



February 1, 2021

VIA ELECTRONIC SUBMISSION

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex J)
Washington, DC 20580

Re: 16 CFR parts 801-803: Hart-Scott Rodino Coverage, Exemption, and Transmittal Rules; Project No. P110014

Dear Sir/Madam:

The Federal Trade Commission (“FTC” or “Commission”) is requesting comment on a proposal to expand the scope of the application of the Hart-Scott Rodino Act (“HSR” or “HSR Act”) (the “Proposal”).¹ As a prominent market operator, Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to provide feedback on the Proposal. Cboe understands that the Proposal seeks to, among other things, expand the scope of the application of the HSR filing and delay requirements for Registered Investment Companies (“RICs”) and other types of investment entities. Cboe’s comments are focused on the potential impact of the Proposal on investors and the U.S. capital markets.

Cboe operates four U.S. stock exchanges (BYX Equities, BZX Equities, EDGA Equities, and EDGX Equities) and lists over 445 exchange traded funds.² These funds provide great utility to investors and comprise hundreds of billions of dollars in assets under management.

The HSR Act requires parties to mergers, acquisitions, joint ventures, and certain other transactions to file premerger notification with the FTC and the Department of Justice Antitrust Division and wait a certain period before consummating such transactions (this period can last up to 30-days). The Proposal seeks to amend the HSR premerger notification rules by expanding the reporting

¹ FED. TRADE COMM’N, *Notice of Proposed Rulemaking: Premerger Notification; Reporting and Waiting Period Requirements*, 85 FED. REG. 77053 (Dec. 1, 2020), <https://www.federalregister.gov/documents/2020/12/01/2020-21753/premerger-notification-reporting-and-waiting-period-requirements> (“HSR Act Proposal”).

² Cboe also operates four U.S. options exchanges (Cboe Options, C2 Options, BZX Options, and EDGX Options), a designated contract market (CFE), a swap execution facility (Cboe SEF), one of the largest pan European stock exchanges (Cboe Equities Europe), and a foreign exchange trading platform (Cboe FX).

requirements for certain transactions by requiring filers to aggregate acquisitions by affiliated entities. Thus, these separate, but aggregated, transactions would be delayed for up to 30-days.

As set forth below, Cboe is concerned that the proposal could negatively impact U.S. capital markets and investors.

The Proposal will likely meaningfully hinder the execution of straightforward investment strategies by affected entities. This would include routine transactions by managed funds and index funds. Imposing a 30-day delay while a filing is pending would prevent the timely completion of trades and execution of trading strategies due to the need to submit HSR filings and wait the designated period before opening or expanding a position. These delays on investments by RICs impose unnecessarily cumbersome processes that would adversely impact investors. Many mutual funds and ETFs utilize return optimizing strategies that are time-sensitive and those strategies could be greatly impaired by any waiting period, let alone a 30-day waiting period. Moreover, the proposed waiting period could generate tracking error and other complications for index funds as well as opportunity costs for actively managed funds. This would further diminish prospective returns for asset owners. The end-result for the capital markets would be decreased efficiency – the impact of which would be felt by investors.

The impacts of the proposed rule changes would be especially harsh for various types of investment funds that operate through a family of commonly managed funds. Since the Proposal would require aggregation across affiliated investment funds, it is likely that many acquisitions by RICs and other investment entities managed by these firms would become subject to HSR filing and delay requirements. Additionally, the HSR filings themselves impose additional costs on the funds and their investors. Indeed, the fees associated with HSR filings can be substantial and the Proposal will likely result in an increased number of filings for fund families, which could result in increased costs for fund shareholders.

Cboe recommends the FTC amend its proposal to address the detrimental outcomes mentioned above. Impacted affiliates would face significant hurdles and increased costs to comply with the Proposal and would likely no longer be able to efficiently achieve their investment objectives. These affiliated entities, which include exchange-listed funds, are an important part of the capital markets ecosystem and should be allowed to continue providing utility to investors without the operational delays and increased costs that would be imposed by the Proposal. As such, Cboe respectfully recommends that the Commission refine and clarify the aggregation component of the Proposal in any final rulemaking to address these likely unintended negative consequences.

Cboe appreciates the opportunity to share its views on the Proposal. As a market operator, Cboe works with issuers, including fund operators, to ensure that markets are efficient and satisfy the needs of investors. As such, Cboe recommends that the Proposal be modified consistent with our comments above. Cboe welcomes the opportunity to discuss these comments further.

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Sincerely,

A handwritten signature in black ink that reads "Angelo Evangelou". The signature is written in a cursive style with a large initial 'A'.

Angelo Evangelou
Chief Policy Officer
Cboe Global Markets, Inc.