August 5, 2024

Via Electronic Filing

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1091

Re: Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 From the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f) (Release No. 34-100473; **File No. SR–CboeBZX–2024–055**)

Dear Ms. Countryman:

On behalf of our members, the Investment Adviser Association (**IAA**), Securities Industry and Financial Markets Association (**SIFMA**), SIFMA's Asset Management Group (**SIFMA AMG**) and Insured Retirement Institute (**IRI**) are writing in support of the Cboe BZX Exchange's (**CBOE**) proposed amendments to exempt closed-end funds (**CEFs**) registered under the Investment Company Act of 1940 (**1940 Act**) from the annual meeting of shareholders requirement set forth in CBOE Exchange Rule 14.10(f).[1] Long-term retail shareholders, including those saving for retirement and education, use listed CEFs to gain exposure to a wide array of income-producing assets in the public and private global markets, including many assets that are difficult to access in other investment products and a wrapper that allows asset managers to maintain investment strategy conviction during market volatility. As demonstrated by the data

[1] Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 From the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f), Exchange Act Release No. 100473, 89 Fed. Reg. 57491 (July 15, 2024), *available at* https://www.govinfo.gov/content/pkg/FR-2024-07-15/pdf/2024-15404.pdf (**CBOE Proposal**).

contained in the Investment Company Institute's (**ICI**) letter in the comment file for SR-CboeBZX-2024-055 (**ICI Letter**),[2] the annual meeting requirement is harming this important market for long-term retail investors. This requirement is creating an end-run around the very protections the 1940 Act is intended to provide and allowing the very harms to long-term investors that Congress and the Securities and Exchange Commission (**SEC**) analyzed when formulating the 1940 Act.

As discussed further in the ICI Letter, Congress debated including an annual meeting requirement in the 1940 Act, but decided that the harm that a controlling shareholder could cause by electing different trustees, who in turn would change the investment management contract or the fund's investment policies, was thought to be too great to retail shareholders, who generally invested based on a fund's investment strategy, relied on continuity of the fund's management, and were statistically less likely to participate in annual meetings. Instead, Congress enshrined specified governance protections in the 1940 Act that render an annual meeting and director elections superfluous, such as specified instances of shareholder election of directors, director independence requirements, and a "vote of a majority of the outstanding voting securities" (as defined in the 1940 Act) for specified governance and policy changes.[3]

Among all investment companies registered with the SEC under the 1940 Act, which includes mutual funds, exchange-traded funds (**ETFs**), unlisted CEFs, unit investment trusts, and money market funds, only listed CEFs are required to hold an annual meeting under CBOE's rulebook. This annual meeting requirement is not derived from federal or state law, but rather is a vestige of exchange listing standards that predates the 1940 Act and reflects the bygone thinking that investment companies—which were then in their infancy and not well understood—should be treated as generally akin to operating companies.[4] In particular, since exchanges first applied this requirement to listed CEFs, Congress passed the 1940 Act, which explicitly enumerates the

---

[2] Letter from Paul G. Cellupica, General Counsel, and Kevin Ercoline, Assistant General Counsel, ICI, to Vanessa A. Countryman, Secretary, SEC (Aug. 2, 2024).

[3] *See A Bill to Provide for the Registration and Regulation of Investment Companies and Investment Advisers, and For Other Purposes: Hearing on S. 3580 Before a Subcomm. of the Comm. on Banking and Currency*, 76th Cong. 504 (1940) (statement of Merrill Griswold, Chairman, Massachusetts Investors Trust of Boston).

[4] The most prominent early exchange, the NYSE, first began requiring annual meetings for operating companies in 1909, as a provision of individually negotiated listing agreements. *See* Special Study Group of the Committee on Federal Regulation of Securities, ABA Section of Business Law, *Special Study on Market Structure, Listing Standards and Corporate Governance*, 57 Bus. Law. 1487, 1497 (2002). The NYSE began listing investment companies in 1929, only after adopting special listing requirements that included annual financial reporting requirements for those investment companies. *See New York Stock Exchange to List Securities of Investment Trusts—Tentative Requirements Announced*, The Commercial & Financial Chronicle, Vol. 128, No. 3337, 3764-65 (June 8, 1929); *The Regulation of Management Investment Trusts for the Protection of Investors*, 46 Yale L. J. 1211, 1218 (1937). The special listing requirements assumed that an investment company would have an annual meeting, as financial reporting and annual meetings had become inextricably intertwined under the NYSE's governance requirements. *See* Douglas C. Michael, *Untenable Status of Corporate Governance Listing Standards Under the Securities Exchange Act*, 47 Bus. Law. 1461, 1467-68 (1992).

instances in which voting is required in lieu of imposing annual meetings,[5] and every major state where investment companies incorporate or organize has removed the annual meeting requirement.[6] The CBOE Proposal notes that there are significant differences between listed CEFs and listed operating companies, which justify exempting listed CEFs from CBOE's annual meeting requirement. The CBOE Proposal also underscores that there are no 1940 Act-like parallel legal protections for the shareholders of public operating companies.[7]

Because annual meetings frequently have limited retail investor participation, the end result of the annual meeting requirement is a paradigm that allows a minority investor with an outsized influence over the proxy contest process to engage in conduct that is antithetical to the long-term investor-protection objectives of the 1940 Act. More broadly, emboldened by short-term profit-seeking, activist activity in the listed CEF market has soared recently and is rendering the listed CEF market unsustainable, with no new listed CEFs launching last year at a time when the unlisted CEF market is booming and ETFs show no sign of slowing down.[8] This development is to the detriment of long-term retail shareholders.

We support eliminating CBOE's annual meeting requirement for listed CEFs because it is superfluous to the requirements in the 1940 Act, unnecessarily saddles CEF shareholders with millions of dollars in expenses,[9] and has been misused to facilitate the very harms the 1940 Act sought to prevent. Accordingly, to protect long-term shareholder interests in a manner consistent with Congressional intent, we urge the SEC to adopt CBOE's proposed rule change to end the annual meeting requirement for listed CEFs.

---

[5] Given that the exchange annual meeting requirement first was applied to CEFs before the enactment of the 1940 Act, the necessity of the continued application of the annual meeting requirement to CEFs must be re-evaluated in light of the 1940 Act's protections.

[6] The vast majority of CEFs are organized under Delaware, Maryland or Massachusetts law, which do not require that registered investment companies, including CEFs, hold annual meetings. Some states, such as Maryland, required registered investment companies to hold annual shareholder meetings until the 1980s, when these requirements were eliminated. Currently, Maryland law permits investment companies registered under the 1940 Act to adopt charter and bylaw provisions that eliminate annual meetings, except in years that the 1940 Act requires an election of directors. *See* Section 2-501 of the Maryland General Corporation Law. Massachusetts and Delaware law do not require annual shareholder meetings, as the statutes defer to an entity's organizational documents. This is indicated by the lack of an affirmative requirement under Chapter 182 of the Massachusetts General Laws and the Delaware Statutory Trust Act.

[7] *See* CBOE Proposal at 57492-93.

[8] While the number of ETFs launched between 2022 and 2023 increased from 2,847 to 3,108 and the number of non-traditional CEFs, inclusive of unlisted CEFs and BDCs, launched between 2022 and 2023 increased from 293 to 322, the number of listed CEFs decreased between 2022 and 2023 from 427 to 402 with no new listed CEFs launching in 2023. *See* ICI, 2024 Investment Company Fact Book at 66, 70-71 & 76 (64th Ed, 2024), *available at* https://www.icifactbook.org/pdf/2024-factbook.pdf.

[9] *See* ICI, Analysis of Fund Proxy Campaigns: 2012-2019 at 2 (Dec. 2019), *available at* https://www.ici.org/system/files/attachments/19_ltr_proxyanalysis.pdf (finding that cost estimates across 145 proxy campaigns totaled $373 million in accrued costs).

* * * *

We appreciate the opportunity to comment and urge the SEC to approve the proposed amendments. If you have any questions, please contact the below organizations.

Sincerely,

Investment Adviser Association

Securities Industry and Financial Markets Association

SIFMA's Asset Management Group

Insured Retirement Institute

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
Haoxiang Zhu, Director, Division of Trading and Markets
Natasha Vij Greiner, Director, Division of Investment Management

About the Associations

The Investment Adviser Association (IAA) is the leading organization dedicated to advancing the interests of fiduciary investment advisers. For more than 85 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. The IAA's member firms manage more than $35 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit www.investmentadviser.org.

The Securities Industry and Financial Markets Association (SIFMA) is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our members, we advocate for legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

SIFMA's Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms that manage more than 50% of global assets under management. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit http://www.sifma.org/amg.

The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, broker-dealers, banks, marketing organizations, law firms, and solution providers. IRI members account for 90 percent of annuity assets in the U.S., include the foremost distributors of protected lifetime income solutions, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.