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Page 1 of \* 33

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2021 - \* 059

Amendment No. (req. for Amendments \*)

Filing by Cboe BZX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) \*

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Section 806(e)(2) \*

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Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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## Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

The Exchange proposes to exempt certain categories of investment companies registered under the Investment Company Act of 1940 from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company.

## Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Sarah	Last Name *	Tadtman
Title *	Counsel		
E-mail *	stadtman@cboe.com		
Telephone *	(913) 815-7203	Fax	

## Signature

Pursuant to the requirements of the Securities Exchange of 1934, Cboe BZX Exchange, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 09/22/2021

(Title \*)

By Kyle Murray

(Name \*)

VP, Associate General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Kyle Murray

Date: 2021.09.22  
11:15:51 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

Add Remove View

21-059 19b-4 - (f)(6) (Shareholder Approval)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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21-059 Exhibit 1 (Shareholder Approval)

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

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Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

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Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

21-059 Exhibit 5 (Shareholder Approval)

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**Item 1.        Text of the Proposed Rule Change**

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to exempt certain categories of investment companies registered under the Investment Company Act of 1940 (the “1940 Act”) from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company. The text of the proposed rule change is provided in Exhibit 5.

(b)      Not applicable.

(c)      Not applicable.

**Item 2.        Procedures of the Self-Regulatory Organization**

(a)      The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on July 16, 2021.

(b)      Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, Counsel, (913) 815-7203.

**Item 3.        Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a)      Purpose

The Exchange proposes to amend Rules 14.10(e)(1)(A) and (E) to exempt certain categories of investment companies registered under the 1940 Act from the requirement to

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<sup>1</sup>        15 U.S.C. 78s(b)(1).

<sup>2</sup>        17 CFR 240.19b-4.

obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company. The proposal is substantially similar to a recent rule change made by NYSE Arca, Inc. (“Arca”).<sup>3</sup> The Exchange also proposes to make structural changes to Rules 14.10(e)(1)(A) and (E).

By way of background, Exchange Rule 14.10(i)(1) requires issuers to obtain shareholder approval in connection with the acquisition of the stock or assets of another company, in the following circumstances:

(A) where, due to the present or potential issuance of common stock, including shares issued pursuant to an earn-out provision or similar type of provision, or securities convertible into or exercisable for common stock, other than a public offering for cash:

(1) the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or

(2) the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities; or

(B) any director, officer or Substantial Shareholder (as defined by Rule 14.10(i)(5)(C)) of the Company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the Company or assets to be

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<sup>3</sup> See Securities Exchange Act No. 91901 (May 14, 2021) 86 FR 27487 (May 20, 2021) (SR-NYSEArca-2020-54) (Order approving of a proposed rule change, as modified by amendment no. 2, to amend NYSE Arca Rule 5.3E to exempt registered investment companies that list certain categories of securities defined as derivative and special purpose securities under NYSE Arca Rules from having to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of an affiliated registered investment company (the “Arca Approval Order”).

acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more.

Exchange Rules 14.10(e)(1)(A) and 14.10(e)(1)(E) exempt certain categories of issuers from certain corporate governance requirements.

Now, the Exchange proposes to amend Rules 14.10(e)(1)(A) and 14.10(e)(1)(E) to exempt certain categories of investment companies registered under the 1940 Act from the requirement to comply with Rule 14.10(i)(1) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8<sup>4</sup> (Mergers of affiliated companies) (“Rule 17a-8”) under the 1940 Act and does not otherwise require shareholder approval under the 1940 Act and the rules thereunder or any other Exchange rule.<sup>5</sup> Specifically, the Exchange proposes to exempt from the shareholder approval provision described herein Portfolio Depository Receipts, as provided under Rule 14.11(b), as well as management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund

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<sup>4</sup> 17 CFR 270.17a-8.

<sup>5</sup> The Exchange proposes to exempt both Portfolio Depository Receipts (Rule 14.11(b)) and certain management investment companies that are Index Fund Shares (Rule 14.11(c)), Managed Fund Shares (Rule 14.11(i)), Managed Portfolio Shares (Rule 14.11(k)), ETF Shares (Rule 14.11(l)), and Tracking Fund Shares (Rule 14.11(m)) (collectively, with Portfolio Depository Receipts, the “1940 Act Securities”). Each of the listed categories are issued by an entity organized under the 1940 Act. In proposing this exemption, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund’s organizational documents. See Investment Company Act Release No. 25666 at Footnote 18.

Shares as defined in Rules 14.11(c), 14.11(i), 14.11(k), 14.11(l), and 14.11(m), respectively.<sup>6</sup>

In general, the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or asset of another company is designed to give existing shareholders a vote on the issuance of stock that may dilute their voting or economic rights. The Exchange notes that Exchange Rule 14.10(i)(1) is also intended to give shareholders a vote on transactions where a director, officer, or substantial shareholder of the listed company has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. For the reasons described below, as well as the protections embedded in Rule 17a-8, the Exchange believes that these concerns are limited with respect to 1940 Act Securities. Therefore, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from having to obtain shareholder approval under Exchange rules which can be both time consuming and expensive.

The Exchange believes that the potential economic and voting dilution concerns sometimes associated with a large share issuance are unlikely to be present when an issuer of a 1940 Act Security issues shares in connection with the acquisition of the stock or assets of an affiliated registered investment company. As described above, the proposed exemption will only apply to issuers of investment companies organized under the 1940 Act.<sup>7</sup> Sections 17(a)(1)-(2) of the 1940 Act prohibit, among other things, certain transactions between

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<sup>6</sup> Index Fund Shares listed pursuant to Rule 14.11(c) are substantively similar to Investment Company Units listed pursuant to Arca Rule 5.2-E(j)(3). Similarly, Tracking Fund Shares listed pursuant Rule 14.11(m) are substantively similar to Active Proxy Portfolio Shares listed pursuant to Arca Rule 8.601-E.

<sup>7</sup> As of June 10, 2021, approximately 97% of securities listed on the Exchange are issued by investment companies registered under the 1940 Act.

registered investment companies and affiliated persons.<sup>8</sup> Rule 17a-8 provides an exemption from Sections 17(a)(1)-(2) for certain mergers of affiliated companies provided that the board of directors of each investment company, including a majority of the directors that are not interested persons, affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction.<sup>9</sup> Because the shares issued by the acquiring investment company are issued at a price equal to the fund's net asset value,<sup>10</sup> the board of directors is able to make an affirmative determination that the merger is not dilutive to existing shareholders.<sup>11</sup> With respect to potential concerns about voting dilution, holders of Portfolio Depository Receipts and management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund Shares either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances.

The Exchange believes that the same provisions of Rule 17a-8 that protect against dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant

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<sup>8</sup> 15 U.S.C. 80a-17(a)(1)-(2). See also the definition of "affiliated person" in the 1940 Act at 15 U.S.C 80a-2(a)(3).

<sup>9</sup> 17 CFR 270.17a-8.

<sup>10</sup> The Exchange notes that the proposing releases for Rule 17a-8 specifically contemplated that, in certain circumstances, the price paid may deviate from a fund's net asset value due to adjustments for tax purposes. See Investment Company Act Release No. 25259 at Footnote 26.

<sup>11</sup> The Exchange notes that the shares are issued at a fund's net asset value when the fund is registered. Rule 17a-8 also includes requirements to protect against dilution when the fund to be acquired is unregistered. Notwithstanding these requirements applicable when a fund is unregistered, the Exchange's exemption will only apply when each fund that is a party to the merger is registered.

interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board of each merging company must make an affirmative decision that the transaction is in the best interest of its respective company and that the transaction will not result in dilution for existing shareholders, the Exchange believes there is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

Under Rule 17a-8, an affiliated merger must be approved by a majority of the outstanding voting securities of the merging company that is not the surviving company unless certain conditions are met. However, Rule 17a-8 does not require the surviving company (i.e., the fund issuing shares in the merger) to obtain the approval of its shareholders. When the Commission proposed amendments to Rule 17a-8, it specifically sought comment on whether the outstanding voting securities of the fund that will survive the merger should also be required to approve the merger.<sup>12</sup> Importantly, the Commission ultimately did not include a requirement of approval of shareholders of the surviving company in its final rule.

Given that Rule 17a-8 does not require a surviving company issuer of 1940 Act Securities to obtain shareholder approval in the context of a merger of affiliated companies, the Exchange believes it is appropriate to exempt such issuers of 1940 Act Securities from having to comply with Exchange Rule 14.10(i)(1). As described above, the Exchange only proposes to exempt issuers of 1940 Act Securities from having to comply with Exchange Rule 14.10(i)(1) if they are issuing shares to acquire the stock or assets of an affiliated

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<sup>12</sup> See Investment Company Act Release No. 25259 at Section II(A)(2)(a): "Should the outstanding voting securities of the fund that will survive the merger also be required to approve the merger?"



registered investment company. Notwithstanding the proposed exemption, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.<sup>13</sup> Thus, an issuer of a 1940 Act Security may still be required to obtain shareholder approval in connection with the acquisition of the stock or assets of an affiliated company even if such transaction complies with Rule 17a-8 if such transaction would require shareholder approval under other applicable Exchange Rules, another provision of the 1940 Act or the rules and regulations thereunder, state law, or a fund's organizational documents.

Based on the above proposed changes, the Exchange proposes to restructure Rules 14.10(e)(1)(A) and (E). Specifically, the Exchange proposes to split Rule 14.10(e)(1)(A) into subparagraphs (i) and (ii). Subparagraph (i) will provide the current exemptions for asset-backed issuers and other passive issuers, while subparagraph (ii) will provide for the proposed exemption of Rule 14.10(i)(1) applicable to issuers of Portfolio Depository Receipts, as provided under Rule 14.11(b). The Exchange also proposes to split existing Rule 14.10(e)(1)(E) into subparagraphs (i), (ii), and (iii). Subparagraphs (i) and (ii) will provide the current exemptions for management investment companies, while subparagraph (iii) will provide for the proposed exemption of Rule 14.10(i)(1) applicable to certain categories of investment companies registered under the 1940 Act.

(b) Statutory Basis

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<sup>13</sup> See supra footnote 5.

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>14</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</sup> 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 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>16</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the protection of investors as protections afforded by Rule 17a-8, mean that (i) there is limited risk of dilution to existing shareholders as a result of an issuance of shares by an issuer of 1940 Act Securities in connection with the acquisition of the stock or assets of an affiliated company, and (ii) existing shareholders have a reduced risk of being disenfranchised as a result of a Rule 17a-8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid. With respect to

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<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> Id.

potential concerns about voting dilution, holders of Portfolio Depository Receipts and management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund Shares either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances.

The Exchange further believes its proposal is consistent with the protection of investors because its proposal is limited to registered investment companies that are organized under the 1940 Act. In the case of a merger of affiliated investment companies, the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company, must affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction. Where the shares issued by the surviving investment company are issued at a price equal to the fund's net asset value, the board of directors is able to conclude that the interests of shareholders in such a transaction will not be diluted. With respect to voting dilution, the Exchange notes that holders of 1940 Act Securities have very limited voting rights, including no right to vote on the annual election of a board of directors.

The Exchange believes that the same provisions of Rule 17a-8 that protect against dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board of each merging company

must make an affirmative determination that the transaction is in the best interest of its investment company that the transaction will not result in dilution for existing shareholders, there is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

The Exchange notes that while shareholders of the non-surviving company must approve the merger under certain circumstances, Rule 17a-8 does not require the shareholders of the surviving company to approve the transaction. Accordingly, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from the requirements of Rule 14.10(i)(1) in this same limited circumstance.

Notwithstanding the proposed exemption described above, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.<sup>17</sup>

The Exchange believes it is not unfairly discriminatory to offer the exemption only to issuers of 1940 Act Securities completing a merger with an affiliated registered investment company, as opposed to all issuers of securities listed pursuant to Exchange Rule 14.11, because only 1940 Act Securities are subject to the requirements of the 1940 Act which offer the protections against dilution and self-dealing described herein.

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<sup>17</sup> See supra footnote 5.

Lastly, the Exchange believes that the proposal is reasonable as it is substantially similar to a recent rule amendment made by Arca.<sup>18</sup>

**Item 4. 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 Act. The proposed amendment will not impose any burden on competition, as they simply propose to offer 1940 Act Securities a limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders. Further, the proposed rule change is substantively similar to Arca Rule 5.3E.

**Item 5. 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.

**Item 6. Extension of Time Period for Commission Action**

Not applicable.

**Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act<sup>19</sup> and Rule 19b-4(f)(6)<sup>20</sup> thereunder.

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<sup>18</sup> See supra footnote 3.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes that the proposal does not significantly affect the protection of investors or the public interest because, as discussed above, the proposal is consistent with the protection of investors as protections afforded by Rule 17a-8, meaning that (i) there is limited risk of dilution to existing shareholders as a result of an issuance of shares by an issuer of 1940 Act Securities in connection with the acquisition of the stock or assets of an affiliated company, and (ii) existing shareholders have a limited risk of being disenfranchised as a result of a Rule 17a-8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid. Furthermore, the proposal is substantially similar to a recent rule amendment made by Arca.<sup>21</sup>

The Exchange does not believe the proposed amendments will impose any significant burden on competition as they simply propose to offer 1940 Act Securities a

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<sup>21</sup> See supra footnote 3.

limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders.

For the foregoing reasons, this rule filing qualifies as a "non-controversial" rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. Waiver of the operative delay would provide certain investment companies registered under the 1940 Act immediate relief from the shareholder approval requirements of Rule 14.10(i) if the conditions proposed herein are met. Further, the Commission previously approved a substantively similar rule change on Arca and found it consistent with the Act.

(c) Not applicable.

(d) Not applicable.

**Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The Exchange's proposal is substantially similar to a recent rule amendment made by Arca, with two exceptions. The Arca rule exempts certain categories of "derivative and

special purpose securities”<sup>22</sup> from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company.<sup>23</sup> While the Arca rule provides an exemption for Investment Company Units and Active Proxy Portfolio Shares, the proposed Rule provides an exemption for Index Fund Shares and Tracking Fund Shares. However, as noted above those products are substantively similar to Investment Company Units and Active Proxy Portfolio Shares listed on Arca.<sup>24</sup>

**Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

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<sup>22</sup> For purposes of Arca Rule 5.3-E, derivative and special purpose securities are defined as those securities listed pursuant to Rules 5.2-E(h) (Unit Investment Trusts), 5.2-E(j)(2) (Equity Linked Notes), 5.2-E(j)(3) (Investment Company Units), 5.2-E(j)(4) (Index- Linked Exchangeable Notes), 5.2-E(j)(5) (Equity Gold Shares), 5.2-E(j)(6) (Equity- Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index- Linked Securities), 5.2-E(j)(8) (Exchange-Traded Fund Shares), 8.100-E (Portfolio Depositary Receipts), 8.200-E (Trust Issued Receipts), 8.201-E (Commodity-Based Trust Shares), 8.202-E (Currency Trust Shares), 8.203-E (Commodity Index Trust Shares), 8.204-E (Commodity Futures Trust Shares), 8.300-E (Partnership Units), 8.400-E (Paired Trust Shares), 8.600-E (Managed Fund Shares), 8.601-E (Active Proxy Portfolio Shares), 8.700-E (Managed Trust Securities) and 8.900-E (Managed Portfolio Shares). As noted above, Investment Company Units and Active Proxy Portfolio Shares are equivalent to Index Fund Shares and Tracking Fund Shares listed on the Exchange pursuant to Rule 14.11(c) and 14.11(m), respectively.

<sup>23</sup> See supra footnote 3.

<sup>24</sup> See supra footnote 6.



**Item 11.      Exhibits**

Exhibit 1.      Completed Notice of Proposed Rule Change for publication in the  
Federal Register.

Exhibit 2-4.      Not applicable.

Exhibit 5.      Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2021-059]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Exempt Certain Categories of Investment Companies Registered under the Investment Company Act of 1940 from the Requirement to Obtain Shareholder Approval Prior to the Issuance of Securities in Connection with Certain Acquisitions of the Stock or Assets of Another Company

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to exempt certain categories of investment companies registered under the Investment Company Act of 1940 (the “1940 Act”) from the requirement to obtain shareholder approval prior to the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

issuance of securities in connection with certain acquisitions of the stock or assets of another company. 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/](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**

The Exchange proposes to amend Rules 14.10(e)(1)(A) and (E) to exempt certain categories of investment companies registered under the 1940 Act from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company. The proposal is substantially similar to a recent rule change made by NYSE Arca, Inc. ("Arca").<sup>5</sup> The Exchange also proposes to make structural changes to Rules 14.10(e)(1)(A) and (E).

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<sup>5</sup> See Securities Exchange Act No. 91901 (May 14, 2021) 86 FR 27487 (May 20, 2021) (SR-NYSEArca-2020-54) (Order approving of a proposed rule change, as modified by amendment no. 2, to amend NYSE Arca Rule 5.3E to exempt registered investment companies that list certain categories of securities defined as derivative and special purpose securities under NYSE Arca Rules from having to obtain shareholder approval prior to the issuance of securities in connection

By way of background, Exchange Rule 14.10(i)(1) requires issuers to obtain shareholder approval in connection with the acquisition of the stock or assets of another company, in the following circumstances:

(A) where, due to the present or potential issuance of common stock, including shares issued pursuant to an earn-out provision or similar type of provision, or securities convertible into or exercisable for common stock, other than a public offering for cash:

(1) the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or

(2) the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities; or

(B) any director, officer or Substantial Shareholder (as defined by Rule 14.10(i)(5)(C)) of the Company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the Company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more.

Exchange Rules 14.10(e)(1)(A) and 14.10(e)(1)(E) exempt certain categories of issuers from certain corporate governance requirements.

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with certain acquisitions of the stock or assets of an affiliated registered investment company (the “Arca Approval Order”).

Now, the Exchange proposes to amend Rules 14.10(e)(1)(A) and 14.10(e)(1)(E) to exempt certain categories of investment companies registered under the 1940 Act from the requirement to comply with Rule 14.10(i)(1) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8<sup>6</sup> (Mergers of affiliated companies) (“Rule 17a-8”) under the 1940 Act and does not otherwise require shareholder approval under the 1940 Act and the rules thereunder or any other Exchange rule.<sup>7</sup> Specifically, the Exchange proposes to exempt from the shareholder approval provision described herein Portfolio Depository Receipts, as provided under Rule 14.11(b), as well as management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund Shares as defined in Rules 14.11(c), 14.11(i), 14.11(k), 14.11(l), and 14.11(m), respectively.<sup>8</sup>

In general, the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or asset of another company is

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<sup>6</sup> 17 CFR 270.17a-8.

<sup>7</sup> The Exchange proposes to exempt both Portfolio Depository Receipts (Rule 14.11(b)) and certain management investment companies that are Index Fund Shares (Rule 14.11(c)), Managed Fund Shares (Rule 14.11(i)), Managed Portfolio Shares (Rule 14.11(k)), ETF Shares (Rule 14.11(l)), and Tracking Fund Shares (Rule 14.11(m)) (collectively, with Portfolio Depository Receipts, the “1940 Act Securities”). Each of the listed categories are issued by an entity organized under the 1940 Act. In proposing this exemption, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund’s organizational documents. See Investment Company Act Release No. 25666 at Footnote 18.

<sup>8</sup> Index Fund Shares listed pursuant to Rule 14.11(c) are substantively similar to Investment Company Units listed pursuant to Arca Rule 5.2-E(j)(3). Similarly, Tracking Fund Shares listed pursuant Rule 14.11(m) are substantively similar to Active Proxy Portfolio Shares listed pursuant to Arca Rule 8.601-E.

designed to give existing shareholders a vote on the issuance of stock that may dilute their voting or economic rights. The Exchange notes that Exchange Rule 14.10(i)(1) is also intended to give shareholders a vote on transactions where a director, officer, or substantial shareholder of the listed company has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. For the reasons described below, as well as the protections embedded in Rule 17a-8, the Exchange believes that these concerns are limited with respect to 1940 Act Securities. Therefore, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from having to obtain shareholder approval under Exchange rules which can be both time consuming and expensive.

The Exchange believes that the potential economic and voting dilution concerns sometimes associated with a large share issuance are unlikely to be present when an issuer of a 1940 Act Security issues shares in connection with the acquisition of the stock or assets of an affiliated registered investment company. As described above, the proposed exemption will only apply to issuers of investment companies organized under the 1940 Act.<sup>9</sup> Sections 17(a)(1)-(2) of the 1940 Act prohibit, among other things, certain transactions between registered investment companies and affiliated persons.<sup>10</sup> Rule 17a-8 provides an exemption from Sections 17(a)(1)-(2) for certain mergers of affiliated companies provided that the board of directors of each investment company, including a majority of the directors that are not interested persons, affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their

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<sup>9</sup> As of June 10, 2021, approximately 97% of securities listed on the Exchange are issued by investment companies registered under the 1940 Act.

<sup>10</sup> 15 U.S.C. 80a-17(a)(1)-(2). See also the definition of “affiliated person” in the 1940 Act at 15 U.S.C 80a-2(a)(3).

shareholders will not be diluted as a result of the transaction.<sup>11</sup> Because the shares issued by the acquiring investment company are issued at a price equal to the fund's net asset value,<sup>12</sup> the board of directors is able to make an affirmative determination that the merger is not dilutive to existing shareholders.<sup>13</sup> With respect to potential concerns about voting dilution, holders of Portfolio Depositary Receipts and management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund Shares either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances.

The Exchange believes that the same provisions of Rule 17a-8 that protect against dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board of each merging company must make an affirmative decision that the transaction is in the best interest of its respective company and that the transaction will not result in dilution for existing shareholders, the Exchange believes there is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

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<sup>11</sup> 17 CFR 270.17a-8.

<sup>12</sup> The Exchange notes that the proposing releases for Rule 17a-8 specifically contemplated that, in certain circumstances, the price paid may deviate from a fund's net asset value due to adjustments for tax purposes. See Investment Company Act Release No. 25259 at Footnote 26.

<sup>13</sup> The Exchange notes that the shares are issued at a fund's net asset value when the fund is registered. Rule 17a-8 also includes requirements to protect against dilution when the fund to be acquired is unregistered. Notwithstanding these requirements applicable when a fund is unregistered, the Exchange's exemption will only apply when each fund that is a party to the merger is registered.

Under Rule 17a-8, an affiliated merger must be approved by a majority of the outstanding voting securities of the merging company that is not the surviving company unless certain conditions are met. However, Rule 17a-8 does not require the surviving company (i.e., the fund issuing shares in the merger) to obtain the approval of its shareholders. When the Commission proposed amendments to Rule 17a-8, it specifically sought comment on whether the outstanding voting securities of the fund that will survive the merger should also be required to approve the merger.<sup>14</sup> Importantly, the Commission ultimately did not include a requirement of approval of shareholders of the surviving company in its final rule.

Given that Rule 17a-8 does not require a surviving company issuer of 1940 Act Securities to obtain shareholder approval in the context of a merger of affiliated companies, the Exchange believes it is appropriate to exempt such issuers of 1940 Act Securities from having to comply with Exchange Rule 14.10(i)(1). As described above, the Exchange only proposes to exempt issuers of 1940 Act Securities from having to comply with Exchange Rule 14.10(i)(1) if they are issuing shares to acquire the stock or assets of an affiliated registered investment company. Notwithstanding the proposed exemption, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's

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<sup>14</sup> See Investment Company Act Release No. 25259 at Section II(A)(2)(a): "Should the outstanding voting securities of the fund that will survive the merger also be required to approve the merger?"



organizational documents.<sup>15</sup> Thus, an issuer of a 1940 Act Security may still be required to obtain shareholder approval in connection with the acquisition of the stock or assets of an affiliated company even if such transaction complies with Rule 17a-8 if such transaction would require shareholder approval under other applicable Exchange Rules, another provision of the 1940 Act or the rules and regulations thereunder, state law, or a fund's organizational documents.

Based on the above proposed changes, the Exchange proposes to restructure Rules 14.10(e)(1)(A) and (E). Specifically, the Exchange proposes to split Rule 14.10(e)(1)(A) into subparagraphs (i) and (ii). Subparagraph (i) will provide the current exemptions for asset-backed issuers and other passive issuers, while subparagraph (ii) will provide for the proposed exemption of Rule 14.10(i)(1) applicable to issuers of Portfolio Depository Receipts, as provided under Rule 14.11(b). The Exchange also proposes to split existing Rule 14.10(e)(1)(E) into subparagraphs (i), (ii), and (iii). Subparagraphs (i) and (ii) will provide the current exemptions for management investment companies, while subparagraph (iii) will provide for the proposed exemption of Rule 14.10(i)(1) applicable to certain categories of investment companies registered under the 1940 Act.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>16</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</sup> requirements that the rules

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<sup>15</sup> See supra footnote 7.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

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 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>18</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the protection of investors as protections afforded by Rule 17a-8, mean that (i) there is limited risk of dilution to existing shareholders as a result of an issuance of shares by an issuer of 1940 Act Securities in connection with the acquisition of the stock or assets of an affiliated company, and (ii) existing shareholders have a reduced risk of being disenfranchised as a result of a Rule 17a-8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid. With respect to potential concerns about voting dilution, holders of Portfolio Depository Receipts and management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund Shares either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances.

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<sup>18</sup> Id.

The Exchange further believes its proposal is consistent with the protection of investors because its proposal is limited to registered investment companies that are organized under the 1940 Act. In the case of a merger of affiliated investment companies, the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company, must affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction. Where the shares issued by the surviving investment company are issued at a price equal to the fund's net asset value, the board of directors is able to conclude that the interests of shareholders in such a transaction will not be diluted. With respect to voting dilution, the Exchange notes that holders of 1940 Act Securities have very limited voting rights, including no right to vote on the annual election of a board of directors.

The Exchange believes that the same provisions of Rule 17a-8 that protect against dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board of each merging company must make an affirmative determination that the transaction is in the best interest of its investment company that the transaction will not result in dilution for existing shareholders, there is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

The Exchange notes that while shareholders of the non-surviving company must approve the merger under certain circumstances, Rule 17a-8 does not require the shareholders of the surviving company to approve the transaction. Accordingly, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from the requirements of Rule 14.10(i)(1) in this same limited circumstance.

Notwithstanding the proposed exemption described above, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.<sup>19</sup>

The Exchange believes it is not unfairly discriminatory to offer the exemption only to issuers of 1940 Act Securities completing a merger with an affiliated registered investment company, as opposed to all issuers of securities listed pursuant to Exchange Rule 14.11, because only 1940 Act Securities are subject to the requirements of the 1940 Act which offer the protections against dilution and self-dealing described herein.

Lastly, the Exchange believes that the proposal is reasonable as it is substantially similar to a recent rule amendment made by Arca.<sup>20</sup>

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 Act. The proposed amendment will not impose any burden on competition, as they

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<sup>19</sup> See supra footnote 7.

<sup>20</sup> See supra footnote 5.

simply propose to offer 1940 Act Securities a limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders. Further, the proposed rule change is substantively similar to Arca Rule 5.3E.

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**

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>21</sup> and Rule 19b-4(f)(6)<sup>22</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-059 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-2021-059. This file number should be included on the subject line if e-mail 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 (<http://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, D.C. 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2021-059 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

(additions are underlined; deletions are {bracketed})

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## Rules of Cboe BZX Exchange, Inc.

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## Rule 14.10. Corporate Governance Requirements

(a)-(d) No change.

## (e) Exemptions from Certain Corporate Governance Requirements

This Rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets, and Companies listed on the Exchange prior to July 1, 2013. This Rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

## (1) Exemptions to the Corporate Governance Requirements

(A) Asset-backed Issuers and Other Passive Issuers. The following are exempt from the requirements relating to:

(i) Majority Independent Board [Rule 14.10(c)(2)(A)], Audit Committee [Rule 14.10(c)(3)], Independent Director Oversight of Executive Officer Compensation and Director Nominations [Rule 14.10(c)(4) and (5)], the Controlled Company Exemption [Rule 14.10(e)(3)(B)], and Code of Conduct [Rule 14.10(d)]:

(i)a asset-backed issuers; and

(ii)b issuers, such as unit investment trusts, including Portfolio Depository Receipts, which are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(ii) Shareholder Approval [Rule 14.10(i)(1)]: issuers, of Portfolio Depository Receipts as defined in Rule 14.11(b), shall not be required to comply with Rule 14.10(i)(1) in connection with the



acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act of 1940 and does not otherwise require shareholder approval under the Investment Company Act of 1940 and the rules thereunder or any other Exchange rule.

(B)-(D) No change.

(E) Management Investment Companies. Management investment companies (including business development companies) are subject to all the requirements of Rule 14.10, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the following:

(i) the Independent Directors requirement, the Independent Director Oversight of Executive Officer Compensation and Director Nominations requirements, and the Code of Conduct requirement, set forth in Rules 14.10(c)(2), 14.10(c)(4), 14.10(c)(5) and 14.10(d), respectively.

(ii) {In addition,} management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund Shares as defined in Rules 14.11(c), 14.11(i), 14.11(k), 14.11(l), and 14.11(m), respectively, are exempt from the Audit Committee requirements set forth in Rule 14.10(c)(3), except for the applicable requirements of SEC Rule 10A-3.

(iii) management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, ETF Shares, and Tracking Fund Shares as defined in Rules 14.11(c), 14.11(i), 14.11(k), 14.11(l), and 14.11(m), respectively, shall not be required to comply with Rule 14.10(i)(1) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act of 1940 and does not otherwise require shareholder approval under the Investment Company Act of 1940 and the rules thereunder or any other Exchange rule.

(F) No change.

(2)-(3) No change.

(f)-(j) No change.

#### *Interpretations and Policies*

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