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Erica A. Barker,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90082; File No. SR-CboeBZX-2020-060]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Fifth Amended and Restated Bylaws of the Exchange's Parent Corporation, Cboe Global Markets, Inc.

October 2, 2020.

I. Introduction

On July 30, 2020, Cboe BZX Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Fifth Amended and Restated Bylaws (the "Parent Bylaws") of its parent corporation, Cboe Global Markets, Inc. (the "Parent"). The proposed rule change was published for comment in the **Federal Register** on August 19, 2020.³ The Commission received no comment letters regarding the proposed rule change. On September 24, 2020, the Exchange filed Amendment No. 1 to the proposal.⁴ The Commission is

publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description

The Exchange proposed certain amendments to the Parent Bylaws that, according to the Exchange, would "improve the governance processes" of the Parent and "make certain provisions more consistent with the Delaware General Corporation Law ("DGCL")."⁵ According to the Exchange, many of the proposed changes reflect corporate governance best practices and, in some instances, provide clarity and flexibility to the Parent Bylaws.⁶

*Proposed Changes to Article 2—Stockholders*⁷

The majority of the proposed changes amend Section 2.11 (Nomination of Directors) and Section 2.12 (Notice of Business at Annual Meetings). According to the Exchange, the changes are designed to reflect the most up-to-date practices under the DGCL and provide the Board with additional information and advance notice in connection with nominations and the conduct of business at annual and special meetings. In particular, the Exchange combines current Section 2.12 into Section 2.11 and amends provisions that govern notice requirements for annual and special meetings, as well as provisions that provide general procedures and practices in connection with notices. The proposed delineation does not alter the process or definition of either type of meeting, but instead provides for significantly more detailed written notice requirements as well as updates to the manner and timeliness of notices.

Additionally, as detailed further in the Notice, the proposed rule change relocates and expands text concerning nominees for directors and elections of directors, as well as amends provisions concerning the place of annual and

special meetings and the adjournment of meetings.⁸

Further, the Exchange proposes to update provisions that govern the preparing of the voting list, the ability of the Board to appoint a director to preside over meetings in the absence of the Chairman of the Board, and provisions concerning the procedural authority of the presiding officer at any stockholder meeting.⁹

*Proposed Changes to Article 3—Directors*¹⁰

The proposed rule change amends provisions concerning director vacancies, notice for special meetings of the Board, and the routine filing of consents following an action by the Board.¹¹

The proposed change also adds new Section 3.15 (Emergency Bylaws). In particular, that new section provides certain temporary emergency provisions that would apply at the outset of an emergency, disaster, or catastrophe, notwithstanding anything to the contrary in the Certificate of Incorporation or the Bylaws, only for so long as a quorum of the Board cannot readily be convened for action. The Exchange notes that proposed Section 3.15 is meant to provide the Parent with short-term flexibility to continue operations during an emergency situation, and that proposed paragraph (f) makes clear that, as soon as it is practicable for a majority of the elected directors to reconvene, they would be expected to do so.¹²

*Proposed Changes to Article 4—Committees*¹³

The proposed rule change to Section 4.1 (Designation of Committees) adds language to reflect that the Board may designate one or more committees of the Board, and also adds text to address the absence or disqualification of committee members and allow committee members

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89550 (August 13, 2020), 85 FR 51117 ("Notice").

⁴ In Amendment No. 1, the Exchange provided additional detail and clarity on a few points without materially changing the proposal or the proposed rule text. Specifically, in Amendment No. 1, the Exchange: (i) Provided additional support for its proposed restrictions on the use of audio, video, and cell phones during stockholder meetings, including information on past practice by the Exchange, underlying authority for such restrictions in the current Parent Bylaws, and comparison to the practices of other Delaware-incorporated public companies; (ii) clarified that the provisions of proposed Section 3.15(g) may need to be filed pursuant to Section 19 of the Exchange Act; (iii) clarified that proposed Section 3.15 is meant to provide short-term flexibility to continue operations during the initial stage of an emergency situation, and that proposed paragraph (f) makes clear that, as soon as it is practicable for a majority of the elected directors to reconvene, they would be

expected to do so; and (iv) added further explanation of the provision in proposed Section

4.1 regarding the limitation of the power and authority vested in a Board committee in the management of the business and affairs of the Parent. To promote transparency of its proposed amendment, when the Exchange filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the filing, which then became publicly available on the Commission's website.

⁵ See Notice, *supra* note 3, at 51117.

⁶ See Notice, *supra* note 3.

⁷ See Notice, *supra* note 3, for a discussion of the detailed proposed changes to Article 2 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

⁸ See Notice, *supra* note 3, at 51119–51120. See also Section 2.10 (Action at Meeting), 2.11 (Notice of Business and Nomination of Directors at Meetings of Stockholders), 2.1 (Place of Meetings), 2.2 (Annual Meeting), 2.3 (Special Meeting), and 2.7 (Adjournments).

⁹ See also Amendment No. 1 (concerning restrictions on the use of audio, video, and cell phones during stockholder meetings).

¹⁰ See Notice, *supra* note 3, for a discussion of the detailed proposed changes to Article 3 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

¹¹ See Section 3.5 (Vacancies), Section 3.10 (Special Meetings), and Section 3.13 (Action by Consent). See also Notice, *supra* note 3, at 51121.

¹² See Amendment No. 1.

¹³ See Notice, *supra* note 3, for a discussion of the detailed proposed changes to Article 4 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

to unanimously appoint another Director to act at the meeting in place of any such absent or disqualified member. In addition, the Exchange proposes to add text to reflect the power and authority of Board committees.¹⁴

The proposed rule change to Section 4.2 (The Executive Committee) replaces a list of specific actions and matters that are not to be handled by the Executive Committee and replaces it with a reference to matters under the DGCL that are to be submitted to stockholders for approval.

The proposed change to Section 4.5 (The Nominating and Governance Committee) reduces the minimum size requirement of that committee from five members to three members.

*Proposed Changes to Article 8—Notices*¹⁵

The proposed rule changes in Section 8.1 (Notices) allow notices sent by messenger or overnight courier to be left at the recipient's address and also updates language concerning delivery by electronic mail and when electronic mail delivery is not allowed. The Exchange also proposes to amend Section 8.2 (Electronic Notice) to allow for electronic delivery of materials to stockholders unless the stockholder has opted-out of electronic transmission (currently, electronic transmission is permitted only when a stockholder has opted-in to electronic delivery).

*Proposed Rule Changes to Article 11—Forum for Adjudication of Disputes*¹⁶

The proposed rule changes to Article 11 add clarifying provisions and additional detail regarding the exclusive forum for adjudication of disputes.

Finally, the proposed rule change makes non-substantive edits to the Parent Bylaws, including updating paragraph lettering and numbering and ensuring consistent use of defined terms.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Act,¹⁸ which requires, that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change reflects the Exchange's stated goals to improve the governance process of the Parent and update the Parent Bylaws to reflect and track the DGCL and current best practices.¹⁹ The Exchange has represented that it does not believe the proposed rule changes are controversial and that the proposed provisions are common among comparable public companies.²⁰

The Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act, including Section 6(b)(1) thereunder, in that the Exchange, and its Parent on the Exchange's behalf as applicable, will remain so organized and have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

While proposed Section 3.15 will provide the Parent with special limited powers to ensure continued operations at the onset of an emergency situation that otherwise prevents the Board from obtaining the necessary quorum to convene and exercise its power, that section is intended only to provide limited short-term flexibility to ensuring continue operations of the Parent during the initial stage of the emergency situation. Pursuant to proposed paragraph (f), a majority of the elected directors are expected to reconvene as soon as it is possible to do so. In addition, the provisions in new Section 3.15 concerning amendments to the Parent Bylaws remain subject to existing

Section 10.2 and, as applicable, the rule filing requirements of Section 19 of the Act.²¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2020-060 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-2020-060. 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 (<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, DC 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2020-060 and should be submitted on or before October 29, 2020.

¹⁴ See Amendment No. 1 (noting that any Board committee may act only insofar as the resolution of the Board of Directors permits, which is consistent with how Article 4 currently operates).

¹⁵ See Notice, *supra* note 3, for a discussion of the detailed proposed changes to Article 8 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

¹⁶ See Notice, *supra* note 3, for a discussion of the detailed proposed changes to Article 11 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

¹⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(1).

¹⁹ See Notice, *supra* note 3, at 51122.

²⁰ The Exchange represents that other public companies have provisions similar to what it is proposing, and that some of its proposed rule changes have been adopted by other securities and commodities exchanges, including Nasdaq, Inc., Intercontinental Exchange, and the CME Group, Inc. *Id.*

²¹ 15 U.S.C. 78s. See also Amendment No. 1.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**. Amendment No. 1 provided additional detail and clarity on a few points without materially changing the proposal or the proposed rule text.²² The Commission notes that Amendment No. 1 does not change the substance of the proposed rule change as it was initially filed, but merely adds detail to a few select items of the proposal regarding their intended scope. These points of clarification add helpful detail to support the proposal without materially altering it. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.²³

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change, as modified by Amendment No. 1 (SR-CboeBZX-2020-060), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90075; File No. SR-NYSEArca-2020-56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend NYSE Arca Rules 5.2-E(j)(3), 5.2-E(j)(8), 5.5-E(g)(2), 8.600-E, and 8.900-E

October 2, 2020.

On June 18, 2020, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or

"Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain listing requirements relating to maintaining a minimum number of beneficial holders and minimum number of shares outstanding. The proposed rule change was published for comment in the **Federal Register** on July 7, 2020.³

On August 17, 2020, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has received no comment letters on the proposed rule change. The Commission is issuing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

I. Description of the Proposal

The Exchange proposes to amend NYSE Arca Rules 5.2-E(j)(3) and 5.5-E(g)(2) (Investment Company Units), 5.2-E(j)(8) (Exchange-Traded Fund Shares), 8.600-E (Managed Fund Shares), and 8.900-E (Managed Portfolio Shares) (collectively, "Fund Shares") to (1) remove the listing requirement that, following the initial twelve-month period after commencement of trading of a series of Investment Company Units, Exchange-Traded Fund Shares, Managed Fund Shares or Managed Portfolio Shares, respectively, on the Exchange, such series have at least 50 beneficial holders, and (2) replace the existing minimum number of shares requirements⁷ with a requirement that a series of Fund Shares have at least one

creation unit outstanding on an initial and continued listing basis.⁸

The Exchange believes that the requirement that a series of Fund Shares listed on the Exchange must have at least 50 beneficial shareholders is no longer necessary. The Exchange believes that the requirements of Rule 6c-11 under the 1940 Act and, in particular, the website disclosure requirements of Rule 6c-11(c), together with the existing creation and redemption process, serve to mitigate the risks of manipulation and lack of liquidity that the shareholders requirement was intended to address. The Exchange further believes that requiring at least one creation unit to be outstanding at all times, together with the enhanced disclosure requirements of Rule 6c-11, will facilitate an effective arbitrage mechanism that, for Investment Company Units, Managed Fund Shares, and Exchange-Traded Fund Shares, will provide investors with sufficient transparency into the holdings of the underlying portfolio and help ensure that the trading price in the secondary market remains in line with the value per share of a fund's portfolio. As an example, the Exchange notes that Rule 6c-11(c)(1)(vi) requires additional disclosure if the premium or discount is in excess of 2% for more than seven consecutive days, so that there would be transparency to investors in the event there are indications of an inefficient arbitrage mechanism.

With respect to Managed Portfolio Shares, while these securities do not publicly disclose their portfolio holdings daily and are not eligible to rely on Rule 6c-11, the Exchange believes that the applicable Verified Intraday Indicative Value and other information required to be disseminated in connection with the listing and trading of Managed Portfolio Shares ensures transparency of key values and information, and that such information is sufficient to support an effective arbitrage process, independent of any minimum shareholders requirement.

The Exchange states that the arbitrage mechanism generally causes the market price and the net asset value per share to align, and the functioning of the arbitrage mechanism helps to ensure that the trading price in the secondary market is at fair value. The Exchange further states that the existence of the creation and redemption process, as well as the proposed requirement that at least one creation unit is always

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89197 (June 30, 2020), 85 FR 40720 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 89584, 85 FR 51817 (August 21, 2020). The Commission designated October 5, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Commentary .01(d) to NYSE Arca Rule 5.2-E(j)(3) (requiring a minimum of 100,000 shares of a series of Investment Company Units to be outstanding at commencement of trading); NYSE Arca Rule 5.2-E(j)(8)(e)(1)(A) (requiring the Exchange to establish a minimum number of Exchange-Traded Fund Shares to be outstanding at the time of commencement of trading); NYSE Arca Rule 8.600-E(d)(1)(A) (requiring the Exchange to establish a minimum number of Managed Fund Shares to be outstanding at the time of commencement of trading); and NYSE Arca Rule 8.900-E(d)(1)(A) (requiring the Exchange to establish a minimum number of Managed Portfolio Shares to be outstanding at the time of commencement of trading).

²² See *supra* note 4 for a description of Amendment No. 1.

²³ 15 U.S.C. 78s(b)(2).

²⁴ *Id.*

²⁵ 17 CFR 200.30-3(a)(12).

⁸ The Exchange represents that the term "creation unit" would have the same meaning as defined in Rule 6c-11(a)(1) under the Investment Company Act of 1940 ("1940 Act").