The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE
1401 H Street, NW, Washington, DC 20005 USA

June 27, 2025

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

Re: Notice of Filing of a Proposed Rule Change to Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 that are Listed as of or after May 20, 2025, from the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f) (Release No. 34-103166; **File No. SR-CboeBZX-2025-072**)

Dear Ms. Countryman:

The Investment Company Institute[1] is writing in support of the Cboe BZX Exchange's (Cboe) proposed amendments to exempt newly listed closed end funds (CEFs) registered under the Investment Company Act of 1940 ("1940 Act") from the annual meeting requirement of shareholders set forth in Cboe Exchange Rule 14.10(f).[2] While ICI strongly supported Cboe's

[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $37.7 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $9.6 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[2] Notice of Filing of a Proposed Rule Change to Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 that are listed as of or after May 20, 2025, from the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f), Exchange Act Release No. 103166, 90 Fed. Reg. 24172 (June 6, 2025), *available at* www.govinfo.gov/content/pkg/FR-2025-06-06/pdf/2025-10283.pdf. While the requirement is for a listed CEF to *hold* an annual meeting, exchanges have previously stated that in "interpreting this rule, the [exchange] considers an annual shareholders' meeting to be one at which directors are elected." *See, e.g.*, NYSE, Listed Company Compliance Guidance Memo for NYSE Domestic Companies (Jan. 12, 2016), *available at* www.nyse.com/publicdocs/nyse/regulation/nyse/2016_NYSE_Listed_Company_Compliance_Guidance_Memo_for_Domestic_Companies.pdf. Thus, for the purposes of this comment letter, "annual meeting" shall presume to include director or trustee elections.

prior filing[3] to remove the annual meeting, we believe this new filing addresses concerns raised by the Securities and Exchange Commission (SEC) and certain commenters related to the impact removing the annual meeting requirement may have on shareholders who bought listed CEF shares with an expectation that their listed CEF would continue to hold annual meetings. While the data previously presented by ICI directly contradicted these theoretical impacts as they relate to long-term retail shareholders, ICI believes the present proposal by Cboe addresses these concerns by limiting the removal of the annual meeting solely to newly listed CEFs.

In commenting on the prior filing, ICI submitted several letters detailing the harms caused by institutional hedge fund raiders masquerading as "activists" (collectively, "predatory activists") and provided evidence on very similar harms analyzed by the SEC and Congress when drafting the 1940 Act, which does not include any annual meeting requirement.[4] While ICI summarizes and attaches three prior letters in an Appendix for ease of reference, ICI is submitting this letter to emphasize several additional points. First, removing the annual meeting requirement will encourage capital formation and increase retail investor access to private markets. Second, the predatory activists themselves have taken actions resulting in the removal of annual meetings for a number funds in which they invested, thus challenging the credibility of any claims by predatory activists regarding the importance of annual meetings.[5] Third, listed CEFs will still have the option to launch with by-laws requiring an annual meeting, so if retail shareholders truly value annual meetings for these products as the predatory activists assert, the market will respond.

## I. Predatory Activists Have Effectively Killed the Listed CEF Market and Harmed Capital Formation

Removing the annual meeting requirement for new listed CEFs is beneficial to funds and investors because it will help generate capital formation by re-opening the listed CEF initial public offering

---

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

[4] Letter from Paul G. Cellupica, General Counsel, and Kevin Ercoline, Assistant General Counsel, ICI, to Vanessa Countryman, Secretary, SEC (Aug. 2, 2024), *available at* www.sec.gov/comments/sr-cboebzx-2024-055/srcboebzx2024055-503595-1466622.pdf ("First Letter"); Letter from Paul G. Cellupica, General Counsel, and Kevin Ercoline, Assistant General Counsel, ICI, to Vanessa Countryman, Secretary, SEC (Nov. 5, 2024), *available at* www.sec.gov/comments/sr-cboebzx-2024-055/srcboebzx2024055-537995-1541842.pdf ("Second Letter"); and Letter from Paul G. Cellupica, General Counsel, and Kevin Ercoline, Assistant General Counsel, ICI, to Vanessa Countryman, Secretary, SEC (Jan. 24, 2025), *available at* https://www.sec.gov/comments/sr-cboebzx-2024-055/srcboebzx2024055-559995-1606982.pdf ("Third Letter," collectively "ICI Letters").

[5] As discussed *infra* Section II, when a listed CEF is forced to convert into another investment product, whether an ETF, mutual fund, or unlisted CEF, or otherwise liquidate due to predatory activist pressure, that process results in the removal of an annual meeting requirement. If the activists truly believed that annual meetings are necessary to fund governance, they would not be spending millions of dollars to force listed CEFs to convert into products that do not have an annual meeting requirement.

(IPO) market. In addition to the other benefits that the listed CEF wrapper provides,[6] the listed CEF is a very appropriate vehicle to allow retail investors access to private market strategies while still providing the protections of the 1940 Act. The closed-end structure of a listed CEF is not designed to provide for daily investor redemptions, and thus does not have to maintain a sleeve for portfolio liquidity to facilitate periodic redemptions. This allows the listed CEF to fully invest in its underlying investment strategy, even if that investment strategy focuses on less-liquid investments such as private assets.

The desire for retail access to private markets in a 1940 Act regulated product, and the apt nature of the closed-end structure to provide that access, can be seen from the substantial growth over the past four years in other regulated closed-end funds, such as interval funds, tender offer funds, and business development companies (BDCs). Assets of these funds have nearly tripled in just four years from $140 billion at year-end 2020 to $403 billion at year-end 2024.[7] Similarly, the number of these funds has increased from 240 to 393 over the same period. Listed CEFs, in particular, are well positioned to further provide private market access to retail investors because (i) the exchange-traded shares of listed CEFs provide a much easier retail access point than other vehicles, and (ii) given that shares of listed CEFs are traded on an exchange and have a readily available secondary market, the intra-day liquidity of listed CEF shares provide retail investors, model portfolios, and allocation funds the ability to exit or change a position on demand.

However, the campaigns of predatory activists have unequivocally negatively impacted the listed CEF IPO market. No listed CEFs launched in 2023, only three listed CEFs launched in 2024,[8] and no listed CEFs have launched year-to-date in 2025. Yet, unlisted closed-end regulated products that do not have annual meetings have thrived as 52 interval funds, tender offer funds, and unlisted BDCs launched in 2023 and 53 launched in 2024. Further, other products that do not have an annual meeting requirement have also seen exponential growth during this time, with, for example, a record 757 ETFs having launched in 2024 and 518 new ETFs having launched in 2023.[9] One fundamental difference between the growth in these funds (specifically interval funds, tender offer funds, and unlisted BDCs) compared with the nonexistent growth in listed CEFs is the presence of activist activity.

Under current market practices, CEFs launch fully seeded, meaning that a sponsor spends millions of dollars launching the product and does not expect to see a return on investment for a minimum of five years, on average.[10] Sponsors are going to proceed cautiously before entering the listed

---

[6] For example, listed CEFs often utilize leverage to enhance income distributions to retail shareholders to an extent not available to mutual funds or ETFs. Additionally, and importantly for long-term retail investors, a listed CEF wrapper allows a portfolio manager to maintain a long-term conviction strategy during volatile market periods, which can be beneficial to investment returns, particularly for yield-based strategies.

[7] For more information, *see* James Duvall, *et al.*, The Closed-End Fund Market, 2024, ICI RESEARCH PERSPECTIVE, Vol. 31, No. 4 at 1, 5 & 7 (April 2025), *available at* www.ici.org/files/2025/per31-04.pdf.

[8] Additionally, this IPO activity was approximately only $136 million.

[9] *See* ICI, 2025 Investment Company Fact Book (65th ed. 2025), *available at* www.icifactbook.org.

[10] Based on communications with ICI members.

CEF IPO market if an activist can use the annual meeting requirement as a pretext to attack a fund during a market downturn, with associated market-wide volatility and price dislocations, and take control of the listed CEF. This is not a hypothetical, as this is exactly what happened in 2020 during COVID[11] and again in 2022 when the Fed was raising interest rates.[12]

Removing the annual meeting requirement for newly listed CEFs, and thereby eliminating the most egregious mechanism predatory activists use to target these funds, will give Cboe the ability to list CEFs that can grow and evolve to meet investor needs, including exposure to less liquid assets. The annual meeting requirement has facilitated the ability of predatory activists to engage in harmful activities that prevent the capital formation of products that allow retail investors to access private markets in a security with a liquid secondary market. Given that listed CEFs are one of the most convenient wrappers to provide retail access to private markets, and given the continued growth in private markets due to companies staying private for longer, it is critical to have listing standards that facilitate retail investor access to these strategies in vehicles that have the protections of the 1940 Act. Approving Cboe's proposed amendment, which would protect newly listed CEFs from predatory activists, would undoubtedly help open-up the listed CEF IPO market and facilitate capital formation by removing a key disincentive to launching in the listed CEF market.[13]

## II. No Group of Entities Has Taken Actions Resulting in the Removal of Annual Meetings More Than Predatory Activists, Thus Undermining the Credibility of Activist Claims that Annual Meetings are Necessary for Investor Protection

The comment letters that supported maintaining the annual meeting requirement for listed CEFs during the prior proposed amendment process were overwhelmingly written by activists. Activists put forth disingenuous and insincere arguments that, for example, "any attempt to divest shareholders of their right to annual meetings . . . will leave shareholders definitively less protected and the public interest weakened."[14] The disingenuousness and insincerity of these arguments are underscored by the objective fact that no entities have done more to force the removal of a CEF's annual meeting requirement than activists. When an activist forces a listed

---

[11] *See* First Letter, *supra* note 4, at Section 4.3 (discussing the takeover of the former Voya Prime Rate Trust by an activist between 2020 and 2021).

[12] *See id.* at n.89 (discussing the takeover of the Templeton Global Income Fund by an activist between 2022 and 2023).

[13] While removing the annual meeting requirement would facilitate capital formation for listed CEFs in the IPO market, it would also make listed CEFs a more desirable product for financial advisors. Financial advisors play a significant role in creating demand for CEFs. Proxy contests require significant mailings and direct contact with financial advisors and their end clients to increase voter participation. The increase in activism has created an undue burden on financial advisors that has impacted the decision to recommend a listed CEF. Removing the annual meeting will help align financial advisors' third-party costs of listed CEFs with those of other available registered investment companies.

[14] Letter from Michael D'Angelo, Chief Operating Officer and General Counsel, Saba Capital Management, L.P., to Vanessa Countryman, Secretary, SEC (Nov. 14, 2024), at 12, *available at* https://www.sec.gov/comments/sr-cboebzx-2024-055/srcboebzx2024055-540455-1547642.pdf.

CEF to convert into another investment product—whether an ETF, mutual fund, or unlisted CEF—or otherwise liquidate, there is no longer an annual meeting requirement.

Activists' rhetorical emphasis on annual meetings stems not from concern for long-term shareholders, but from their own self-interest, which courts have found to be at odds with that of the investment strategy of the CEFs in which they invest.[15] While activists position their arguments as improving governance, as shown in the Second Letter they generally just force a liquidity event and exit their position, without any focus on changing governance.[16] Activists' true motive is merely to make a quick profit for themselves, at the expense of long-term retail shareholders. If activists truly believed that annual meetings are necessary to fund governance, they would not spend millions of dollars in attacking listed CEFs to force them to convert into products that do not have an annual meeting requirement.[17]

## III. Cboe's Proposal Returns to Shareholders the Freedom of Choice and Aligns Protections with Those Delineated by Congress

The states where the majority of investment companies organize, Maryland, Delaware, and Massachusetts,[18] have all removed the requirement for an annual meeting for listed CEFs and have allowed the decision to be made in a CEF's bylaws.[19] Whether to require annual meetings should be a state governance decision, and Cboe's proposed rule amendment will allow that decision to

---

[15] *See, e.g.*, Eaton Vance Senior Income Trust v. Saba Capital Master Fund, Ltd., Case No. 2084-CV-01533, at 47 (Mass. Super. Ct. Oct. 21, 2024) ("[M]ost retail shareholders and non-activist investors likely invest in CEFs with investment objectives that align with the CEFs' investment goals. [The] activist agenda . . . is contrary to and inconsistent with the stated investment objectives of the [CEFs].").

[16] *See* Second Letter, *supra* note 4, Figures 1, 3-5 (demonstrating that activists utilize their minority ownership and limited retail engagement in the proxy process to force liquidity events, receive the bulk of any tender offer proceeds, exit their position within a year, and then discounts revert to where they originally were).

[17] *See, e.g.*, Amey Stone, *Pioneer Looks to Liquidate Closed-End Funds. Could it Be a Trend?*, BARRON'S (May 15, 2025) (reporting on Pioneer Investments shuttering its entire listed CEF product line after an activist refused to approve a new investment management agreement required as part of a merger); Daniel Gil, *First Trust to Convert Closed-End Fund into ETF*, IGNITES (Dec. 2, 2024) (reporting on the planned and prior listed CEF to ETF conversions from this sponsor and how the listed CEF to ETF conversion process is often in response to campaigns from activists, which often take stakes in listed CEFs to force concessions); Joe Morris, *Tortoise Retreats from Closed-End Funds Via ETF Conversion*, IGNITES (Aug. 8, 2024) (reporting on the sponsor merging half of its listed CEF lineup into an ETF). Tortoise's listed CEFs had previously been the subject of litigation and activist attacks. *See* Saba Capital Master Fund, Ltd. *et al.* v. BlackRock ESG Capital Allocation Trust *et al.*, No. 23-8104 (2d Cir. June 26, 2024).

[18] *See* Duvall, *supra* note 7, Figure S5 in the Statistical Appendix, *available at* www.ici.org/files/2025/per31-04-data.xlsx.

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

be determined by state law and a CEF's organizational documents. By returning the decision to states and the organizational documents thereunder, the rule change will allow shareholders the ability to choose if they want to invest in funds that have an annual meeting. If annual meetings are truly as important to CEF investors (and their financial advisors) as the predatory activists and their allies say, capital will flow to those products that have them. However, given that over the past few years capital formation in CEFs has overwhelmingly been directed to products that do not require annual meetings, sponsors of CEFs should have the ability to determine whether to launch listed CEFs that do not have annual meetings, and to let the market as a whole—not predatory activists—determine whether such products are viable.

Additionally, if listed CEFs are launched that do not require annual meetings, it is important to reiterate that these funds will still have the protections enumerated under the 1940 Act, as discussed in ICI's Letters. In particular, independent directors, which are the primary oversight mechanism Congress intended for fund management of registered investment companies, will continue to exercise their fiduciary responsibility to monitor discounts and direct changes—as they currently do—to address discounts, such as pursuing managed distribution plans, share buyback programs, limited-term structures, other discount management plans utilizing tender offers, or even liquidation programs.[20]

Finally, we note that the comment file for the prior amendment process included a large number of letters from retail investors who overwhelmingly favored removing the annual meeting requirement from exchange listing standards.[21] To the extent that the predatory activists have raised a concern that removing the annual meeting requirement could be viewed as taking away a "right" or "benefit," the evidence is that the most engaged retail shareholders do not value that right or benefit. However, as the new proposal is structured to only apply to new funds that do not yet exist and do not have shareholders, there is no theoretical existing "right" being removed. Arguably, predatory activists would not even have standing to challenge the amendment, if approved, because the proposed amendment does not affect any current holdings or investments of predatory activists. The proposed amendment only applies prospectively to new funds that have not yet launched and do not yet have shareholders.[22]

---

[20] *See* Third Letter, *supra* note 4, at Section 4 (noting that boards for listed CEFs managed by Goldman Sachs Asset Management, Adams Funds, BlackRock, Deutsche, and numerous others have implemented these programs on their own volition).

[21] Including comments submitted for Cboe's prior proposal and the New York Stock Exchange's proposal, *see* Notice of Filing of Proposed Rule Change Amending Section 302.00 of the NYSE Listed Company Manual to Exempt Closed-End Funds Registered Under the Investment Company Act of 1940 From the Requirement to Hold Annual Shareholder Meetings, Exchange Act Release No. 100460, 89 Fed. Reg. 56447 (July 9, 2024), *available at* https://www.govinfo.gov/content/pkg/FR-2024-07-09/pdf/2024-15037.pdf, retail comment letters in favor of the prior proposal outweighed retail comment letters against the proposal by more than 6:1, as ICI counted 1,154 retail comment letters in favor and 181 retail comment letters against.

[22] Our understanding is the Cboe proposal applies to funds listing as of or after the date of the filing of the amendment: May 20, 2025. Presumably, listed CEFs listing between now and any date of effectiveness of the proposed amendment would have disclosure in their offering documents informing shareholders that annual

*  *  *  *

We appreciate the opportunity to comment and urge the SEC to approve the proposed amendment. If you have any questions, please contact Paul G. Cellupica, General Counsel, at paul.cellupica@ici.org, and Kevin Ercoline, Assistant General Counsel, at kevin.ercoline@ici.org.

Regards,

/s/ Paul Cellupica
Paul G. Cellupica
General Counsel

/s/ Kevin Ercoline
Kevin Ercoline
Assistant General Counsel

cc: The Honorable Paul S. Atkins, Chairman
The Honorable Mark T. Uyeda, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Jamie Selway, Director, Division of Trading and Markets
Natasha Vij Greiner, Director, Division of Investment Management
Holly Hunter-Ceci, Chief Counsel, Division of Investment Management
Sarah Tadtman, Senior Counsel, CBOE

meetings will not occur if the proposed amendment is approved. Thus, the activists cannot argue that any "right" to annual meetings was ever created, as purchasers would be on notice that the listed CEF did not intend to have annual meetings upon the initial offering and sale of shares.

## APPENDIX

As mentioned in the preceding letter at *supra* note 4, ICI filed several letters during the prior proposed rule amendment process. The ICI Letters are attached in this Appendix for ease of reference and are summarized below:

- The First Letter addressed how removing the annual meeting would protect investors and the public interest. As described in that letter, the annual meeting requirement is being abused by predatory activists to implement focused investment strategies that primarily benefit themselves. The harms conducted by predatory activists are the same harms that Congress and the SEC considered in drafting the 1940 Act and sought to prevent with its enactment. The First Letter demonstrated how removing the annual meeting would align shareholder protections with those envisioned by Congress.

- The Second Letter responded to questions raised by the SEC in its order instituting proceedings,[23] such as (i) whether the fact that listed CEF shares may trade at a discount to net asset value (NAV) would raise any investor protection concerns with eliminating the annual shareholder meeting requirement, and (ii) the extent to which listed CEF investors participate in, and benefit from, annual shareholder meetings. As discussed in the Second Letter, the SEC's first concern presupposes that retail investors purchased with an expectation to redeem at NAV. ICI provided data demonstrating that retail investment patterns undercut any argument that retail shareholders buy with an expectation to redeem at NAV, or that listed CEFs are marketed with such representations. The data demonstrated that retail investors often buy listed CEF shares trading at a discount and then reinvest dividends when shares continue to trade at a discount, thus underscoring that many shareholders buy and hold shares for the yield and distributions listed CEFs offer as opposed to any future opportunity to exit at NAV. As for the second concern, shareholder engagement data demonstrated that removing the annual meeting requirement would not materially disadvantage retail shareholders as retail shareholders are less engaged in governance matters. The letter also provided further data highlighting the harms and costs that predatory activists are causing to both retail shareholders and the market as a whole.

- The Third Letter was filed to refute and address the misrepresentations, inaccuracies, and selective data points made in comment letters filed by predatory activists and those commissioned by them. In addition to refuting inaccuracies, the letter sought to respond to corporate voting data comparisons related to retail impact and engagement in the proxy voting process, elaborate on and emphasize the role independent directors play under the

[23] Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 From the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f), Exchange Act Release No. 101322, 89 Fed. Reg. 83724 (Oct. 17, 2024), *available at* https://www.govinfo.gov/content/pkg/FR-2024-10-17/pdf/2024-23979.pdf.

1940 Act in overseeing management of listed CEFs, and analyze the findings of academic research and discuss how such research underscores ICI's arguments made in prior letters about the importance of protecting long-term retail investors and the harm that activists cause.