

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99524; File No. SR-CboeBZX-2024-010)

February 13, 2024

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Corporate Governance Requirements, as Provided Under Exchange Rule 14.10 and Make Certain Other Changes to its Listing Rules as Provided Under Exchange Rules 14.3, 14.6, 14.7, and 14.12

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 29, 2024, 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 and II below, which Items have been prepared by the self-regulatory organization. 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”) proposes to amend its Corporate Governance Requirements, as provided under Exchange Rule 14.10 and make certain other changes to its listing rules as provided under Exchange Rules 14.3, 14.6, 14.7, and 14.12. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the corporate governance requirements as provided under Exchange Rule 14.10 and make certain other related changes to its listing rules as provided under Exchange Rules 14.3, 14.6, 14.7, and 14.12. The proposed changes are substantively similar to the equivalent rule on another exchange.³ Specifically, the proposed changes will (1) modify the compensation-related listing rules to align with that of other exchanges; (2) modify the exemption to the Direct Registration Program (“DRP”) requirement as it pertains to foreign issuers; (3) require listed Companies to publicly disclose compensation or other payments by third parties to any nominee for director or sitting director in connection with their candidacy for or service on the Companies’ Board of Directors; (4) modify the listing requirements to change the definition of market value for purposes of the shareholder approval rules and eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value; (5)

³ See the Nasdaq Stock Market LLC (“Nasdaq”) listing rules series 5200 (General Procedures and Prerequisites for Initial and Continued Listing on the Nasdaq Stock Market), 5600 (Corporate Governance Requirements), and 5800 (Failure to Meeting Listing Standards). Additionally, the chart provided in Item 8 below summarizes each Nasdaq Rule and each corresponding proposed Exchange Rule.

modify and clarify the exemptions from certain corporate governance requirements; (6) modify the definition of a “Family Member” as defined in Rule 14.10; (7) modify the quorum requirement applicable to a non-U.S. company where such company’s home country law is in direct conflict with the Exchange’s quorum requirement; and (8) modify rule numbers and make other ministerial clarifying changes. As noted above, the proposed changes would result in Exchange Rules that are substantively similar to the existing rules of Nasdaq and are supported by prior Commission approval orders and immediately effective exchange proposals, as discussed in further detail below.

(1) Compensation-related Listing Rules

First, the Exchange proposes to amend Rule 14.10 to require a Company listed on the Exchange to have a compensation committee and to update its requirements for a compensation committee. In addition to being consistent with the rules of another exchange,⁴ The Exchange believes the proposed rule will be in accordance with Rule 10C-1 of the Act.

(a) Requirement to Have a Compensation Committee

The Exchange’s current listing rules require that compensation of the chief executive officer and all other Executive Officers⁵ of a Company must be determined, or recommended to the board for determination, either by: (i) a compensation committee comprised solely of Independent Directors;⁶ or as an alternative by (ii) Independent Directors constituting a majority of the board’s Independent Directors in a vote in which only Independent Directors participate (the “Alternative”).⁷ Now, the Exchange proposes to eliminate the Alternative and instead require Exchange-listed Companies to have a standing compensation committee with the responsibility for

⁴ See Nasdaq listing rule 5605.

⁵ “Executive Officer” means those officers covered in Rule 16a-1(f) under the Act. See Exchange Rule 14.10(c)(1)(A).

⁶ See Exchanger Rule 14.10(c)(1)(B).

⁷ See Exchange Rule 14.10(c)(4)(B).

determining, or recommending to the full board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company. The Exchange believes there are several benefits from a board having a standing committee dedicated solely to oversight of executive compensation. Specifically, directors on a standing compensation committee may develop expertise in a Company's executive compensation program in the same way that directors on a standing audit committee develop expertise in a Company's accounting and financial reporting processes. In addition, a formal committee structure may help promote accountability to stockholders for executive compensation decisions.⁸ Furthermore, no Company listed on the Exchange relies on the Alternative. Given this, the Exchange does not believe that eliminating the Alternative on the Exchange would impose any undue burden to Companies listed on the Exchange.

The proposal would rename existing Rule 14.10(c)(4) "Compensation Committee Requirements" and would describe such requirements, many of which are included under existing Rule 14.10(c)(4), as discussed further below. The proposal to require Exchange-listed Companies to have a standing compensation committee with the responsibility for determining, or recommending to the full board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company, is substantively similar to existing rules of another Exchange⁹ that were approved by the Commission.¹⁰

(b) Compensation Committee Charter

⁸ See Securities Exchange Act Nos. 68013 (October 9, 2012) 77 FR 62563 (October 15, 2012) (SR-NASDAQ-2012-109) (Notice of Filing of Proposed Rule Change To Modify the Listing Rules for Compensation Committees To Comply With Rule 10C-1 Under the Exchange Act and Make Other Related Changes) 68640 (January 11, 2013) 78 FR 4554 (January 22, 2013) (Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 To Amend the Listing Rules for Compensation Committees To Comply With Rule 10C-1 Under the Act and Make Other Related Changes).

⁹ See Nasdaq Listing Rule 5605(d).

¹⁰ Supra note 10.

The Exchange proposes to require each Company to certify that it has adopted a formal written compensation committee charter and that the compensation committee will review and reassess the adequacy of the formal written charter on an annual basis, as provided under proposed Rule 14.10(c)(4)(A).¹¹ This proposal is similar to the Exchange’s current requirement for Companies to certify as to the adoption of a formal written audit committee charter, except that the proposed requirement for annual review and reassessment of the adequacy of the compensation committee charter is written prospectively, rather than retrospectively.¹² In other words, the proposed compensation committee charter requirement states that the compensation committee will review and reassess the adequacy of the charter on an annual basis, while the current audit committee charter requirement states that the audit committee has reviewed and reassessed the adequacy of the charter on an annual basis.¹³

The Exchange proposes that the compensation committee charter must specify:

- the scope of the compensation committee’s responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;

¹¹ Smaller Reporting Companies may adopt either a formal written compensation committee charter or a board resolution that specifies the committee’s responsibilities and authority, except Smaller Reporting Companies are not required to specify the specific compensation responsibilities and authority set forth in proposed Exchange Rule 14.10(d)(4)(D). For further discussion, see the section entitled “Smaller Reporting Companies” below.

¹² See Exchange Rule 14.10(c)(3)(A). The proposed Rule is substantively identical to Nasdaq Rule 5605(d)(1).

¹³ The Exchange proposes to make a conforming change and technical and grammar corrections to its audit committee charter requirement to clarify that Companies’ annual review and reassessment of the audit committee charter should be prospective. This is consistent with the Exchange’s current interpretation of its audit committee charter requirement. By proposing this amendment, the Exchange seeks to minimize differences between the audit committee and compensation committee charter requirements and to eliminate potential questions as to whether the Exchange intended a discrepancy between these two requirements.

- the compensation committee’s responsibility for determining, or recommending to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company;
- that the chief executive officer of the Company may not be present during voting or deliberations by the compensation committee on his or her compensation; and
- the specific compensation committee responsibilities and authority set forth in proposed Exchange Rule 14.10(c)(4)(D).

The requirement for the charter to specify the scope of the compensation committee’s responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements, is copied from the Exchange’s similar listing rule relating to audit committee charters.¹⁴ Furthermore, this requirement is substantively similar to requirements on another exchange.¹⁵

The requirement for the charter to specify the compensation committee’s responsibility for determining, or recommending to the board for determination, the compensation of the chief executive officer and all other Executive Officers of the Company, is based upon the Exchange’s current compensation-related listing rules.¹⁶ These listing rules require that the compensation of a Company’s chief executive officer and all other Executive Officers must be determined by (i) a compensation committee comprised solely of Independent Directors or (ii) the Independent Directors constituting a majority of the board’s Independent Directors in a vote in which only Independent Directors participate. As discussed above, the Exchange proposes to eliminate the

¹⁴ See Exchange Rule 14.10(c)(3)(A)(i).

¹⁵ See Nasdaq Listing Rule 5605(d)(1)(A).

¹⁶ See Exchange Rule 14.10(c)(4)(B)(i) and (ii).

Alternative, and therefore, the compensation of a Company's chief executive officer and all other Executive Officers must be determined, or recommended to the board for determination, by a compensation committee comprised of Independent Directors. Going forward, the Exchange proposes to implement this requirement by requiring Companies to include it in their formal written compensation committee charters.

The requirement for the charter to specify that the chief executive officer of the Company may not be present during voting or deliberations by the compensation committee on his or her compensation is based upon the Exchange's current compensation-related listing rules.¹⁷ Going forward, the Exchange proposes to implement this requirement by requiring Companies to include it in their formal written compensation committee charters as applicable.

Finally, the requirement for the charter to specify the specific compensation committee responsibilities and authority set forth in proposed Exchange Rule 14.10(c)(4)(D) is modeled after the Exchange's similar listing rule relating to audit committee charters.¹⁸ Moreover, it is substantively similar to rules of another exchange.¹⁹

(c) Compensation Committee Size

Next, the Exchange proposes to impose a minimum size requirement of the compensation committee of at least two members under proposed Rule 14.10(c)(4)(B). The proposal would move existing Rule 14.10(c)(4)(A) to paragraph (B) and incorporate the proposed compensation

¹⁷ See Exchange Rule 14.10(c)(4)(B)(i).

¹⁸ See Exchange Rule 14.10(c)(3)(A)(iv), which requires that an audit committee charter set forth the specific audit committee responsibilities and authority set forth in Exchange Rule 14.10(c)(3)(C). Exchange Rule 14.10(c)(3)(C) states that an audit committee must have the specific responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Exchange Act, with certain exemptions. Rule 10A-3(b)(2), (3), (4) and (5) under the Exchange Act concerns responsibilities relating to: (i) registered public accounting firms; (ii) complaints relating to accounting, internal accounting controls or auditing matters; (iii) authority to engage advisors; and (iv) funding as determined by the audit committee.

¹⁹ See Nasdaq Listing Rule 5605(d)(3).

committee size requirement. Given the importance of compensation decisions to stockholders, the Exchange believes that it is appropriate to have more than one director responsible for these decisions. No Company currently listed on the Exchange has a compensation committee of fewer than two members. Given this, combined with the fact that another exchange²⁰ also requires a minimum compensation committee size of two members, the Exchange does not believe the proposal would cause undue hardship for Exchange-listed companies.

(d) Exceptional and Limited Circumstances Exception

The Exchange proposes to adopt Rule 14.10(c)(4)(C), which will provide that notwithstanding proposed Rule 14.10(c)(4)(B) (Compensation Committee Composition) if the compensation committee is comprised of at least three members, one director who does not meet the requirements of paragraph 14.10(c)(4)(B) and is not currently an Executive Officer or employee or a Family Member of an Executive Officer, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

²⁰ See Nasdaq Listing Rule 5605(d)(2).

The Exchange's current listing rules include similar exceptions for audit and nominations committees.²¹ The Exchange believes such an exception provides an important means to allow Companies flexibility as to board and committee membership and composition in unusual circumstances, which may be particularly important for smaller Companies. Moreover, the proposed rule is substantively similar to existing rules of another exchange.²²

(e) Compensation Committee Responsibilities and Authority

The Exchange proposes to keep the Compensation Committee Responsibilities and Authority provided under existing Rule 14.10(c)(4)(C) largely the same under proposed Rule 14.10(c)(4)(D), but to make small modifications to restructure and organize the rule. Specifically, the Exchange proposes to add a paragraph following proposed Rule 14.10(c)(4)(D)(iv) providing that for the purposes of this Rule, the compensation committee is not required to conduct an independence assessment for a compensation adviser that acts in a role limited to the following activities for which no disclosure is required under Item 407(e)(3)(iii) of Regulation S-K: (a) consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of Executive Officers or directors of the Company, and that is available generally to all salaried employees; and/or (b) providing information that either is not customized for a particular issuer or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice. The proposed language is identical to that included in another exchanges rules.²³

(f) Compensatory Fees

²¹ See Exchange Rule 14.10(c)(3)(B)(ii).

²² See Nasdaq Listing Rule 5605(d)(2)(B).

²³ See Nasdaq Listing Rule 5605(d)(3).

Existing Rule 14.10(c)(4)(A)(i) provides that in addition to meeting the criteria listed under Rule 14.10(c)(1)(B), in evaluating the independence of a director to determine if such director is permitted to determine the compensation of Executive Officers as described in Rule 14.10(c)(4)(B), the board of directors of a Company shall consider the following factors: (a) the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the Company to such director; and (b) whether the director is affiliated with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the company. Now, the Exchange proposes to move existing Rule 14.10(c)(4)(A)(i) to Rule 14.10(c)(4)(B) and to note within the paragraph the requirement that each Company must have and certify that it has and will continue to have a compensation committee of at least two members. The Exchange also proposes to make other non-substantive changes to Rule 14.10(c)(4)(B) to add clarity and so that it is substantively identical to the equivalent Nasdaq rule.²⁴

Additionally, the Exchange proposes to amend Interpretation and Policy .07 to Rule 14.10 so that it is substantively identical to Nasdaq Listing IM-5605-6. Currently, Interpretation and Policy .07 provides that independent director oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to maximize shareholder value. The rule is intended to provide flexibility for a Company to choose an appropriate board structure and to reduce resource burdens, while ensuring Independent Director control of compensation decisions. The Exchange proposes to modify Interpretation and Policy .07 to provide that independent director oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to act in the best

²⁴ See Nasdaq Rule 5605(d)(2)(A).

interests of the corporation. Compensation committees are required to have a minimum of two members and be comprised only of Independent Directors as defined under Rule 14.10(c)(1)(B). In addition, proposed Rule 14.10(c)(4)(B) includes an additional independence test for compensation committee members. When considering the sources of a director's compensation for this purpose, the board should consider whether the director receives compensation from any person or entity that would impair the director's ability to make independent judgments about the Company's executive compensation. Similarly, when considering any affiliate relationship a director has with the Company, a subsidiary of the Company, or an affiliate of a subsidiary of the Company, in determining independence for purposes of compensation committee service, the board should consider whether the affiliate relationship places the director under the direct or indirect control of the Company or its senior management, or creates a direct relationship between the director and members of senior management, in each case of a nature that would impair the director's ability to make independent judgments about the Company's executive compensation. In that regard, while a board may conclude differently with respect to individual facts and circumstances, the Exchange does not believe that ownership of Company stock by itself, or possession of a controlling interest through ownership of Company stock by itself, precludes a board finding that it is appropriate for a director to serve on the compensation committee. In fact, it may be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.

For purposes of the additional independence test for compensation committee members described in proposed Rule 14.10(c)(4)(B), any reference to the “Company” includes any parent or subsidiary of the Company. The term “parent or subsidiary” is intended to cover entities the

Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements).

Proposed Interpretation and Policy .07 would set forth the compensation committee composition requirements for Smaller Reporting Companies. Specifically, a Smaller Reporting Company must have a compensation committee with a minimum of two members. Each compensation committee member must be an Independent Director as defined under Rule 14.10(c)(1)(B). In addition, each such Smaller Reporting Company must have a formal written compensation committee charter or board resolution that specifies the committee's responsibilities and authority set forth in proposed Rule 14.10(c)(4)(A)(i)-(iii). However, in recognition of the fact that Smaller Reporting Companies may have fewer resources than larger Companies, Smaller Reporting Companies are not required to adhere to the additional compensation committee eligibility requirements in proposed Rule 14.10(c)(4)(B), or to incorporate into their formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in proposed Rule 14.10(c)(4)(D).

The Exchange also proposes to allow a Company that has ceased to be a Smaller Reporting Company to phase-in a fully-compliant compensation committee. Pursuant to Rule 12b-2 under the Act, a Company tests its status as a Smaller Reporting Company on an annual basis at the end of its most recently completed second fiscal quarter.²⁵ A Company which ceases to meet the requirements for Smaller Reporting Company status as of the Determination Date will cease to be a Smaller Reporting Company as of the beginning of the fiscal year following the Determination Date (the "Start Date").

²⁵ See 17 CFR 240.12b-2.

By six months from the Start Date (i.e., by six months after the beginning of its fiscal year), a Company that has ceased to be a Smaller Reporting Company must comply with the requirements of Rule 14.10(c)(4)(D) relating to certain compensation committee responsibilities and authority.²⁶ In addition, such a Company may phase in its compliance with the additional compensation committee composition requirements of Rule 14.10(c)(4)(B) relating to the receipt of compensatory fees and affiliation as follows: (1) one member must satisfy the requirements by six months from the Start Date; (2) a majority of members must satisfy the requirements by nine months from the Start Date; and (3) all members must satisfy the requirements by one year from the Start Date. Since a Smaller Reporting Company is required to have a compensation committee comprised of at least two Independent Directors, a Company that has ceased to be a Smaller Reporting Company may not use the phase-in schedule for the minimum size requirement or the requirement that the committee consist only of Independent Directors as defined under 14.10(c)(1)(B). During the phase-in schedule, a Company that has ceased to be a Smaller Reporting Company must continue to comply with the requirement to have a compensation committee comprised of at least two Independent Directors as defined under the Exchange's existing listing rules.

(g) Smaller Reporting Companies Exemption

The Exchange proposes to move existing Rule 14.10(e)(1)(F) to proposed Rule 14.10(c)(4)(F) with amendments to conform to Nasdaq Listing Rule 5605(d)(5). Current Rule 14.10(e)(1)(F) provides that Smaller reporting companies, as defined in Rule 12b-2 under the Act, are exempt from the Independent Director Oversight of Executive Officer Compensation

²⁶ By six months from the Start Date, such a Company also must certify to the Exchange that: (i) it has complied with the requirement in Rule 14.10(c)(4)(A) to have a compensation committee charter including the content specified in Rule 14.10(c)(4)(A)(i)-(iv); and (ii) it has complied, or will within the applicable phase-in schedule comply, with the requirement in Rule 14.10(c)(4)(B) regarding compensation committee composition.

requirements set forth in Rule 14.10(c)(4), except that compensation of the chief executive officer and all other Executive Officers of the Company must be determined, or recommended to the Board for determination, either by: (i) Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors meeting the definition of Independent Director in Rule 14.10(c)(1)(B) participate; or (ii) a compensation committee comprised solely of Independent Directors meeting the definition of Independent Director in Rule 14.10(c)(1)(B). The rule further provides that the chief executive officer may not be present during voting or deliberations.

Now, the Exchange proposes to delete subparagraphs (i) and (ii) in existing Rule 14.10(e)(1)(F) and modify the proposed Rule to provide that a Smaller Reporting Company is not subject to the requirements of Rule 14.10(c)(4) except that a Smaller Reporting Company must have, and certify that it has and will continue to have, a compensation committee of at least two members, each of whom must be an Independent Director as defined under Rule 14.10(c)(1)(B). Proposed Rule 14.10(c)(4)(F) would also provide that a Smaller Reporting Company may rely on the exception in Rule 14.10(c)(4)(C) and the cure period in Rule 14.10(c)(4)(E). In addition, a Smaller Reporting Company must certify that it has adopted a formal written compensation committee charter or board resolution that specifies the content set forth in Rule 14.10(c)(4)(A)(i)-(iii). A Smaller Reporting Company does not need to include in its formal written compensation committee charter or board resolution the specific compensation committee responsibilities and authority set forth in Rule 14.10(c)(4)(D). As discussed above, the proposed amendments to Interpretation and Policy .07 to Rule 14.10 would provide additional clarity to the requirements for Smaller Reporting Companies and would make the policy substantively similar to Nasdaq IM-5605-6.

(h) Conforming Changes and Correction of Typographical Errors

The Exchange proposes to capitalize the term “Independent Director” throughout Rule 14.10(c)(3)(B) (Audit Committee Composition) and the term “Company” throughout Rule 14.10.

The Exchange proposes to modify the Audit Committee Charter requirement provided in Rule 14.10(c)(3)(A) to require a prospective review of the adequacy of the formal written charter on an annual basis,²⁷ similar to that proposed for the Compensation Committee Charter requirement under proposed Rule 14.10(c)(4)(A). Thus, proposed Rule 14.10(c)(3)(A) would provide that Each Company must certify that it has adopted a formal written audit committee charter and that the audit committee will review and reassess the adequacy of the formal written charter on an annual basis.

Existing Rule 14.10(c)(1)(B) includes a paragraph that provides that in addition to the requirements contained in this Rule 14.10(c)(1)(B), directors of a Company, in determining compensation of Executive Officers as described in Rule 14.10(c)(4)(B) (relating to compensation of Executive Officers), are also subject to additional factors for determining independence under Rule 14.10(c)(4). The Exchange proposes to delete this paragraph to conform to Nasdaq Rule 5605(a)(2)(G) and because the proposed compensation committee rules would already address this issue in proposed Rule 14.10(c)(4)(B).

The Exchange also proposes to correct certain typographical errors in Rule 14.10(c)(1)(3) to maintain a clear Rulebook.

As discussed above, the Exchange notes that all of the proposed changes to Rule 14.10(c) described above are substantively similar to existing rules of another Exchange²⁸ that were approved by the Commission.²⁹

²⁷ The proposed Rule is substantively identical to Nasdaq Rule 5605(d)(1).

²⁸ See Nasdaq Listing Rule 5605(d).

²⁹ Supra notes 10 and 11.

(2) Direct Registration Program

Exchange Rules 14.3(b)(3) and 14.7(c) provide that all securities listed on the Exchange, with certain exceptions, must be eligible for a DRP operated by a clearing agency registered under Section 17A of the Act.³⁰ When this requirement was initially adopted, the Exchange recognized that the laws or regulations of certain foreign countries might make it impossible for companies incorporated in those countries to comply. Consequently, the rule permits a Foreign Private Issuer³¹ to follow its home country practice in lieu of this requirement when prohibited from complying by a law or regulation in its home country.

The Exchange now proposes to amend this exemption to extend its application to all “foreign issuers” as that term is used in Securities Exchange Act Rule 3b-4³² rather than only to Foreign Private Issuers.³³ The Exchange believes this amendment is necessary because the same legal or regulatory impediments to DRP eligibility exist for a foreign issuer which is incorporated in a foreign jurisdiction but which does not qualify for Foreign Private Issuer status as is the case for a Foreign Private Issuer incorporated in the same jurisdiction which is currently eligible to utilize the existing exemption. Absent this extension of the scope of the exemption, the DRP eligibility requirement would render it impossible for a foreign issuer to list if it was not a Foreign Private Issuer but was incorporated in a foreign jurisdiction whose law or regulation made compliance with

³⁰ 15 U.S.C. 78q-1.

³¹ See Exchange Rule 14.1(a)(14).

³² Exchange Act Rule 3b-4, 17 CFR 240.3b-4, defines the term “foreign issuer” as any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.

³³ The proposed amendments to the Exchange’s DRP are substantively similar to changes made by Nasdaq. See Securities and Exchange Act Release No. 68238 (November 15, 2012) 77 FR 69911 (November 21, 2012) (SR-NASDAQ-2012-128) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Exemption to the Direct Registration Program Requirement to All Foreign Issuers Rather Than Only Foreign Private Issuers).

the DRP requirement impossible. As under the current exemption, a foreign issuer will have to submit to the Exchange a written statement from an independent counsel in the company's home country certifying that a law or regulation in the home country prohibits compliance with the DRP requirement in order to utilize the exemption.

The Exchange also proposes to amend the exemptions provided under Rule 14.3(b)(3) to conform with those provided in existing Rule 14.7. Specifically, Exchange Rule 14.7(a) provides that except as indicated in Rule 14.7(c), all securities listed on the Exchange (except securities which are book-entry only) must be eligible for a DRP operated by a clearing agency registered under Section 17A of the Act. Existing Rule 14.3(b)(3) provides that all securities initially listing on the Exchange must be eligible for a DRP operated by a clearing agency registered under Section 17A of the Act. It also provides that this provision does not extend to: (i) additional classes of securities of Companies which already have securities listed on the Exchange; (ii) Companies which immediately prior to such listing had securities listed on another registered securities exchange in the U.S.; or, (iii) non-equity securities that are book-entry only. As these exemptions are not provided in existing Rule 14.7 or other exchange rules, the Exchange proposed to delete them from Rule 14.3(b)(3). The proposed rule changes are substantively similar to existing rules on another exchange.³⁴

Exchange Rule 14.10(e)(1)(C) provides limited exemptions with respect to certain corporate governance and reporting requirements for Foreign Private Issuers and also provides that a Foreign Private Issuer may follow its home country practice in lieu of the DRP requirement set forth in Rules 14.3(b)(3) and 14.7. As the proposed exemption to the DRP requirement expands beyond Foreign Private Issuers, the Exchange proposes to delete the reference to Rules 14.3(b)(3) and 14.7

³⁴ See Nasdaq Listing Rules 5210(c) and 5255(c).

from Rule 14.10(e)(1)(C) and Interpretation and Policy .12 of Rule 14.10 to minimize confusion about the availability of such exemptions to foreign issuers that do not qualify for Foreign Private Issuer status.³⁵

The Exchange also proposes to correct Rule inaccurate references in Interpretation and Policy .12 to Rule 14.10 and Rule 14.10(e)(1)(C)(i). Specifically, the Exchange proposes to make non-substantive changes to modify incorrect references from Rule 14.7 to Rule 14.10 and from Rule 14.3(e)(4) to 14.6(d). Additionally, the Exchange proposes to correct a title reference in Exchange Rule 14.10(e)(1)(C)(i) to correctly reflect the title of Rule 14.10(g) (Notification of Noncompliance). The Exchange also proposes to amend Interpretation and Policy .12 to Rule 14.10 to provide a more granular and accurate rule cite to the applicable audit committee requirement for Foreign Private Issuers provided under Rule 14.10(c)(3)(B)(i)(b). As discussed above, the Exchange also proposes to delete references to the Exchange's DRP from Interpretation and Policy .12. In place of the reference to the DRP provided in Interpretation and Policy .12, the Exchange proposes to reiterate the requirement that a Foreign Private Issuer must comply with the voting rights requirement under Rule 14.10(j). Further, as discussed below, the Exchange also proposes to add references to proposed Rule 14.6(b)(3) to proposed Interpretation and Policy .12. These proposed changes are also substantively similar to existing rules on another exchange.³⁶

(3) Public Disclosure

The Exchange proposes to add an additional obligation to make public disclosure under proposed Rule 14.6(b)(3), which would require the disclosure of third party director and nominee

³⁵ The proposed rule changes are substantively identical to Nasdaq Rule 5615(a)(3) and IM-5613-3.

³⁶ Id.

compensation,³⁷ and is substantively similar to existing rules of another exchange.³⁸ Current Exchange Rules require listed companies to make public disclosure in several areas. For example, a listed company is required to publicly disclose material information that would reasonably be expected to affect the value of its securities or influence investors' decisions as well as when non-independent directors serve on a committee that generally requires only independent directors, such as for a controlled company or under exceptional and limited circumstances.³⁹ A listed company is also required to file required periodic reports with the Commission.⁴⁰ A principal purpose of these disclosure requirements is to protect investors and ensure these investors have necessary information to make informed investment and voting decisions.

As noted above, now the Exchange proposes to adopt Rule 14.6(b)(3) which would require the disclosure of third party director and nominee compensation. The preamble to proposed Rule 14.6(b)(3) would provide that Companies must disclose all agreements and arrangements in accordance with this rule by no later than the date on which the Company files or furnishes a proxy or information statement subject to Regulation 14A or 14C under the Act in connection with the Company's next shareholders' meeting at which directors are elected (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F).⁴¹

³⁷ The Exchange notes that the proposal is substantively similar to other proposed rules approved by the Commission. See Securities and Exchange Act Nos. 77481 (March 30, 2016) 81 FR 19678 (April 5, 2016) (SR-NASDAQ-2016-013) (Notice of Filing of Proposed Rule Change To Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Director's Members or Nominees); 78223 (July 1, 2016) 81 FR 44400 (July 7, 2016) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Director's Members or Nominees).

³⁸ See Nasdaq Listing Rule 5250(b)(3).

³⁹ See Exchange Rules 14.6(b)(1), 14.10(e)(3)(B), 14.10(c)(3)(B)(ii), and 14.10 (c)(5)(C).

⁴⁰ See Exchange Rule 14.6(c).

⁴¹ The proposed rule is substantively identical to the preamble of Nasdaq Rule 5250(b)(3).

Proposed Rule 14.6(b)(3)(A) would require a Company to disclose either on or through the Company's website or in the proxy or information statement for the next shareholders' meeting at which directors are elected (or, if the Company does not file proxy or information statements, in its Form 10-K or 20-F), the material terms of all agreements and arrangements between any director or nominee for director, and any person or entity other than the Company (the "Third Party"), relating to compensation or other payment in connection with such person's candidacy or service as a director of the Company. A Company need not disclose pursuant to this rule agreements and arrangements that: (i) relate only to reimbursement of expenses in connection with candidacy as a director; (ii) existed prior to the nominee's candidacy (including as an employee of the other person or entity) and the nominee's relationship with the Third Party has been publicly disclosed in a proxy or information statement or annual report (such as in the director or nominee's biography); or (iii) have been disclosed under Item 5(b) of Schedule 14A of the Act or Item 5.02(d)(2) of Form 8-K in the current fiscal year. Proposed Rule 14.6(b)(3)(A) would further provide that disclosure pursuant to Commission rule shall not relieve a Company of its annual obligation to make disclosure under proposed subparagraph (B).⁴²

Proposed Rule 14.6(b)(3)(B) would provide that a Company must make the disclosure required in proposed subparagraph (A) at least annually until the earlier of the resignation of the director or one year following the termination of the agreement or arrangement.⁴³ In recognition that a company, despite reasonable efforts, may not be able to identify all such agreements and arrangements, proposed Rule 14.6(b)(3)(C) would provide that if a Company discovers an agreement or arrangement that should have been disclosed pursuant to proposed subparagraph (A)

⁴² The proposed rule is substantively identical to Nasdaq Rule 5250(b)(3)(A).

⁴³ The proposed rule is substantively identical to Nasdaq Rule 5250(b)(3)(B).

but was not, the Company must promptly make the required disclosure by filing a Form 8-K or 6-K, where required by SEC rules, or by issuing a press release. Remedial disclosure under this proposed subparagraph, regardless of its timing, does not satisfy the annual disclosure requirements under proposed subparagraph (B).⁴⁴

Proposed Rule 14.6(b)(3)(D) would provide that a Company shall not be considered deficient with respect to this paragraph for purposes of Rule 14.12 if the Company has undertaken reasonable efforts to identify all such agreements or arrangements, including asking each director or nominee in a manner designed to allow timely disclosure, and makes the disclosure required by proposed subparagraph (C) promptly upon discovery of the agreement or arrangement. In all other cases, the Company must submit a plan sufficient to satisfy Exchange staff that the Company has adopted processes and procedures designed to identify and disclose relevant agreements or arrangements.⁴⁵ In cases where a company is considered deficient for purposes of Rule 14.12, the company must provide a plan to regain compliance as provided under proposed Rule 14.12(f)(2)(A)(iv). Consistent with deficiencies from most other rules that allow a company to submit a plan to regain compliance,⁴⁶ the Exchange proposes to allow companies deficient under the proposed rule 45 calendar days to submit a plan sufficient to satisfy Exchange staff that the company has adopted processes and procedures designed to identify and disclose relevant

⁴⁴ The proposed rule is substantively identical to Nasdaq Rule 5250(b)(3)(C).

⁴⁵ The proposed rule is substantively identical to Nasdaq Rule 5250(b)(3)(D).

⁴⁶ Pursuant to Rule 14.12(f)(2)(A), a company is provided 45 days to submit a plan to regain compliance with Rules 14.10(f)(3) (Quorum), 14.10(h) (Review of Related Party Transactions), 14.10(i) (Shareholder Approval), 14.6(c)(3) (Auditor Registration), 14.7 (Direct Registration Program), 14.10(d) (Code of Conduct), 14.10(e)(1)(D)(v) (Quorum of Limited Partnerships), 14.10(e)(1)(D)(vii) (Related Party Transactions of Limited Partnerships), or 14.10(j) (Voting Rights). A company is generally provided 60 days to submit a plan to regain compliance with the requirement to timely file periodic reports contained in Rule 14.12(f)(2)(F).

agreements and arrangements in the future.⁴⁷ If the company does not do so, it would be issued a Staff Delisting Determination, which the company could appeal to a Hearings Panel pursuant to Rule 14.12. This proposal to adopt new Exchange Rule 14.12(f)(2)(A)(iv) and to modify and renumber existing Rules 14.12(f)(2)(A)(iv) and (v) to provide for the proposed Rule 14.12(f)(2)(A)(iv) is substantively similar to existing rules on another exchange.⁴⁸

Finally, proposed Rule 14.6(b)(3)(E) would provide that a Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 14.6(b)(3) by utilizing the process described in Rule 14.10(e)(1)(C). Consistent with other exemptions afforded certain types of companies, the Exchange is also proposing to amend Exchange Rule 14.10(e)(1)(C) to provide that a Foreign Private Issuer may follow home country practice in lieu of the requirements of proposed Rule 14.6(b)(3). The proposal for this exemption is identical to an existing exemption provided on another exchange.⁴⁹

The Exchange also proposes to adopt Interpretation and Policy .03 to Rule 14.6 to add clarity and additional guidance to the requirements of proposed Rule 14.6(b)(3). Specifically, proposed Interpretation and Policy .03 would provide that the terms “compensation” and “other payment” as used in this proposed rule are intended to be construed broadly. Therefore, the terms would apply to agreements and arrangements that provide for non-cash compensation and other payment obligations, such as health insurance premiums or indemnification, made in connection with a person’s candidacy or service as a director. Further, at a minimum, the disclosure should

⁴⁷ The proposed rule is substantively identical to Nasdaq Rule 5810(c)(2), except as for the reference to board disclosure rules which the Exchange is not proposing to adopt.

⁴⁸ See Nasdaq Listing Rule 5810(c)(2)(A)(i) through (v).

⁴⁹ See Nasdaq Listing Rule 5615(a)(3).

identify the parties to and the material terms of the agreement or arrangement relating to compensation.⁵⁰

Proposed Interpretation and Policy .03 to Rule 14.6 would also provide that Subject to exceptions provided in the rule, the disclosure must be made on or through the Company's website or in the proxy or information statement for the next shareholders' meeting at which directors are elected in order to provide shareholders with information and sufficient time to help them make meaningful voting decisions. A Company posting the requisite disclosure on or through its website must make it publicly available no later than the date on which the Company files a proxy or information statement in connection with such shareholders' meeting (or, if they do not file proxy or information statements, no later than when the Company files its next Form 10-K or Form 20-F). Disclosure made available on the Company's website or through it by hyperlinking to another website, must be continuously accessible. If the website hosting the disclosure subsequently becomes inaccessible or that hyperlink inoperable, the company must promptly restore it or make other disclosure in accordance with this rule. Rule 14.6(b)(3) does not separately require the initial disclosure of newly entered into agreements or arrangements, provided that disclosure is made pursuant to this rule for the next shareholders' meeting at which directors are elected. In addition, for publicly disclosed agreements and arrangements that existed prior to the nominee's candidacy and thus not required to be disclosed in accordance with proposed Rule 14.6(b)(3)(A)(ii) but where

⁵⁰ The Exchange notes that the proposal is substantively similar to other proposed rules approved by the Commission. See Securities and Exchange Act Nos. 77481 (March 30, 2016) 81 FR 19678 (April 5, 2016) (SR-NASDAQ-2016-013) (Notice of Filing of Proposed Rule Change To Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Director's Members or Nominees); 78223 (July 1, 2016) 81 FR 44400 (July 7, 2016) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Director's Members or Nominees).

the director or nominee's remuneration is thereafter materially increased specifically in connection with such person's candidacy or service as a director of the Company, only the difference between the new and previous level of compensation or other payment obligation needs be disclosed. All references in this rule to proxy or information statements are to the definitive versions thereof.⁵¹

(4) Market Value Definition and Shareholder Approval

Exchange Rule 14.10(i) sets forth the circumstances under which shareholder approval is required prior to an issuance of securities in connection with (1) the acquisition of the stock or assets of another company; (2) a change of control; (3) equity-based compensation of officers, directors, employees or consultants; and (4) private placements. Specifically, under current Rule 14.10(i)(4), shareholder approval is required prior to the issuance of securities in connection with a transaction other than a public offering involving:

(A) the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or Substantial Shareholders⁵² of the Company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or (B) the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock. Exchange Rule 14.1(a)(19) defines "market value" as the closing bid price. Now, the Exchange proposes to make certain changes to Rule 14.10(i) as described below, and to modify the measure of market value for the purpose of Rule 14.10(i)(4) from the closing bid

⁵¹ Id.

⁵² See Exchange Rule 14.10(i)(5)(C).

price to the lower of: (i) BZX Official Closing Price⁵³ as reflected on Cboe.com or (ii) the average BZX Official Closing Price of the common stock as available on Cboe.com for the five trading days immediately preceding the signing of the binding agreement.

The Exchange also proposes to amend the preamble and to Rule 14.10(i) and the title of Rule 14.10(i)(4) to replace references to “private placements” with “transactions other than public offerings”, which conforms the language to that in existing Interpretation and Policy .18 to Rule 14.10. Private placements would continue to be considered “transactions other than public offerings” under the proposed rule change, and the proposed change does not change the essence of the current rule.

The Exchange notes that the proposed changes to Exchange Rule 14.10(i) and Interpretation and Policy .18 to Rule 14.10 are substantively similar to rules of another Exchange that were previously approved by the Commission.⁵⁴

(a) Closing Price

The BZX Official Closing Price refers to the price disseminated to the consolidated tape as the market center closing trade, which is derived from the closing auction on the Exchange if a

⁵³ See Exchange Rule 11.23(a)(3).

⁵⁴ See Securities Exchange Act Nos. 82702 (February 13, 2018) 83 FR 7269 (February 20, 2018) (SR-NASDAQ-2018-008) (Notice of Filing of Proposed Rule Change To Modify the Listing Requirements Contained in Listing Rule 5635(d) To Change the Definition of Market Value for Purposes of the Shareholder Approval Rules and Eliminate the Requirement for Shareholder Approval of Issuances at a Price Less Than Book Value but Greater Than Market Value) and 84287 (September 26, 2018) 83 FR 49599 (October 2, 2018) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Listing Requirements Contained in Listing Rule 5635(d) To Change the Definition of Market Value for Purposes of the Shareholder Approval Rule and Eliminate the Requirement for Shareholder Approval of Issuances at a Price Less Than Book Value but Greater Than Market Value). See also Securities Exchange Act No. 88056 (January 28, 2020) 85 FR 6003 (February 3, 2020) (SR-NASDAQ-2020-004) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Term “Closing Price” in Rule 5635(d)(1)(A) Relating to Shareholder Approval for Transactions Other Than Public Offerings).

closing auction occurs.⁵⁵ The Exchange’s closing auction is designed to gather the maximum liquidity available for execution at the close of trading, and to maximize the number of shares executed at a single price at the close of the trading day. The closing auction promotes accurate closing prices by offering specialized orders available only during the closing auction and integrating those orders with regular orders submitted during the trading day that are still available at the close. Further, the Exchange believes the price of an executed trade is generally viewed as a more reliable indicator of value than a bid quotation. Given this combined with the fact that the proposal to use the official closing price rather than the closing bid price is similar to the rules of another exchange (except that it uses its own closing price)⁵⁶ the Exchange believes it is appropriate to use the BZX Official Closing Price rather than the closing bid price.

In addition, because prices are displayed from numerous data sources on different websites, to provide transparency within the rule to the appropriate price and assure that companies and investors use the BZX Official Closing Price when pricing transactions, the Exchange proposes to codify within the proposed Rule 14.10(i)(4)(A)(i) that Cboe.com is the appropriate source of the closing price information.

(b) Five-Day Average Price

The Exchange proposes to amend Rule 14.10(i)(4) to define a new concept as the “Minimum Price” and eliminate references to book value and eliminating the current definition of market value⁵⁷ from Rule 14.10(i)(4). Minimum Price would be defined under proposed Rule 14.10(i)(4)(A)(i) as price that is the lower of: (a) the BZX Official Closing Price (as reflected on

⁵⁵ If an issue does not have a closing auction (e.g., there is insufficient interest to conduct a closing auction), the BZX Official Closing Price will be the Final Last Sale Eligible Trade.

⁵⁶ See Nasdaq Listing Rule 5635(d).

⁵⁷ “Market value” is defined in Exchange Rule 14.1(a)(19) and is applicable to the shareholder approval rules as well as other listing rules.

Cboe.com) for the five trading days immediately preceding the signing of the binding agreement; or (b) the average BZX Official Closing Price of the common stock as reflected on (Cboe.com) for the five trading days immediately preceding the signing of the binding agreement. This means that the issuance would not require an approval by company's shareholders, so long as it is at a price that is greater than the lower of those measures.

The Exchange believes that while investors and companies sometimes prefer to use an average when pricing transactions, there are potential negative consequences to using a five-day average as the sole measure of whether shareholder approval is required. For example, in a declining market, the five-day average closing price will be above the current market price, which could make it difficult for companies to close transactions because investors could buy shares at a lower price in the market. Conversely, using a five-day average in a rising market the five-day average closing price will appear to be at a discount to the closing current market price. Further, if material news is announced during the five-day period, the average price could be a worse reflection of market value than the closing price after the news is disclosed. The Exchange believes that these risks of using the five-day average closing price are already accepted by the market, as evidenced by the use of an average price in transactions that do not require shareholder approval, such as those transactions where less than 20% of the outstanding shares are being issued. Nonetheless, the Exchange believes the proposal balances this risk because an issuance would not require shareholder approval as long as the issuance occurs at a price greater than the lower of the two proposed measures.

To improve the readability of the rule, the Exchange proposes to eliminate references to book value and current definition of market value from Rule 14.10(i)(4) and to instead reference the

defined term Minimum Price. The Exchange notes that the proposal is substantively similar to existing rules of another exchange.⁵⁸

(c) Book Value

The Exchange proposes to eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value. Book value is an accounting measure and its calculation is based on the historic cost of assets, not their current value. As such the Exchange believes that book value is not an appropriate measure of whether a transaction is dilutive or should otherwise require shareholder approval. Further, the proposal is substantively similar to existing rules of another exchange.⁵⁹

(d) Other Changes to the Shareholder Approval Requirement

The Exchange proposes to revise Exchange Rule 14.10(i)(4) to provide that shareholder approval is required prior to a 20% issuance at a price that is less than the Minimum Price. To improve the readability of Exchange Rule 14.10(i)(4), the Exchange proposes to define “20% Issuance” as “a transaction, other than a public offering⁶⁰ as defined in Rule 14.10, Interpretation and Policy .18, involving the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock), which alone or together with sales by officers, directors or Substantial Shareholders of the Company, equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.” This definition combines the situations described in existing Rule 14.10(i)(4)(A) and (B) into one provision and makes no substantive change to the threshold for quantity or voting power of shares

⁵⁸ See Nasdaq Listing Rule 5635(d)(1)(A).

⁵⁹ See Nasdaq Listing Rule 5635(d)(1)(B).

⁶⁰ Transactions other than public offerings is also the proposed title to Rule 14.10(i)(4).

being sold that would give rise to the need for shareholder approval, although as described above, the applicable pricing test will change.

Finally, the Exchange proposes to amend Rule 14.10 Interpretations and Policies .18 and .19, which describe how the Exchange applies the shareholder approval requirements, to conform references to book and market value with the new definition of Minimum Price, as described above, and to utilize the newly defined term 20% Issuance. The Exchange also proposes to correct an incorrect reference to the Exchange's rules relating to a Company's failure to meeting listing standards from Rule 14.9 to 14.12.

As noted above, the proposed changes to Exchange Rule 14.10(i) and Interpretation and Policy .18 to Rule 14.10 are substantively similar to rules of another Exchange that were previously approved by the Commission.⁶¹

(5) Exemptions to Certain Corporate Governance Requirements

The Exchange proposes to amend and expand the exemptions available to issuers of certain securities from some of the Exchange's corporate governance requirements and to define certain of those securities as "Derivative Securities". The Exchange also proposes to amend Exchange Rule 14.10 Interpretation and Policy .15 to modify the exemptions from the annual meeting requirements. The Exchange notes that the proposed changes would result in rules that are substantively similar to the existing rules of other exchanges.⁶²

Exchange Rule 14.10(e) currently provides exemptions to issuers of certain securities listed on the Exchange from portions of the corporate governance requirements. Specifically, Exchange

⁶¹ Supra notes 55 and 56.

⁶² See Nasdaq Listing Rules 5615(a), IM-5615-4, and IM-5620; NYSE Arca, Inc. ("NYSE Arca") Rule 5.3-E.

Rule 14.10(e)(1)(A) provides exemptions for asset-backed issuers⁶³ and other passive issuers⁶⁴ from the provisions of Exchange Rule 14.10(c)(2) (Independent Directors), Exchange Rule 14.10(c)(3) (Audit Committee Requirements), Exchange Rule 14.10(c)(4) (Independent Director Oversight of Executive Officer Compensation), Exchange Rule 14.10(c)(5) (Independent Director Oversight of Director Nominations), Exchange Rule 14.10(d) (Code of Conduct), and Exchange Rule 14.10(e)(3) (Controlled Company Exemption). Exchange Rule 14.10(e)(1)(E) provides exemptions for management investment companies registered under the Investment Company Act of 1940⁶⁵ from the provisions of Exchange Rule 14.10(c)(2) (Independent Directors), Exchange Rule 14.10(c)(4) (Independent Director Oversight of Executive Officer Compensation), Exchange Rule 14.10(c)(5) (Independent Director Oversight of Director Nominations), and Exchange Rule 14.10(d) (Code of Conduct). In addition, under Exchange Rule 14.10(e)(1)(E), management investment companies are exempt from Exchange Rule 14.10(c)(3) (Audit Committee Requirements), except for the provisions of Rule 10A-3 under the Exchange Act.⁶⁶

Currently, products that can rely on the exemptions within Exchange Rule 14.10(e)(1)(E) are Index Fund Shares (Exchange Rule 14.11(c)), Managed Fund Shares (Exchange Rule 14.11(i)), Managed Portfolio Shares (Exchange Rule 14.11(k)), ETF Shares (Exchange Rule 14.11(l)), and Tracking Fund Shares (Exchange Rule 14.11(m)). Additionally, Rule 14.10 Interpretation and Policy .15 provides exemptions to issuers of certain securities listed pursuant to the requirements of

⁶³ Rule 14.10 Interpretation and Policy .10 defines as issuers “that 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.”

⁶⁴ Exchange Rule 14.10(e)(1)(A)(i)(b) includes Portfolio Depositary Receipts as an example of a passive issuer.

⁶⁵ 15 U.S.C 80a.

⁶⁶ 17 CFR 240.10A-3.

Exchange Rule 14.10(f) (Meetings of Shareholders). Currently, Portfolio Depositary Receipts (Exchange Rule 14.11(b)), Index Fund Shares (Exchange Rule 14.11(c)), and Trust Issued Receipts (Exchange Rule 14.11(f)) are exempt from the annual meeting requirements.⁶⁷

The Exchange now proposes to add a definition of “Derivative Securities” to Exchange Rule 14.10(e)(1)(F)(ii) (the “Proposed Definition”), as discussed in the “Definition of Derivative Securities” section below. Further, the Exchange proposes to adopt Rule 14.10(e)(1)(F)(i), which would provide that issuers whose only securities listed on the Exchange are non-voting preferred securities, debt securities or Derivative Securities, are exempt from the requirements relating to Independent Directors (as set forth in Rule 14.10(c)(2)), Independent Director Oversight of Executive Officer Compensation (as set forth in Rule 14.10(c)(4)), Director Nominations (as set forth in Rule 14.10(c)(5)), Code of Conduct (as set forth in Rule 14.10(d)), and Meetings of Shareholders (as set forth in Rule 14.10(f)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 14.10(c)(3)), except for the applicable requirements of SEC Rule 10A-3. Notwithstanding, if the issuer also lists its common stock or voting preferred stock, or their equivalent on the Exchange it will be subject to all the requirements of Exchange Rule 14.10. Rule 14.10(e)(1)(F)(i) will continue to require such companies to comply with the requirements of Exchange Rule 14.10(g), pursuant to which an issuer will provide the Exchange with prompt notification after an executive officer of the company becomes aware of any noncompliance by the company with the requirements of Exchange Rule 14.10. The Exchange notes that proposed Rule 14.10(e)(1)(F)(i) and (ii) are substantively similar to rules on other exchanges.⁶⁸

⁶⁷ Rule 14.10 Interpretation and Policy .15 also exempts securities listed pursuant to Exchange Rule 14.11(h) (unless the listed security is a common stock or voting preferred stock equivalent).

⁶⁸ See Nasdaq Listing Rule 5615(a)(6) and Arca Rule 5.3-E. See also Securities Exchange Act No. 86072 (June 10, 2019) 84 FR 27816 (June 14, 2019) (SR-NASDAQ-2019-039) (Notice of Filing and Immediate

The Exchange also proposes to amend Exchange Rule 14.10 Interpretation and Policy .15 to amend the annual meeting requirements of Exchange Rule 14.10(f) to clarify that issuers of only non-voting preferred securities, debt securities or Derivative Securities⁶⁹ are not subject to the rule. The Exchange believes that the proposed amendment is appropriate because the holders of non-voting preferred securities, debt securities or Derivative Securities do not have voting rights with respect to the election of directors except in very limited circumstances as required by federal or state law or their governing documents. The rule will continue to state that if the Company also lists common stock or voting preferred stock, or their equivalent, on the Exchange, the Company will be subject to the annual meeting requirements of Exchange Rule 14.10(f). The proposed change is substantively identical to an existing rule on another exchange.⁷⁰

Definition of “Derivative Security”

Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 5615 To Allow Additional Issuers Who List Only Specific Securities To Be Able To Avail Themselves of Certain Exemptions Under Corporate Governance Requirements and To Amend Nasdaq Rule IM-5620 To Exclude Additional Categories of Issuers Listing Only Specific Securities From the Annual Shareholder Meeting Requirement); Securities Exchange Act No. 83324 (May 24, 2018) 83 FR 25076 (May 31, 2018) (SR-NYSEArca-2018-31) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 5.3-E To Exclude Certain Categories of Issuers From the Exchange's Annual Meeting Requirement).

⁶⁹ The Exchange is proposing to expand the list of products that are exempt from the annual meeting requirements of Exchange Rule 14.10(f). The proposed list of products consists of: Commodity Futures Trust Shares; Commodity Index Trust Shares; Commodity-Based Trust Shares; Commodity-Linked Securities; Currency Trust Shares; Equity Gold Shares; Equity Index-Linked Securities; Exchange-Traded Fund Shares; Fixed Income Index-Linked Securities; Futures-Linked Securities; Index Fund Shares; Index-Linked Exchangeable Notes; Managed Fund Shares; Managed Portfolio Shares; Managed Trust Securities; Multifactor Index-Linked Securities; Partnership Units; Portfolio Depository Receipts; SEEDS; Tracking Fund Shares; Trust Certificates; and Trust Issued Receipts. Portfolio Depository Receipts, Index Fund Shares and Trust Issued Receipts are currently excluded from the annual meeting requirement Exchange Rule 14.10(f).

⁷⁰ See Nasdaq Listing Rule IM-5620. See also Securities Exchange Act No. 86072 (June 10, 2019) 84 FR 27816 (June 14, 2019) (SR-NASDAQ-2019-039) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 5615 To Allow Additional Issuers Who List Only Specific Securities To Be Able To Avail Themselves of Certain Exemptions Under Corporate Governance Requirements and To Amend Nasdaq Rule IM-5620 To Exclude Additional Categories of Issuers Listing Only Specific Securities From the Annual Shareholder Meeting Requirement).

The proposed definition of Derivative Security will include: Commodity Futures Trust Shares; Commodity Index Trust Shares; Commodity-Based Trust Shares; Commodity-Linked Securities; Currency Trust Shares; Equity Gold Shares; Equity Index-Linked Securities; ETF Shares; Fixed Income Index-Linked Securities; Futures-Linked Securities; Index Fund Shares; Index-Linked Exchangeable Notes; Managed Fund Shares; Managed Portfolio Shares; Managed Trust Securities; Multifactor Index-Linked Securities; Partnership Units; Portfolio Depository Receipts; Selected Equity-linked Debt Securities (“SEEDS”); Tracking Fund Shares; Trust Certificates; and Trust Issued Receipts. Each of these types of securities is similarly exempt from the corporate governance requirements as proposed herein on another exchange,⁷¹ as summarized in the table below:

Product Type	Exchange Rule	Nasdaq Rule	NYSE Arca Rule
Commodity Futures Trust Shares	14.11(e)(7)	Rule 5711(g)	8.204-E
Commodity Index Trust Shares	14.11(e)(6)	Rule 5711(f)	8.203-E
Commodity-Based Trust Shares	14.11(e)(4)	Rule 5711(d)	8.201-E
Commodity-Linked Securities	14.11(d)	Rule 5710(k)(ii)	5.2-E(j)(6)(B)(II)
Currency Trust Shares	14.11(e)(5)	Rule 5711(e)	8.202-E
Equity Gold Shares	14.11(e)(2)	Rule 5711(b)	5.2-E(j)(5)
Equity Index-Linked Securities	14.11(d)	Rule 5710(k)(i)	5.2E(j)(6)(B)(I)
Exchange-Traded Fund Shares	14.11(l)	Rule 5704	5.2-E(j)(8)
Fixed Income Index-Linked Securities	14.11(d)	5710(k)(iii)	5.2E(j)(6)(B)(IV)
Futures-Linked Securities	14.11(d)	5710(k)(iv)	5.2E(j)(6)(B)(V)
Index Fund Shares*	14.11(c)	Rule 5750	5.2E(j)(3)
Index-Linked Exchangeable Notes	14.11(e)(1)	Rule 5711(a)	5.2-E(j)(4)
Managed Fund Shares	14.11(i)	Rule 5735	8.600-E
Managed Portfolio Shares	14.11(k)	Rule 5745	8.900-E
Managed Trust Securities	14.11(e)(10)	Rule 5711(j)	8.700-E
Multifactor Index-Linked Securities	14.11(d)	5710(k)(v)	5.2E(j)(6)(B)(VI)
Partnership Units	14.11(e)(8)	Rule 5711(h)	8.300-E

⁷¹ See Nasdaq Listing Rules 5615(a), IM-5615-4, and IM-5620; NYSE Arca Rule 5.3-E.

Portfolio Depository Receipts	14.11(b)	Rule 5705	8.100-E
SEEDS	14.11(e)(12)	Rule 5715	5.2-E(j)(2)
Tracking Fund Shares**	14.11(m)	Rule 5750	8.601-E
Trust Certificates	14.11(e)(3)	Rule 5711(c)	5.2-E(j)(7)
Trust Issued Receipts	14.11(f)	Rule 5720	8.200-E

* Index Fund Shares are generally equivalent to Investment Company Units listed pursuant to NYSE Arca Rule 5.2-E(j)(3).

** Tracking Fund Shares are generally equivalent to Active Proxy Portfolio Shares listed pursuant to NYSE Arca Rule 8.601-E and Proxy Portfolio Shares listed pursuant to Nasdaq Rule 5750.

Portfolio Depository Receipts & Index Fund Shares

The Exchange believes it is appropriate that Portfolio Depository Receipts and Index Fund Shares are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because these securities are currently exempt from the provisions Exchange Rule 14.10(c)(2) (Independent Directors), Exchange Rule 14.10(c)(4) (Independent Director Oversight of Executive Officer Compensation), Exchange Rule 14.10(c)(5) (Independent Director Oversight of Director Nominations), Exchange Rule 14.10(d) (Code of Conduct), and Exchange Rule 14.10(f) (Meetings of Shareholders).⁷² Further, both Portfolio Depository Receipts and Index Fund Shares are exempt from the same corporate governance requirements on another exchange.⁷³

Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, Multifactor Index-Linked Securities, Index-Linked Exchangeable Notes, and SEEDs

The Exchange also believes it is appropriate that Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities,

⁷² See Exchange Rule 14.10(e)(1)(E) and Interpretation and Policy .15 to Rule 14.10 for the exemptions for Index Fund Shares and 14.10(e)(1)(A) and Interpretation and Policy .15 to Rule 14.10 for the exemptions regarding Portfolio Depository Receipts.

⁷³ See Securities Exchange Act No. 86072 (June 10, 2019) 84 FR 27816 (June 14, 2019) (SR-NASDAQ-2019-039) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 5615 To Allow Additional Issuers Who List Only Specific Securities To Be Able To Avail Themselves of Certain Exemptions Under Corporate Governance Requirements and To Amend Nasdaq Rule IM-5620 To Exclude Additional Categories of Issuers Listing Only Specific Securities From the Annual Shareholder Meeting Requirement)

Multifactor Index-Linked Securities, Index-Linked Exchangeable Notes and SEEDS are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because each are separate forms of unsecured debt of an issuer that is already subject to the corporate governance and annual meeting requirements of a national securities exchange and will continue to be required under such rules.⁷⁴

If the issuer is listed on the Exchange, it is already subject to the requirements of Exchange Rule 14.10. If the issuer is listed on Nasdaq or NYSE Arca, it is already subject to corporate governance standards that are substantively similar to the Exchange's corporate governance rules as proposed herein. In addition, the Exchange believes that it is appropriate to exempt these securities from the annual meeting requirements of Exchange Rule 14.10(f) because the holders of these securities have economic interests and other limited rights that do not include voting rights. The Exchange notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents.

In addition, while unlike traditional debt securities, these securities derive their value from the performance of an underlying index or reference asset, they retain many of the same characteristics as traditional debt securities⁷⁵ and, therefore, the Exchange believes it is consistent to treat them accordingly with regard to the corporate governance and annual meeting requirements.

The Exchange notes that these securities are already similarly exempted from the same corporate governance requirements on other exchanges.⁷⁶

⁷⁴ Exchange Rule 14.11(h)(1)(E), with which securities listed pursuant to Rule 14.11(d), 14.11(f), and 14.11(h) must comply, states, in part, the issuers of these securities must be "listed on the Exchange, the NYSE or NASDAQ, or must be an affiliate of a Company listed on the Exchange, the NYSE or NASDAQ".

⁷⁵ Like traditional debt securities, these securities are debt of the issuer and have a specific date of maturity.

⁷⁶ Nasdaq Listing Rule 5615(a)(6) and Arca Rule 5.3-E. See also Securities Exchange Act No. 86072 (June 10, 2019) 84 FR 27816 (June 14, 2019) (SR-NASDAQ-2019-039) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 5615 To Allow Additional Issuers Who

Equity Gold Shares

Similarly, the Exchange believes it is appropriate that Equity Gold Shares are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because like such classes of derivative securities, Equity Gold Shares are passive investment vehicles that hold a beneficial interest in a specified commodity trust. In addition, Equity Gold Shares are treated in a similar fashion to Index Fund Shares under the existing Exchange rules.⁷⁷ Therefore, the Exchange believes it is appropriate that Equity Gold Shares are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein as Index Fund Shares are already exempt from certain provisions of Exchange Rule 14.10. The Exchange notes that Equity Gold Shares are already similarly exempted from the same corporate governance requirements on other exchanges.⁷⁸

Trust Certificates

The Exchange believes it is appropriate that Trust Certificates are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because these securities represent an interest in a passive investment vehicle that are issued by entities created solely to issue

List Only Specific Securities To Be Able To Avail Themselves of Certain Exemptions Under Corporate Governance Requirements and To Amend Nasdaq Rule IM-5620 To Exclude Additional Categories of Issuers Listing Only Specific Securities From the Annual Shareholder Meeting Requirement); Securities Exchange Act No. 83324 (May 24, 2018) 83 FR 25076 (May 31, 2018) (SR-NYSEArca-2018-31) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 5.3-E To Exclude Certain Categories of Issuers From the Exchange's Annual Meeting Requirement).

⁷⁷ Exchange Rule 14.11(e)(2)(A) states that “while Equity Gold Shares are not technically Index Fund Shares and thus not are not covered by 14.11(c), all other rules that reference “Index Fund Shares” shall also apply to Equity Gold Shares.”

⁷⁸ Nasdaq Listing Rule 5615(a)(6) and Arca Rule 5.3-E. See also Securities Exchange Act No. 86072 (June 10, 2019) 84 FR 27816 (June 14, 2019) (SR-NASDAQ-2019-039) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 5615 To Allow Additional Issuers Who List Only Specific Securities To Be Able To Avail Themselves of Certain Exemptions Under Corporate Governance Requirements and To Amend Nasdaq Rule IM-5620 To Exclude Additional Categories of Issuers Listing Only Specific Securities From the Annual Shareholder Meeting Requirement); Securities Exchange Act No. 83324 (May 24, 2018) 83 FR 25076 (May 31, 2018) (SR-NYSEArca-2018-31) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 5.3-E To Exclude Certain Categories of Issuers From the Exchange's Annual Meeting Requirement).

securities and invest in the underlying index or reference assets. The trust does not have a board of directors and the holders of Trust Certificates have no voting rights, unless required under state law, with regard to corporate matters, including election of trustees. Therefore, the Exchange believes that Trust Certificates should be included in the Proposed Definition and should not be subject to the annual meeting requirements of Exchange Rule 14.10(f). The Exchange notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. The Exchange further notes that Trust Certificates are already similarly exempted from the same corporate governance requirements on other exchanges.⁷⁹

Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, and Commodity Futures Trust Shares

The Exchange also believes it is appropriate that Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, and Commodity Futures Trust Shares are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because shares of these securities are passive investment vehicles that hold a beneficial interest in a specified commodity trust that is not managed like a corporation and does not have officers or a board of directors. These securities are already exempt from Exchange Rule 14.10(c)(2) (Independent Directors), Exchange Rule 14.10(c)(4) (Independent Director Oversight of Executive Officer Compensation), Exchange Rule 14.10(c)(5) (Independent Director Oversight of Director Nominations), and Exchange Rule 14.10(d) (Code of Conduct). In addition, while shareholders may have limited voting rights in certain circumstances, they do not have the right to elect directors. Therefore, given the limited voting rights, lack of directors or officers, and the passive nature of the trust, the Exchange believes these securities should not be subject to the annual meeting

⁷⁹ Id.

requirements of Exchange Rule 14.10(f). The Exchange notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. The Exchange also notes that these securities are already similarly exempted from the same corporate governance requirements on other exchanges.⁸⁰

Partnership Units

The Exchange also believes that it is appropriate that Partnership Units are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because Partnership Units are passive investment vehicles that hold a beneficial interest in a specified partnership that is not managed like a corporation and does not have a board of directors. In addition, the Exchange believes Partnership Units should not be subject to the annual meeting requirements of Exchange Rule 14.10(f) because holders have limited voting rights and the general partner oversees the operation of the partnership. The Exchange notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. The Exchange notes that Partnership Units are already similarly exempted from the same corporate governance requirements on other exchanges.⁸¹

Trust Issued Receipts

The Exchange believes it is appropriate that Trust Issued Receipts are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because Trust Issued Receipts are passive investment vehicles that hold a beneficial interest in a specified partnership that is not managed like a corporation and does not have a board of directors. In addition, the Exchange believes that Trust Issued Receipts should not be subject to the annual meeting requirements of

⁸⁰ Id.

⁸¹ Id.

Exchange Rule 14.10(f) because these securities are currently exempt from this rule.⁸² The Exchange notes that Trust Issued Receipts are already similarly exempted from the same corporate governance requirements on other exchanges.⁸³

Managed Fund Shares and ETF Shares

The Exchange believes it is appropriate that Managed Fund Shares and ETF Shares are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because they currently exempt from the provisions of Exchange Rule 14.10(c)(2) (Independent Directors), Exchange Rule 14.10(c)(4) (Independent Director Oversight of Executive Officer Compensation), Exchange Rule 14.10(c)(5) (Independent Director Oversight of Director Nominations), and Exchange Rule 14.10(d) (Code of Conduct).⁸⁴ In addition, the Exchange believes that it is appropriate to exempt Managed Fund Shares and ETF Shares from the annual meeting requirements of Exchange Rule 14.10(f) because like Index Fund Shares (which are currently provided an exemption from the annual meeting) the aforementioned securities are issued by an open-end investment company registered under the 1940 Act that are available for creation and redemption on a continuous basis, and require dissemination of an intraday portfolio value. These requirements provide important investor protections and ensure that the net asset value and the market price remain closely tied to one another while maintaining a liquid market for the security.

⁸² See Exchange Rule 14.10 Interpretation and Policy .15.

⁸³ Nasdaq Listing Rule 5615(a)(6) and Arca Rule 5.3-E. See also Securities Exchange Act No. 86072 (June 10, 2019) 84 FR 27816 (June 14, 2019) (SR-NASDAQ-2019-039) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 5615 To Allow Additional Issuers Who List Only Specific Securities To Be Able To Avail Themselves of Certain Exemptions Under Corporate Governance Requirements and To Amend Nasdaq Rule IM-5620 To Exclude Additional Categories of Issuers Listing Only Specific Securities From the Annual Shareholder Meeting Requirement); Securities Exchange Act No. 83324 (May 24, 2018) 83 FR 25076 (May 31, 2018) (SR-NYSEArca-2018-31) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 5.3-E To Exclude Certain Categories of Issuers From the Exchange's Annual Meeting Requirement).

⁸⁴ See Exchange Rule 14.10(e)(1)(E).

These protections, along with the disclosure documents regularly received by investors, allow shareholders of Managed Fund Shares and ETF Shares to value their holdings on an ongoing basis and lessen the need for shareholders to directly deal with management at an annual meeting. Therefore, the Exchange further believes it is appropriate that these be afforded the proposed exemptions to the annual meeting requirements. The Exchange notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. The Exchange notes that Managed Fund Shares and ETF Shares are already similarly exempted from the same corporate governance requirements on other exchanges.⁸⁵

Managed Portfolio Shares and Tracking Fund Shares

The Exchange believes it is appropriate that Managed Portfolio Shares and Tracking Fund Shares are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because it is currently exempt from certain provisions of Rule 14.10.⁸⁶ In addition, the Exchange believes that it is appropriate to exempt Managed Portfolio Shares and Tracking Fund Shares from the annual meeting requirements of Exchange Rule 14.10(f) because like Index Fund

⁸⁵ Nasdaq Listing Rule 5615(a)(6) and Arca Rule 5.3-E. See also Securities Exchange Act Nos. 86072 (June 10, 2019) 84 FR 27816 (June 14, 2019) (SR-NASDAQ-2019-039) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 5615 To Allow Additional Issuers Who List Only Specific Securities To Be Able To Avail Themselves of Certain Exemptions Under Corporate Governance Requirements and To Amend Nasdaq Rule IM-5620 To Exclude Additional Categories of Issuers Listing Only Specific Securities From the Annual Shareholder Meeting Requirement); 83324 (May 24, 2018) 83 FR 25076 (May 31, 2018) (SR-NYSEArca-2018-31) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 5.3-E To Exclude Certain Categories of Issuers From the Exchange's Annual Meeting Requirement); 88561 (April 3, 2020) 85 FR 19984 (April 9, 2020) (SR-NASDAQ-2019-090) (Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, To Adopt Nasdaq Rule 5704 Governing the Listing and Trading of Exchange Traded Fund Shares); and 88625 (April 13, 2020) 85 FR 21479 (April 17, 2020) (SR-NYSEArca-2019-81) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Adopt NYSE Arca Rule 5.2-E(j)(8) Governing the Listing and Trading of Exchange-Traded Fund Shares).

⁸⁶ See Exchange Rule 14.10(e)(1)(E).

Shares (which are currently provided an exemption from the annual meeting) the aforementioned securities are issued by an open-end investment company registered under the 1940 Act that are available for creation and redemption on a continuous basis, and require dissemination of an intraday portfolio value. These requirements provide important investor protections and ensure that the net asset value and the market price remain closely tied to one another while maintaining a liquid market for the security. These protections, along with the disclosure documents regularly received by investors, allow shareholders of Managed Portfolio Shares and Tracking Fund Shares to value their holdings on an ongoing basis and lessen the need for shareholders to directly deal with management at an annual meeting. Therefore, the Exchange further believes it is appropriate that these be afforded the proposed exemptions to the annual meeting requirements. The Exchange notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. The Exchange also notes that Managed Portfolio Shares and Tracking Fund Shares are already similarly exempted from the same corporate governance requirements on another exchange.⁸⁷

Managed Trust Securities

The Exchange believes that it is appropriate to exempt Managed Trust Securities from the annual meeting requirements of Exchange Rule 14.10(f) because like Index Fund Shares (which are currently provided an exemption from the annual meeting) the aforementioned securities are issued by an open-end investment company registered under the 1940 Act that are available for creation and redemption on a continuous basis and require dissemination of an intraday portfolio value.

⁸⁷ See Nasdaq Rule 5615(6)(B). See also Securities Exchange Act No. 93467 (October 29, 2021) 86 FR 60930 (November 4, 2021) (SR-NASDAQ-2021-083) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Exempt Certain Categories of Investment Companies Registered Under the Investment Company Act of 1940 From the Requirements To Obtain Shareholder Approval Prior to the Issuance of Securities in Connection With Acquisitions of the Stock or Assets of an Affiliated Registered Investment Company Under Certain Conditions).

These requirements provide important investor protections and ensure that the net asset value and the market price remain closely tied to one another while maintaining a liquid market for the security. These protections, along with the disclosure documents regularly received by investors, allow shareholders of Managed Trust Securities to value their holdings on an ongoing basis and lessen the need for shareholders to directly deal with management at an annual meeting. Therefore, the Exchange further believes it is appropriate that these be afforded the proposed exemptions to the annual meeting requirements. The Exchange notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. The Exchange also notes that Managed Trust Securities are already similarly exempted from the same corporate governance requirements on other exchanges.⁸⁸

(6) Definition of “Family Member”

The Exchange is proposing to modify the definition of “Family Member” for purposes of director independence under Rule 14.10(c)(1)(B) to mean a person’s spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person’s home. The purpose of this rule change is to exclude domestic employees who share the director’s home, and stepchildren who do not share the director’s home, from the type of relationships that always preclude a board from

⁸⁸ See Nasdaq Listing Rule 5615(a)(6)(B). See also Securities Exchange Act No. 86072 (June 10, 2019) 84 FR 27816 (June 14, 2019) (SR-NASDAQ-2019-039) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 5615 To Allow Additional Issuers Who List Only Specific Securities To Be Able To Avail Themselves of Certain Exemptions Under Corporate Governance Requirements and To Amend Nasdaq Rule IM-5620 To Exclude Additional Categories of Issuers Listing Only Specific Securities From the Annual Shareholder Meeting Requirement); Securities Exchange Act No. 83324 (May 24, 2018) 83 FR 25076 (May 31, 2018) (SR-NYSEArca-2018-31) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 5.3-E To Exclude Certain Categories of Issuers From the Exchange's Annual Meeting Requirement).

finding that a director is independent, as described below. The proposed definition is substantively similar to a proposal that has been considered and approved by the Commission.⁸⁹

Rule 14.10(c)(1)(B) provides a list of certain relationships that preclude a board from finding that a director is independent (the “Bright-Line Independence Test”). These objective measures provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. The Exchange’s Rules preclude a director from being considered independent if the director has a family member who, among other things, (i) accepted any compensation from the Company in excess of \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence (with certain exceptions);⁹⁰ (ii) is, or at any time during the past three years was, employed by the company as an Executive Officer;⁹¹ (iii) is a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient’s consolidated gross revenues for that year, or \$200,000, whichever is more (with certain exceptions);⁹² (iv) is employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company served on the compensation committee of such other entity;⁹³ or (v) is a current partner of the Company’s outside auditor, or was

⁸⁹ See Nasdaq Listing Rule 5605(a)(2). See also Securities and Exchange Act Nos. 86095 (June 12, 2019) 84 FR 28379 (June 18, 2019) (SR-NASDAQ-2019-049) (Notice of Filing of Proposed Rule Change To Amend the Definition of Family Member in Listing Rule 5605(a)(2) for Purposes of the Definition of Independent Director); and 88210 (February 13, 2020) 52 FR 9816 (February 20, 2020) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend the Definition of Family Member in Listing Rule 5605(a)(2) for Purposes of the Definition of Independent Director).

⁹⁰ Rule 14.10(c)(1)(B)(ii)

⁹¹ Rule 14.10(c)(1)(B)(iii).

⁹² Rule 14.10(c)(1)(B)(iv)

⁹³ Rule 14.10(c)(1)(B)(v)

a partner or employee of the Company’s outside auditor who worked on the Company’s audit at any time during any of the past three years.⁹⁴

Currently, for purposes of the Exchange’s Rules, Family Member means a person’s spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person’s home.⁹⁵ This definition includes stepchildren, as they are “children by... marriage.”

As noted above, the Exchange proposes to define a Family Member to mean a person’s spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person’s home. The Exchange also proposes to interpret the term “children” to exclude stepchildren except that a relationship with a stepchild who shares a home with the director would continue to fall under the Bright-line Independence Test because the definition of a Family Member will include anyone (other than domestic employees) who shares the director’s home. To comply with the Exchange’s rules, it will expect the Boards of its listed companies to continue to elicit through director questionnaires the information necessary to make independence determinations, which will need to include questions about stepchild relationships. As noted in the order approving a substantively similar rule, the Commission stated that it “believes that this should help to ensure that listed companies inquire about stepchild relationships so that such companies can discern the essential facts and circumstances to be able to make the affirmative findings necessary under Nasdaq rules to determine a director is independent.”⁹⁶

⁹⁴ Rule 14.10(c)(1)(B)(vi)

⁹⁵ Rule 14.10(c)(1)(B)

⁹⁶ See Securities Exchange Act No. 88210 (February 13, 2020) 52 FR 9816 (February 20, 2020) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend the Definition of Family Member in Listing Rule 5605(a)(2) for Purposes of the Definition of Independent Director).

The Exchange has concluded that inclusion of stepchildren in the definition of a Family Member makes the definition over-inclusive. The Bright-line Independence Test is intended to identify relationships that are likely to interfere with the exercise of independent judgment in carrying out the director's responsibilities. In that regard the Exchange believes that a director's relationship with their stepchildren may or may not interfere with the director's exercise of independent judgment based on the particular facts and circumstances of the situation. If a stepchild has been a dependent of a director or was a part of the director's household since being a minor, the director's relationship with that stepchild is likely to be similar to that with a biological child. However, the Exchange believes if the director marries a person who has an adult child, the director never acted in any capacity as a parent of this stepchild, and the stepchild never shared the director's household, then the director and stepchild are likely to have an attenuated relationship that is unlike the relationship of a parent and child. Because the determination as to whether such relationship is likely to interfere with the exercise of independent judgment in carrying out the director's responsibilities is based on facts and circumstances, the Exchange believes a company's board is in the best position to make such a determination. Accordingly, the Exchange believes that a stepchild relationship should not preclude a director from being considered independent in all circumstances. Notwithstanding, if a stepchild shares a home with the director, such a relationship would continue to fall under the Bright-line Independence Test because the definition of a Family Member will include anyone (other than domestic employees) who shares the director's home.

In addition, the Exchange believes that the proposed change would align the language in its definition of a Family Member with the comparable definition of a Family Member or an immediate

family member of the Nasdaq.⁹⁷ When each market has a different definition, it complicates the preparation by listed companies of director and officer questionnaires that the companies need in order to analyze director independence. In particular, this creates an added and unnecessary burden when a company transfers its listing from one national securities exchange to another. In such case, a director may have already filled out an annual questionnaire based on the prior listing exchange's definition of a family member but need to answer additional questions because the definition of the exchange the listing is transferred to is phrased differently.

The Exchange is also proposing to modify the definition of a "Family Member" for purposes of director independence under Rule 14.10(c)(1)(B) to exclude domestic employees who share a director's home. The Exchange believes that the definition of a Family Member should not include a domestic employee who shares a director's home because this definition is not intended to capture commercial relationships.

Accordingly, as described above the Exchange is proposing to modify the definition of a Family Member for purposes of director independence under Rule 14.10(c)(1)(B) to mean a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. This definition is identical to the Nasdaq definition of a Family Member.⁹⁸

Additionally, the Exchange notes that the proposed rule change to Rule 14.10(c)(1)(B) will not affect the additional independence criteria for audit committee members set forth in Rule 14.10(c)(3), which incorporate the independence requirements of SEC Rule 10A-3.⁹⁹ Thus, the

⁹⁷ See Nasdaq Listing Rule 5605(a)(2).

⁹⁸ Id.

⁹⁹ Rule 14.10(c)(3)(B) requires that each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must, among other requirements, meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act, in addition to the requirements of

broader exclusion from the definition of Family Member, as it applies to minor stepchildren not sharing the director's home, may not be applied for purposes of determining the independence of audit committee members, where the stricter standards of Rule 10A-3, as well as Exchange Rule 14.10(c)(3), still apply.¹⁰⁰

Notwithstanding these changes, the Exchange notes that a company's board must, under 14.10(c)(3)(B) and Interpretation and Policy .05, affirmatively determine that no relationship exists that would interfere with the exercise of independent judgment in carrying out the director's responsibilities. To comply with the Exchange's rules, the Exchange will expect listed companies' boards to continue to elicit through director and officer questionnaires the information necessary for the boards to make such determinations, which will need to include questions about stepchild relationships. The Exchange believes that it is appropriate for the board to review a relationship between a director and a stepchild who does not share a home with the director or a relationship between a director and a domestic employee under such facts and circumstances test.

(7) Quorum Requirement

The Exchange is proposing to modify Exchange Rules 14.10(e)(1)(D)(iv) and 14.10(f)(3)(ii) (the "Quorum Rules") to allow the Exchange to accept a quorum less than 33-1/3% of the outstanding shares of a company's common voting stock where the Company is incorporated outside of the U.S. and such Company's home country law prohibits the company from establishing

Rule 14.10(c)(3)(B). See also Exchange Rule 14.10 Interpretation and Policy .05 (Audit Committee Composition).

¹⁰⁰ See Securities Exchange Act No. 88210 (February 13, 2020) 52 FR 9816 (February 20, 2020) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend the Definition of Family Member in Listing Rule 5605(a)(2) for Purposes of the Definition of Independent Director).

a quorum that satisfies the Quorum Rules. The Exchange notes that these proposed rules are substantively similar to existing rules of another exchange.¹⁰¹

Exchange Rule 14.10(f)(3) establishes quorum requirements for an annual meeting of shareholders for Exchange Companies listing common stock or voting preferred stock, and their equivalents.¹⁰² Under this rule, each company that is not a limited partnership must provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3% of the outstanding shares of the company's common voting stock (the "Exchange Quorum Requirement"). The Exchange notes that domestic listed companies are subject to quorum requirements under the laws of their states of incorporation.¹⁰³

Now, the Exchange proposes to modify the Exchange Quorum Requirement to allow the Exchange to accept any quorum requirement for a non-U.S. company if such company's home country law mandates such quorum for the shareholders' meeting and prohibits the company from establishing the higher quorum required by the Exchange Quorum Requirement. The Exchange proposes to require that a company relying on this provision shall submit to the Exchange a written statement from an independent counsel in such company's home country describing the home country law that conflicts with the Exchange quorum requirement. The Exchange also proposes to

¹⁰¹ See Nasdaq Listing Rules 5615(a)(4)(E) and 5620(c). See Securities and Exchange Act Nos. 90883 (January 11, 2021) 86 FR 4158 (January 15, 2021) (SR-NASDAQ-2020-100) (Notice of Filing of Proposed Rule Change To Modify the Quorum Requirement for Non-U.S. Companies Under Certain Limited Circumstances); and 91567 (April 14, 2021) 86 FR 20556 (April 20, 2021) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Quorum Requirement).

¹⁰² See Exchange Rule 14.10(f)(1).

¹⁰³ For example, Delaware allows companies to establish their own quorum requirements in their certificates of incorporation or bylaws, provided that the quorum must be at least one-third of the shares entitled to vote on the matter. In the absence of a quorum provision in the company's certificate of incorporation or bylaws, Delaware requires a quorum of 50% of the shares entitled to vote on the matter. See Del. Code Sec. 216.

require such counsel to certify that, as the result of the conflict with the home country law, the company is prohibited from complying with the Exchange Quorum Requirement, and the company cannot obtain an exemption or waiver from that law. Finally, to assure appropriate disclosure, the Exchange proposes to require that any company relying on this exception from the Exchange Quorum Requirement must make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to the Exchange, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception.¹⁰⁴

In addition, to help assure continuous transparency, the Exchange proposes to require that such website disclosure is maintained for the period of time the company continues to rely on the exception from the quorum requirements. Finally, to help assure the exception remains appropriate, the Exchange proposes to require the company to update the website disclosure at least annually to indicate that the company continues to be prohibited under its home country law from complying with the Exchange's quorum requirements as of the date of such update.¹⁰⁵

The Exchange also proposes to modify Exchange Rule 14.10(e)(1)(D)(iv) governing the quorum requirements for limited partnerships listed on the Exchange to also reflect this change to the Exchange Quorum Requirement.

¹⁰⁴ See Nasdaq Listing Rules 5615(a)(4)(E) and 5620(c). See Securities and Exchange Act Nos. 90883 (January 11, 2021) 86 FR 4158 (January 15, 2021) (SR-NASDAQ-2020-100) (Notice of Filing of Proposed Rule Change To Modify the Quorum Requirement for Non-U.S. Companies Under Certain Limited Circumstances); and 91567 (April 14, 2021) 86 FR 20556 (April 20, 2021) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Quorum Requirement).

¹⁰⁵ Id.

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.¹⁰⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰⁷ 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)¹⁰⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

(1) Compensation-related Listing Rules

The proposal first requires that the compensation of Executive Officers must be determined by a compensation committee and eliminates the existing Alternative for such compensation. Although the Alternative to a formal committee in the Exchange's current rules may be useful to a small number of prospective companies, the Exchange believes that the heightened importance of compensation decisions and oversight of executive compensation in today's environment, as well as the benefits that can result for investors of having a standing committee overseeing compensation matters, makes it appropriate and consistent with investor

¹⁰⁶ 15 U.S.C. 78f(b).

¹⁰⁷ 15 U.S.C. 78f(b)(5).

¹⁰⁸ Id.

protection and the public interest under Section 6(b)(5) of the Act for the Exchange to raise its standards in this regard.¹⁰⁹ In the Commission's approval order for a similar proposed rule change to Nasdaq rules, the Commission stated:

In making this determination the Commission is aware that Rule 10C-1 does not require listed companies of national securities exchanges to have a committee dedicated to compensation matters. Nevertheless, it is consistent with Section 6(b)(5) of the Act for Nasdaq to require all its listed companies to have an independent compensation committee overseeing executive compensation matters because of the importance and accountability to investors that such a formal structure can provide. The Commission also notes that some of the other requirements of Rule 10C-1 apply only when a company has a committee overseeing compensation matters. Thus, the requirement to have a compensation committee will trigger the additional protections for shareholders created by these requirements.¹¹⁰

The Exchange also believes it is appropriate to raise its standards to require the compensation committee of each issuer to have at least two members, instead of permitting a sole individual to be responsible for compensation policy, and that this furthers investor protection and the public interest in accordance with Section 6(b)(5).¹¹¹ The Commission agreed in its approval of a substantively similar rule on Nasdaq when it stated:

In light of the importance of compensation matters, the added thought and objectivity that is likely to result when two or more individuals deliberate over how much a listed company should pay its executives, and what form such compensation should take, is consistent with the goal of promoting more accountability to shareholders on executive compensation matters. Moreover, given the complexity of executive compensation packages for corporate executives, it is reasonable for Nasdaq to require listed companies to have the input of more than one committee member on such matters.¹¹²

¹⁰⁹ See Securities Exchange Act Nos. 68013 (October 9, 2012) 77 FR 62563 (October 15, 2012) (SR-NASDAQ-2012-109) (Notice of Filing of Proposed Rule Change To Modify the Listing Rules for Compensation Committees To Comply With Rule 10C-1 Under the Exchange Act and Make Other Related Changes) 68640 (January 11, 2013) 78 FR 4554 (January 22, 2013) (Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 To Amend the Listing Rules for Compensation Committees To Comply With Rule 10C-1 Under the Act and Make Other Related Changes).

¹¹⁰ Id.

¹¹¹ Id.

¹¹² Id.

Moreover, no Companies currently listed on the Exchange has a compensation committee of only one member. Therefore, the two-member requirement will not be an onerous burden for Companies listed on the Exchange and should strength their review of compensation matters.

The Exchange’s proposal to require a compensation committee to have a written charter detailing the committee’s authority and responsibility is also consistent with Section 6(b)(5) of the Act and will provide added transparency for shareholders regarding how a company determines compensation and may clarify and improved the process itself. In an approval order for a substantively similar rule on Nasdaq, the Commission stated that “the requirement that listed companies review and reassess the adequacy of the compensation’s committee charter on an annual basis will also help to ensure accountability and transparency on an on-going basis.”¹¹³

The Exchange believes that the proposed “Exceptional and Limited Circumstances” provision, which allows one director who fails to meet the Exchange’s Independent Director definition to serve on a compensation committee under certain conditions, is an appropriate means to allow Companies flexibility as to board and committee membership and composition in unusual circumstances, which may be particularly important for smaller Companies. Further, the Commission long ago approved as consistent with the Act the same exception and concept in the context of the Exchange’s Independent Director under Exchange Rule 14.10(c)(1)(B), with respect to nominations committees and audit committees, and approved a substantively similar provision on another exchange.¹¹⁴

The Exchange believes the proposal to provide under proposed Rule 14.10(c)(4)(D), that for purposes of this Rule, the compensation committee is not required to conduct an

¹¹³ Id.

¹¹⁴ Id.

independence assessment for a compensation adviser that acts in a role limited to certain activities provided under Item 407(e)(3)(iii) of Regulation S-K will add clarity to the Exchange's rules.

The Exchange believes its proposal to prohibit a director who receives compensation or fees from a listed company (other than, among other things, director compensation) from serving on the Company's compensation committee will protect investors and the public interest. Specifically, a director's receipt of compensatory fees from a company (other than compensation for board and board committee service or compensation under a retirement plan or prior service with the company as described above) could render the member unwilling or unable to provide a truly independent voice on executive compensation decisions. The Exchange believes the restriction is warranted given the heightened importance of executive compensation decisions in today's business environment. Moreover, in its approval order of a similar Nasdaq proposal,¹¹⁵ the Commission stated that it believes the restriction will "help to ensure that compensation committee members cannot receive directly or indirectly fees that could potentially influence their decisions on compensation matters."

The Exchange believes its proposal to move Rule 14.10(e)(1)(F) to proposed Rule 14.10(c)(4)(F) and to clarify the specific provisions under which a Smaller Reporting Company is exempt from the requirements of Rule 14.10(c) will provide additional clarity to the Exchange's rulebook. As discussed above, Smaller Reporting Companies will continue to be subject to the same requirements as all other Companies, except the requirements relating to compensatory fees, affiliation and the specific compensation committee responsibilities and authority set forth in proposed Exchange Rule 14.10(c)(4)(C)(iv). The Exchange believes that

¹¹⁵ Id.

this hybrid approach does not discriminate unfairly between issuers because it recognizes the fact that the ““executive compensation arrangements of [Smaller Reporting Companies] generally are so much less complex than those of other public companies that they do not warrant the more extensive disclosure requirements imposed on companies that are not [Smaller Reporting Companies] and related regulatory burdens that could be disproportionate for [Smaller Reporting Companies].””¹¹⁶ In addition, the Exchange notes that the Commission exempted Smaller Reporting Companies from Rule 10C-1.¹¹⁷ As a result, this distinction does not discriminate unfairly among issuers.

Finally, the Exchange believes the proposed non-substantive ministerial changes to the language of Rule 14.10(c) will add clarity to the Exchange’s rulebook.

As noted above, all of the proposed changes to the Exchange’s compensation committee requirements are substantively similar to proposed rules already considered and approved by the Commission.¹¹⁸

(2) Direct Registration Program

The proposed rule change as it pertains to the Exchange’s DRP is consistent with the investor protection objectives of the Act in that it will provide a very limited exemption to the Exchange’s DRP eligibility requirements for foreign issuers that provide a letter from home country counsel certifying that compliance with that requirement is prohibited by home country law or

¹¹⁶ See Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422, 38425 (June 27, 2012), at 38438 (quoting Securities Exchange Act Release No. 54302A (August 29, 2006), 71 FR 53158, 53192 (September 8, 2006)).

¹¹⁷ See 17 CFR 240.10C-1(b)(5)(ii).

¹¹⁸ See Securities Exchange Act Nos. 68013 (October 9, 2012) 77 FR 62563 (October 15, 2012) (SR-NASDAQ-2012-109) (Notice of Filing of Proposed Rule Change To Modify the Listing Rules for Compensation Committees To Comply With Rule 10C-1 Under the Exchange Act and Make Other Related Changes) 68640 (January 11, 2013) 78 FR 4554 (January 22, 2013) (Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 To Amend the Listing Rules for Compensation Committees To Comply With Rule 10C-1 Under the Act and Make Other Related Changes).

regulation. Further, the proposed rule change should facilitate cooperation and coordination among clearing agencies, transfer agents, and broker-dealers by explaining the basis upon which certain foreign issuers are not required to participate in the DRP. This, in turn, should facilitate better efficiency in the clearance and settlement of securities transactions involving the securities of these foreign issuers and should facilitate better efficiency in the transfer of such securities. The Exchange notes that its proposal is substantively similar to proposed amendments Nasdaq made to its Rules 5210(c) and 5255(c),¹¹⁹ and thus raises no novel issues.

(3) Public Disclosure

The proposal to require an additional public disclosure accomplishes the objectives of the Act by enhancing transparency around third party compensation and payments made in connection with board service. The Exchange believes such disclosure has several benefits. First, it would provide information to investors to help them make meaningful investing and voting decisions. It would also address potential concerns that undisclosed third-party compensation arrangements may lead to conflicts of interest among directors and call into question their ability to satisfy fiduciary duties. In an approval for a substantively similar proposed rule change on another exchange, the Commission stated “to the extent that [the proposal] would, in certain situations, provide investors and market participants additional information to make informed investment and voting decisions, we believe it is consistent with the requirements of Section 6(b)(5) of the Act.”¹²⁰

¹¹⁹ See Securities and Exchange Act Release No. 68238 (November 15, 2012) 77 FR 69911 (November 21, 2012) (SR-NASDAQ-2012-128) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Exemption to the Direct Registration Program Requirement to All Foreign Issuers Rather Than Only Foreign Private Issuers).

¹²⁰ See Securities and Exchange Act Nos. 77481 (March 30, 2016) 81 FR 19678 (April 5, 2016) (SR-NASDAQ-2016-013) (Notice of Filing of Proposed Rule Change To Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Director's Members or Nominees);

While there may be some overlap in the proposed disclosure requirement with existing Commission disclosure requirements, it is not unusual for a national securities exchange to adopt disclosure requirements in their listing rules that supplement or overlap with disclosure requirements otherwise imposed under federal securities laws. Such disclosure-related listing standards “help to ensure that listed companies maintain compliance with the disclosure requirements under the federal securities laws and contribute to the maintenance of fair and orderly markets by providing investors with material and current information necessary for informed investment and voting decisions.”¹²¹ Further, as the proposed public disclosure requirement is substantively similar to a proposal already considered and approved by the Commission, it raises no novel issues.¹²²

(4) Market Value Definition and Shareholder Approval

The Exchange believes that the proposal to modify the measure of market value for the purpose of Rule 14.10(i)(4) from the closing bid price to the lower of: (i) the closing price (as reflected on Cboe.com); or (ii) the average closing price of the common stock (as reflected on Cboe.com) for the five trading days immediately preceding the signing of the binding agreement will perfect the mechanism of a free and open market and protect investors and the public interest. Furthermore, the proposal is substantively similar to a proposed rule that was previously approved by the Commission.¹²³

78223 (July 1, 2016) 81 FR 44400 (July 7, 2016) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Director’s Members or Nominees).

¹²¹ Id.

¹²² Id.

¹²³ See Securities Exchange Act Nos. 82702 (February 13, 2018) 83 FR 7269 (February 20, 2018) (SR-NASDAQ-2018-008) (Notice of Filing of Proposed Rule Change To Modify the Listing Requirements

First, the Exchange believes using the proposed method for determining the market value has the potential to provide a better indication of the actual market value than the current use of closing bid price under certain market conditions. The Exchange also believes that the BZX Official Closing Price is less prone to manipulation than are bid prices. In addition, the Exchange believes the proposal to use the BZX Official Closing Price for purposes of market value should help to ensure transparency to investors in calculating market value for purposes of the proposed rule.

Second, allowing share issuances to be priced at the five-day average of the closing price will further align the Exchange's requirements with how many transactions are structured, such as transactions where Exchange Rule 14.10(i) is not implicated because the issuance is for less than 20% of the common stock and the parties rely on the five-day average for pricing to smooth out unusual fluctuations in price. In so doing, the proposed rule change will perfect the mechanism of a free and open market. Further, allowing a five-day average price continues to protect investors and the public interest because it will allow companies and investors to price transactions in a manner designed to eliminate aberrant pricing resulting from unusual transactions on the day of a transaction. Maintaining the allowable average at just a five-day period also protects investors by ensuring the period is not too long, such that it would result in the price being distorted by ordinary past market movements and other outdated events. In a market that rises each day of the period, the

Contained in Listing Rule 5635(d) To Change the Definition of Market Value for Purposes of the Shareholder Approval Rules and Eliminate the Requirement for Shareholder Approval of Issuances at a Price Less Than Book Value but Greater Than Market Value) and 84287 (September 26, 2018) 83 FR 49599 (October 2, 2018) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Listing Requirements Contained in Listing Rule 5635(d) To Change the Definition of Market Value for Purposes of the Shareholder Approval Rule and Eliminate the Requirement for Shareholder Approval of Issuances at a Price Less Than Book Value but Greater Than Market Value). See also Securities Exchange Act No. 88056 (January 28, 2020) 85 FR 6003 (February 3, 2020) (SR-NASDAQ-2020-004) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify the Term "Closing Price" in Rule 5635(d)(1)(A) Relating to Shareholder Approval for Transactions Other Than Public Offerings).

five-day average will be less than the price at the end of the period, but would still be higher than the price at the start of such period. The Exchange believes that where two alternative measures of value exist that both reasonably approximate the value of listed securities, defining the Minimum Price as the lower of those values allows issuers the flexibility to use either measure because they can also sell securities at a price greater than the Minimum Price without needing shareholder approval. This flexibility, and the certainty that a transaction can be structured at either value in a manner that will not require shareholder approval, further perfects the mechanism of a free and open market without diminishing the existing investor protections of the 14.10(i).

The Exchange also believes that eliminating the requirement for shareholder approval of issuances at a price less than book value but greater than market value does not diminish the existing investor protections of Exchange Rule 14.10(i)(4). Book value is primarily an accounting measure calculated based on historic cost and is generally perceived as an inappropriate measure of the current value of a stock. Because book value is not an appropriate measure of the current value of a stock, the elimination of the requirement for shareholder approval of issuances at a price less than book value but greater than market value will remove an impediment to, and perfect the mechanism of, a free and open market, which currently unfairly burdens companies in certain industries, without meaningfully diminishing investor protections of Exchange Rule 14.10(i)(4).

The Exchange also believes that amending the title of 14.10(i)(4) and the preamble to replace references to “private placements” to “transactions other than public offerings” to conform the language in the title of 14.10(i)(4) and the preamble to the language in the rule text and that of Rule 14.10 Interpretation and Policy .18, which provides the definition of a public offering, will perfect the mechanism of a free and open market by making the rule easier to

understand and apply. Private placements would continue to be considered “transactions other than public offerings” under the proposed rule change, and the proposed change does not change the essence of the current rule.

The Exchange believes that amending Exchange Rule 14.10 Interpretation and Policy .18 and .19, which describe how the Exchange applies the shareholder approval requirements, to conform references to book and market value with the new definition of Minimum Price, as described above, and to utilize the newly defined term 20% Issuance will perfect the mechanism of a free and open market by eliminating confusion caused by references to a measure that is no longer applicable and by making the rule easier to understand and apply.

(5) Exemptions to Certain Corporate Governance Requirements

The Exchange believes that the proposed amendments to modify and expand the exemptions available to issuers of certain securities from some of the Exchange’s corporate governance requirements are consistent with the protection of investors. The Exchange believes that the proposed exemptions for issuers of only non-voting preferred stock, debt securities and Derivative Securities are consistent with the protection of investors, as the holders of these securities do not have voting rights with respect to the election of directors, except in very limited circumstances, as required by state or federal law or their governing documents. Moreover, such securities are generally issued by an entity that is either (i) structured solely as vehicles for the issuance of non- voting or derivative securities, or (ii) issued by an operating company primarily listed on a national securities exchange and therefore subject to the full corporate governance and annual meeting requirements of that exchange.

Additionally, the net asset value of Derivative Securities that the Exchange proposes to exclude from its annual meeting requirement is determined by the market price of each fund’s

underlying securities or other reference asset. Shareholders of such securities products listed on the Exchange receive regular disclosure documents describing the pricing mechanism for their securities and detailing how they can value their holdings. Accordingly, holders of such securities can value their investment on an ongoing basis. Because of these factors, the Exchange believes there is a reduced need for shareholders to engage with management of issuers of these securities and thus no need for the issuers of such securities to hold annual shareholder meetings absent the existence of other listed securities with director election voting rights. Further, although the Exchange proposes to exclude issuers of such securities from holding an annual meeting, such issuers may still be required to hold special meetings as required by state or federal law or their governing documents. The Exchange further notes that issuers of only non-voting preferred stock, debt securities and Derivative Securities are excluded from complying with substantially similar requirements on other national securities exchanges.¹²⁴

An issuer that has non-voting preferred stock, debt securities and Derivative Securities listed on the Exchange that also lists the issuers common stock or voting preferred stock or their equivalent on the Exchange will be subject to all the requirements of Exchange Rule 14.10.

(6) Definition Family Member

The Exchange believes the proposal to modify the definition of Family Member as provided in Exchange Rule 14.10(c)(1)(B) will 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. In particular, the Exchange's rules currently prohibit a director from being deemed independent in certain circumstances by including director's stepchildren in the definition of a Family Member, as described in more detail above. The rule also includes a

¹²⁴ See Nasdaq Listing Rule 5615(a)(6) and Arca Rule 5.3-E.

domestic employee who shares the director's home in the definition of a Family Member, even though the relationship between the director and such employee is commercial in nature.

Independent directors over time became a linchpin in the American corporate governance. It is important for investors to have confidence that individuals serving as independent directors do not have a relationship with the listed company that would impair their independence. As the importance of independent directors for listed companies increased, so did the directors' workload and the risk of litigation. In this environment, the Exchange believes that it is appropriate not to prohibit directors from being considered independent based on the aforementioned commercial or attenuated stepchild relationships, but instead allow the board to review such a relationship and determine whether a relationship exists that would interfere with the exercise of independent judgment in carrying out the director's responsibilities.

Additionally, the Exchange notes that the proposed rule change to Rule 14.10(c)(1)(B) will not affect the additional independence criteria for audit committee members set forth in Rule 14.10(c)(3), which incorporate the independence requirements of SEC Rule 10A-3.¹²⁵

Following the proposed rule change, the Exchange's definition of Family Member will become identical with Nasdaq definition of a Family Member, which the Commission has previously approved.¹²⁶

¹²⁵ Rule 14.10(c)(3)(B) requires that each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must, among other requirements, meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act, in addition to the requirements of Rule 14.10(c)(3)(B). See also Exchange Rule 14.10 Interpretation and Policy .05 (Audit Committee Composition).

¹²⁶ See Nasdaq Listing Rule 5605(a)(2). See also Securities and Exchange Act Nos. 86095 (June 12, 2019) 84 FR 28379 (June 18, 2019) (SR-NASDAQ-2019-049) (Notice of Filing of Proposed Rule Change To Amend the Definition of Family Member in Listing Rule 5605(a)(2) for Purposes of the Definition of Independent Director); and 88210 (February 13, 2020) 52 FR 9816 (February 20, 2020) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend the Definition of Family Member in Listing Rule 5605(a)(2) for Purposes of the Definition of Independent Director).

(7) Quorum

The Exchange believes that the proposed amendments to Exchange Rules 14.10(e)(1)(D)(iv) and 14.10(f)(3)(ii) are designed to protect interests and the public interest because the proposal would eliminate a conflict forcing a company to choose between following the Exchange's rules or the law in its home jurisdiction. Further, while the Exchange's Quorum Requirement would not apply, there would continue to be other protections for shareholders provided by the company's home country laws. The Exchange also believes the proposed amendments to Exchange Rules 14.10(e)(1)(D)(iv) and 14.10(f)(3)(ii) are designed to protect investors and the public interest because any company relying on the proposed exception from the Exchange's Quorum Requirement will be required to make public disclosure on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the company's reliance on the exception.

The Exchange believes that the proposed requirement that such website disclosure is maintained for the period of time the company continues to rely on the exception from the quorum requirements is designed to protect investors and the public interest because such website disclosure would help assure continuous transparency. The Exchange also believes that the proposed requirement to update the website disclosure at least annually to indicate that the company continues to be prohibited under its home country law from complying with the Exchange's quorum requirements as of the date of such update is designed to protect investors and the public interest because such disclosure would help the Exchange assure that the exception remains appropriate.

The Exchange believes that the proposed amendments to correct grammatical errors or incorrect rule references will improve the readability and clarity of the Exchanges rulebook. The

Exchange notes that the proposed changes to the Exchange's quorum requirements are substantively similar to existing rules on Nasdaq, and thus do not present any new or novel issues.¹²⁷

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. Instead, the Exchange believes the proposed rule changes to conform certain applicable listing rules so that they are substantively similar to corresponding Nasdaq rules may enhance intermarket competition since the Exchange and Nasdaq will have substantially similar listing requirements for issuers.

Moreover, none of the proposed changes will unduly burden intra-market competition. Participants will experience no competitive impact from the proposed amendments as they are merely intended to the Exchange's corporate governance requirements so that they are substantively similar to those of other exchanges. Further, the Exchange anticipates that all issuers with Companies listed on the Exchange already comply with the proposed rules. Thus, the proposal will have no material impact to such issuers.

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

¹²⁷ See Nasdaq Listing Rules 5615(a)(4)(E) and 5620(c). See Securities and Exchange Act Nos. 90883 (January 11, 2021) 86 FR 4158 (January 15, 2021) (SR-NASDAQ-2020-100) (Notice of Filing of Proposed Rule Change To Modify the Quorum Requirement for Non-U.S. Companies Under Certain Limited Circumstances); and 91567 (April 14, 2021) 86 FR 20556 (April 20, 2021) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Quorum Requirement).

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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)(iii) of the Act¹²⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²⁹

A proposed rule change filed under Rule 19b-4(f)(6)¹³⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange to implement the proposal as soon as possible. The Exchange states that the proposal is substantively similar or identical to Nasdaq listing rules series 5200 (General Procedures and Prerequisites for Initial and Continued Listing on the Nasdaq Stock Market), 5600 (Corporate Governance Requirements), and 5800 (Failure to Meeting Listing Standards). The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. The proposed changes have also previously been subject to notice

¹²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give 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 has satisfied this requirement.

¹³⁰ 17 CFR 240.19b-4(f)(6).

¹³¹ 17 CFR 240.19b-4(f)(6)(iii).

and comment.¹³² Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹³³

At any time within 60 days of the filing of such 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 shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-010 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.

¹³² See Section II. A, *supra*. As described above, some of the proposed changes were also previously approved by the Commission.

¹³³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to file number SR-CboeBZX-2024-010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-CboeBZX-2024-010 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³⁴

Sherry R. Haywood,
Assistant Secretary.

¹³⁴ 17 CFR 200.30-3(a)(12).