

Required Minimum Amount is necessary to demonstrate genuine investor interest in the operating company to support an exchange listing, SPACs do not present a similar risk of circumventing the round lot holder requirement through share transfers for no value and that removing this requirement will not impact the protection of investors.²⁷

Given the differences between SPACs and operating companies, including in their structure, and the rights of SPAC shareholders to convert or redeem their shares upon a business combination for a pro rata portion of the IPO proceeds maintained in a trust account, the Commission believes that it is reasonable and not unfairly discriminatory for the Exchange to exclude SPACs from the requirement to meet the Required Minimum Amount at the time of initial listing of the SPAC. Specifically, the Commission believes the Exchange has provided a reasonable basis for its proposal to differentiate SPACs from operating companies in terms of the requirement to comply with the Required Minimum Amount upon initial listing given that, in the Exchange's experience, SPACs do not appear to present a similar risk of circumventing the round lot holder requirement through share transfers for no value. As the Exchange states in its proposal, typically the only investors holding shares in a SPAC prior to an IPO are its founders, whereas other round lot holders generally represent new investors, in contrast to the Exchange's experience with operating companies.²⁸

Further, the Exchange's other initial listing requirements will remain applicable to SPACs at the time of their initial listing including, among other things, that round lot holders hold unrestricted shares and that SPACs will continue to meet the minimum number and market value of unrestricted publicly held shares requirements as well as the other listing requirements on the applicable market tier, in addition to the specific listing criteria applicable to SPACs.²⁹ As the Commission stated

when approving the Exchange's amendments to exclude restricted securities from its calculation of a company's publicly held shares, market value of publicly held shares, and round lot holders for purposes of qualifying the company's securities for initial listing, the amendments "should allow the Exchange to more accurately determine whether a security has adequate distribution and liquidity and is thus suitable for listing and trading on the Exchange."³⁰ In addition, all initial listing requirements apply to the combined company upon consummation of a business combination, which would include the Required Minimum Amount. The Commission therefore believes the Exchange's current listing rules will continue to provide appropriate listing standards for SPAC securities, both prior to and after the completion of any business combination. Moreover, investors in SPACs will continue to have the ability to convert or redeem their shares for cash into a pro rata share of the amount in the trust account, pursuant to the provisions of Nasdaq Rules IM-5101-2(d) and (e).

These other listing requirements, taken together, should continue to help ensure that SPACs are listed only if there will be a sufficient market, with adequate depth and liquidity and with sufficient investor interest to support an exchange listing, and will continue to provide investors the redemption feature. The Commission also notes that the Exchange's proposal is consistent with SPAC listing standards on other listing exchanges that do not require round lot holders to hold unrestricted securities of a minimum market value amount.³¹ For the reasons discussed above, the Commission believes the Exchange's proposal is consistent with the requirements of Section 6(b)(5) of the Act and with the maintenance of fair and orderly markets under the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³² that the proposed rule change, as modified by

Nasdaq's rules provide alternative standards to satisfy in lieu of the market value standards, SPACs typically list under the market value standard given that they have no prior operating history.

³⁰ Required Minimum Amount Approval Order, *supra* note 7, at 33111. *See also supra* note 7.

³¹ *See, e.g.*, New York Stock Exchange LLC ("NYSE") Listed Company Manual Section 102.06. The Commission notes that NYSE's initial listing standards for SPACs, which require an aggregate market value of \$100 million and market value of publicly-held shares of \$80 million, are generally higher than those on Nasdaq. *See supra* notes 17 and 29. *See also* NYSE American LLC Company Guide Sections 102 and 119.

³² 15 U.S.C. 78s(b)(2).

Amendment No. 1 (SR-NASDAQ-2020-069), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, February 4, 2021.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims; and
- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION:

For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

³³ 17 CFR 200.30-3(a)(12).

²⁷ *See supra* note 14 and accompanying text.

²⁸ *See supra* notes 12-13 and accompanying text.

²⁹ For example, SPACs listed on the Nasdaq Capital Market under the Market Value of Listed Securities Standard would be required to have at least 1,000,000 unrestricted publicly held shares, at least 300 round lot holders that hold unrestricted shares, a minimum market value of listed securities of \$50 million, a minimum market value of unrestricted publicly held shares of at least \$15 million, and at least three registered and active market makers. *See* Nasdaq Rules 5505(a)-(b). *See also* Nasdaq Rules 5315(e)-(f) (Nasdaq Global Select Market) and 5405(a)-(b) (Nasdaq Global Market). The Commission understands that, although

Dated: January 28, 2021.

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90990; File No. SR-CBOE-2021-006]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Definition of “Current Market Value” for Purposes of Calculating Margin Requirements for Certain Options

January 26, 2021.

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 14, 2021, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) 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 Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend the definition of “current market value” for purposes of calculating margin requirements for certain options. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

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Rule 10.3. Margin Requirements

(a) *Definitions.* For purposes of this Rule, the following terms shall have the meanings specified below.

(1) No change.

(2) The term “current market value” is as defined in Section 220.3(2) of Regulation T

of the Board of Governors of the Federal Reserve System. At any other time, in the case of options, stock index warrants, currency index warrants and currency warrants, it shall mean the closing price of that series of options or warrants on the Exchange on any day with respect to which a determination of current market value is made, except in the case of certain index and ETF options determined by the Exchange, it shall be based on quotes for that series of options on the Exchange 15 minutes prior to the close of trading on any day with respect to which a determination of current market value is made. In the case of other securities, it shall mean the preceding business day’s closing price as shown by any regularly published reporting or quotation service. If there is no closing price or quotes, as applicable, on the option or on another security, a TPH organization may use a reasonable estimate of the current market value of the security as of the close of business or as of 15 minutes prior to the closing of trading, respectively, on the preceding business day.

* * * * *

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the definition of “current market value” with respect to certain ETF options for purposes of calculating margin requirements. Rule 10.3(a)(2) currently defines the term “current market value” as follows:

The term “current market value” is as defined in Section 220.3 of Regulation T of the Board of Governors of the Federal Reserve System. At any other time, in the case of options, stock index warrants,

currency index warrants and currency warrants, it shall mean the closing price of that series of options or warrants on the Exchange on any day with respect to which a determination of current market value is made, except in the case of certain index options determined by the Exchange, it shall be based on quotes for that series of options on the Exchange 15 minutes prior to the close of trading on any day with respect to which a determination of current market value is made. In the case of other securities, it shall mean the preceding business day’s closing price as shown by any regularly published reporting or quotation service. If there is no closing price or quotes, as applicable, on the option or on another security, a TPH organization may use a reasonable estimate of the current market value of the security as of the close of business or as of 15 minutes prior to the closing of trading, respectively, on the preceding business day.⁵

Rule 10.3 and other Rules in Chapter 10 of the Exchange’s Rulebook describe how margin requirements are calculated for market participants’ positions in options (and certain other securities), including strategy-based margin and customer portfolio margin requirements, which requirements are generally based on the current market value of the option series. These requirements are determined on a daily basis for market participants’ securities accounts that hold options positions.⁶ Currently, 43 ETF options that are listed for trading on the Exchange close for trading at 4:15 p.m. Eastern time.⁷ Therefore, daily margin requirements for those options are currently based on the closing trade prices of those options series at that time.⁸

⁵ Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System defines “current market value” of a security as (1) throughout the day of the purchase or sale of a security, the security’s total cost of purchase or the net proceeds of its sale including any commissions charged; or (2) at any other time, the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing sale price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.” See 12 CFR 220.2. The term “marking” value is often used to refer to the current market value for capital and margin purposes. The proposed rule change corrects the reference to Section 220.3 in the definition of current market value in Rule 10.3(a)(2) to be Section 220.2.

⁶ The Exchange notes the Options Clearing Corporation (“OCC”) calculates the daily margin requirements for Clearing Members’ options positions at OCC. The Exchange understands OCC intends to incorporate a corresponding change regarding the time at which the value of a series is determined into its procedures for calculating margin requirements.

⁷ See Rule 5.1(b)(2); see also closing times for ETF options, available at https://www.cboe.com/us/options/market_statistics/symbol_reference/?mkt=cne&underlying=1.

⁸ The Exchange notes the daily margin requirements for all other ETF options that close at 4:00 p.m. Eastern time are based on the closing trade at that time.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).