cboe also believes that it should be made clear that any such exclusion would not de facto include any index that includes derivatives. Further to this point, Cboe does not believe that the ETF Rule should exclude ETFs that use derivatives in order to achieve targeted returns over longer periods of time. For instance, an ETF that seeks to track a target return index (such as an index that tracks an underlying index, but uses derivatives in order to create a maximum downside and/or maximum upside on returns of that underlying index) should not

⁵ [See SR-CboeBZX-2018-048.](#)

⁶ [See Securities Exchange Act Release No. 83594 \(July 5, 2018\), 83 FR 32158 \(July 11, 2018\) \(SR-CboeBZX-2018-044\).](#)



be considered a leveraged ETF, especially when such ETF or index seeks to achieve such returns on a quarterly or less frequent basis.

Such products are growing significantly in popularity and Cboe believes that any definition of leveraged ETF that includes the above described indexes or ETFs (and thus excludes such ETFs from the ETF Rule) would significantly increase the cost of bringing such products to market as compared to other ETFs and would detract from additional innovation and competition in the space, to the detriment of investors.

Standardized ETP Segmentation

The failure to establish industry standard definitions for the numerous product types and regulatory regimes under which they are brought to market has inhibited the ability of investors to fully appreciate the differences between the various product types that fall under the umbrella of the broader term ETP. Cboe believes that the continued proliferation of ETPs and ETFs without the establishment of a standardized classification system only acts to further ossify investor confusion. An industry-wide initiative to adopt standards for describing and classifying ETPs will foster a greater general understanding of ETPs and facilitate a broader dialogue among both investors and industry participants, to the benefit of all.

Unit Investment Trusts

Cboe agrees with the Commission's position that ETFs structured as unit investment trusts ("UITs") should continue to operate pursuant to their existing exemptive orders and that new UITs should be subject to Commission review as part of the exemptive process. The unique issue set applicable to UITs as compared to non-UIT ETFs warrant the disparate treatment between UITs and other ETFs.

Cboe appreciates the opportunity to reply to the request for comments in the Release and strongly supports the adoption of the ETF Rule, but also believes that there are a number of areas that Cboe Listings, in cooperation with the Commission, could further optimize the process for launching and operating ETFs. As asset flows into ETPs and the number of listed products in the U.S. continue to grow rapidly,⁷ Cboe believes that it becomes increasingly

⁷ Based on inflows for US-listed ETPs year-to-date through August 31, 2018 as calculated and published by ETF.com, there have been \$173.7 billion in net inflows in 2018, there are a total of \$3.718 trillion invested in ETPs, and there have been 185 new ETPs launched in 2018.



more important to evaluate all areas of the regulatory framework in order to help sponsors bring ETFs to market in a more predictable, transparent, and efficient manner. Adoption of the proposed ETF Rule will make positive strides in this direction, but Cboe believes that allowing exchanges to broaden the generic listing standards in order to increase the number of ETFs that can be listed without an exchange rule filing and reducing the Division of Trading and Markets' role as a gatekeeper for ETFs coming to market will make the entire regulatory framework for ETFs as efficient as possible.

Cboe welcomes the opportunity 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 that reads "Laura Morrison".

Laura Morrison
SVP, Global Head of Exchange Traded Products

A handwritten signature in blue ink that reads "Kyle Murray".

Kyle Murray
Assistant General Counsel

cc:

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission

The Honorable Robert J. Jackson Jr.
Commissioner
Securities and Exchange Commission

The Honorable Hester M. Peirce
Commissioner



Securities and Exchange Commission

The Honorable Elad L. Roisman
Commissioner
Securities and Exchange Commission

The Honorable Kara M. Stein
Commissioner
Securities and Exchange Commission

Dalia Blass
Director
Division of Investment Management
Securities and Exchange Commission

Brett Redfearn
Director
Division of Trading and Markets
Securities and Exchange Commission