

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84494; File No. SR-CHX-2018-05)

October 26, 2018

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect Name Changes of the Exchange and its Direct Parent Company and to Amend Certain Corporate Governance Provisions

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 18, 2018, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) 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

The Exchange proposes to amend the Amended and Restated Certificate of Incorporation of the Exchange (“Exchange Certificate”), the Amended and Restated Bylaws of the Exchange (“Exchange Bylaws”), the Second Amended and Restated Certificate of Incorporation of the Exchange’s parent CHX Holdings, Inc. (“Holdings” and, such certificate, the “Holdings Certificate”), the Second Amended and Restated Bylaws of Holdings (“Holdings Bylaws”), the rules of the Exchange (“Rules”) and the fee schedule of the Exchange (“Fee Schedule”) to (1) reflect a name change of the Exchange to “NYSE Chicago, Inc.” and a name change of Holdings to “NYSE Holdings, Inc.”; (2) harmonize certain provisions thereunder with similar provisions in the governing documents of the national securities exchange affiliates of the Exchange and its

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

parent companies; and (3) make clarifying and updating changes. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

(1) Generally

The Exchange proposes to amend the Exchange Certificate, Exchange Bylaws, Holdings Certificate, Holdings Bylaws, Rules and Fee Schedule to (1) reflect a name change of the Exchange to "NYSE Chicago, Inc." and a name change of Holdings to "NYSE Chicago Holdings, Inc."; (2) harmonize certain provisions thereunder with similar provisions in the governing documents of the national securities exchange affiliates of the Exchange⁴ and its parent companies; and (3) make clarifying and updating changes.

The Exchange and Holdings were recently acquired by NYSE Group, Inc. ("NYSE Group"), which in turn is indirectly wholly owned by NYSE Holdings LLC ("NYSE Holdings").

⁴ The Exchange has four registered national securities exchange affiliates: NYSE National Inc. ("NYSE National"), NYSE Arca, Inc. ("NYSE Arca"), New York Stock Exchange LLC ("NYSE"), NYSE America LLC ("NYSE American" and together with the Exchange, NYSE National, NYSE Arca and NYSE, the "NYSE Group Exchanges").

NYSE Holdings is a wholly owned subsidiary of Intercontinental Holdings, Inc. (“ICE Holdings”), which is in turn wholly owned by the Intercontinental Exchange, Inc. (“ICE”).⁵ As a result of its acquisition, the Exchange became part of a corporate family including five separate registered national securities exchanges. Following the acquisition, the Exchange has continued to operate as a separate self-regulatory organization and continues to have rules, membership rosters and listings distinct from the rules, membership rosters and listings of the other NYSE Group Exchanges.

The Exchange believes it is important for each of the exchanges to have a consistent approach to corporate governance in certain matters, to simplify complexity and create greater consistency among the NYSE Group Exchanges.⁶ Accordingly, in addition to implementing the proposed name changes and making clarifying and updating changes, the Exchange proposes to harmonize certain aspects of its corporate governance framework to the existing structure at the other NYSE Group Exchanges, particularly as it relates to board and committee structure, administration, and governance practices. Because the Exchange is a Delaware corporation, most of the proposed changes are based on the governing documents of NYSE National, which is also a Delaware corporation, and NYSE Arca, which is a Delaware non-stock corporation, as the most comparable NYSE Group Exchanges.⁷

⁵ See Exchange Act Release No. 83635 (July 13, 2018), 83 FR 34182 (July 19, 2018) (SR-CHX-2018-004); see also Exchange Act Release No. 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR-CHX-2018-004).

⁶ See 83 FR 34182, 34187, *id.*

⁷ The other NYSE Group Exchanges, NYSE and NYSE American, are limited liability companies organized under New York and Delaware limited liability company law, respectively.

The Exchange is not proposing any amendments to its ownership structure. Furthermore, the Exchange is not proposing any amendments to its trading rules at this time other than the minor technical amendments to implement the name change, as set forth below.

The name changes and other changes described herein would become operative upon the Exchange Certificate becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

In addition to the proposed changes to the Exchange Certificate, Exchange Bylaws, Holdings Certificate, Holdings Bylaws, Rules and Fee Schedule described below, the proposed rule change includes numerous non-substantive grammatical edits to conform existing language to the proposed language (e.g., replacing “a” with “an” when referring to “Exchange” or adding or deleting articles such as “the”). Such changes are not described in detail under this Section 3 but are marked in the respective Exhibit 5 documents.

(2) Name Changes of the Exchange and Holdings

The Exchange has determined that for marketing purposes it would be desirable to change the name of the Exchange to “NYSE Chicago, Inc.” and the name of Holdings to “NYSE Chicago Holdings, Inc.,” so as to be stylistically consistent with the names of the other NYSE Group Exchanges.⁸ The Exchange does not propose to change the name of its affiliated routing broker, CHXBD, LLC.

In connection with the name changes, the Exchange proposes the following amendments, as reflected in the Exhibit 5.

a. Exchange Certificate

The Exchange proposes to amend the Exchange Certificate as follows:

⁸ See supra note 4.

- Amend the title, first introductory paragraph and signature block to reflect that the proposed Exchange Certificate is the “Second Amended and Restated Certificate of Incorporation”;
- Delete “July 18, 2018” from the signature block and replace a reference to “CHICAGO STOCK EXCHANGE, INC.” in Article FIRST with “NYSE Chicago, Inc.”; and
- Replace a reference to “CHX Holdings, Inc.” under Article FOURTH with “NYSE Chicago Holdings, Inc.”

b. Exchange Bylaws

The Exchange proposes to amend the Exchange Bylaws as follows:

- Amend the title to reflect that the proposed Exchange Bylaws are the “Second Amended and Restated Bylaws of NYSE Chicago, Inc.”;
- Replace a reference to “the Chicago Stock Exchange, Inc.” under Article 1, Section 1 with “NYSE Chicago, Inc.”; and
- Replace all references to “CHX Holdings, Inc.” under current Article X, Section 2 (proposed Article IX, Section 2)⁹ with “NYSE Chicago Holdings, Inc.”

c. Holdings Certificate

The Exchange proposes to amend the Holdings Certificate as follows:

- Amend the title to reflect that the proposed Holdings Certificate is the “Third Amended and Restated Certificate of Incorporation”;

⁹ As described below, the Exchange proposes to eliminate Article IX of the current Exchange Bylaws, thereby resulting in Article X of the current Exchange Bylaws becoming Article IX of the proposed Exchange Bylaws.

- Adopt introductory paragraphs providing the current name of Holdings and stating that the Holdings Certificate was adopted and amended in accordance with specific provisions of the General Corporation Law of the State of Delaware (“DGCL”).
- Replace a reference to “CHX Holdings, Inc.” under Article I of the proposed Holdings Certificate with “NYSE Chicago Holdings, Inc.”;
- Adopt Article XIV (Effective Time) to provide the effective date and time of the proposed Holdings Certificate; and
- Insert a signature block for the execution of the proposed Holdings Certificate.

d. Holdings Bylaws

The Exchange proposes to amend the Holdings Bylaws as follows:

- Amend the title to reflect that the proposed Holdings Bylaws are the “Third Amended and Restated Bylaws of NYSE Chicago Holdings, Inc.” and
- Replace a reference to “CHX Holdings, Inc.” under Article I, Section 1.1 with “NYSE Chicago, Holdings, Inc.”

e. Rules

The Exchange proposes to amend the Rules as follows:¹⁰

- Replace references to “the Chicago Stock Exchange, Inc.” “Chicago Stock Exchange, Inc.” or “the Chicago Stock Exchange, Incorporated” with “NYSE Chicago, Inc.” in the title of the Rules and under Article 1, Rules 1(f), 1(g) and 1(k); paragraph .01 of the Interpretations and Policies of Article 7, Rule 4; and

¹⁰ The Exchange will submit subsequent rule filings as necessary to make any technical corrections to proposed rule changes that are pending as of the date of submission of this filing and approved by the Commission thereafter.

paragraph .02(g) of the Interpretations and Policies of Article 22, Rule 2.

Similarly, the Exchange proposes to delete “Chicago Stock” before “Exchange” in Article 7, Rule 6(c)(1)(H) and paragraph .01(a) of the Interpretations and Policies of Article 8, Rule 16, and to replace “Chicago Stock Exchange” with “NYSE Chicago” in paragraph .01(h) of the Interpretations and Policies of Article 22, Rule 2.

- Replace references to “CHX Holdings, Inc.” with “NYSE Chicago Holdings, Inc.” under Article 1, Rule 1(h); and Article 3, Rules 18 and 20.
- Replace a reference to “CHX Holdings” with “NYSE Holdings” under Article 1, Rule 1(h).
- Replace references to “CHX” with “NYSE Chicago” under Article 1, Rules 1(g) and 1(h).
- Replace references to “CHX” with “Exchange” (defined under proposed Article 1, Rule 1(k)) under Article 1, Rules 1(l); 2(b)(1)(C) (resulting in the current “CHX Only” order execution modifier being renamed “Exchange Only”), 2(b)(1)(D), 2(c)(1)(A) and 2(c)(2); Article 5, Rule 3(a)(11); paragraph .03 of the Interpretations and Policies of Article 9, Rule 17; Article 17, Rules 3, 5(a), 5(b), 5(c)(3)(A) (resulting in the current “Quote@CHX” Brokerplex order type being renamed “Quote@Exchange”), 5(c)(3)(B) (resulting in the current “Reprice@CHX” Brokerplex order type being renamed “Reprice@Exchange”), 5(g) and 6(a); Article 18, Rule 1(b)(2)(D)(i); Article 20, Rules 2A(b)(2), 2A(c)(4), 5(a)(2), 6(d)(2), 8(b)(6), 8(d)(3), 8(d)(4)(A), 9(c), 13(a), paragraph .02 of 13(a), 13(b), paragraph .03 of 13(b) and 13(c).

As the Exchange will no longer be referred to as “CHX” under the proposed Rules, the Exchange proposes to amend Article 1, Rule 1(k), defining “Exchange,” to delete the last sentence providing “[t]he Exchange may also be referred to in these Rules as the ‘CHX’.”

- Replace references to “CHX book” or “CHX Book” with “book” (as “Book” is not defined under the Rules) under Article 1, Rules 2(a)(2), 2(b)(1)(D), 2(c)(1)(B), 2(c)(2), 2(c)(3), 2(g)(1) and 2(h)(3); Article 16, Rule 4(d)(1); Article 18, Rules 1(b)(2), 1(b)(3), 1(b)(4), 1(b)(5), 1(c)(1), 1(c)(2) and 1A(b); Article 19, Rule 3(a)(3); and Article 20, Rules 2A(a)(4)(ii), 2A(c)(3)(A), 8(b), 8(d)(1), 8(d)(4)(B) and 8(f)(1).
- Replace references to the “CHX Routing Services” with “Routing Services” under Article 1, Rule 2(h)(1)(A)(iv); Article 18, Rules 1(b)(2)(E), 1A(c)(2); Article 19, Rules 1, 2 and 3; and Article 20, Rules 8(a) and 12(a).
- Replace references to “CHX Rules” and “CHX rules” with “Rules” (defined under Article 1, Rule 1(x)) under Article 1, Rules 1(pp), 1(rr) and 2; paragraph .03(b) of the Interpretations and Policies of Article 9, Rule 17; Article 15, Rule 1(a); Article 16, Rules 1(d), 2(e)(1) and 4(a); Article 17, Rules 5(b), 5(d) and 7(b); Article 18, Rule 1(c)(1)(C); Article 19, Rule 3(a); Article 20, Rules 1, 2A(b)(2)(A), 9(c), 11(c)(4); and Article 23, Rule 13(a)(3).
- Replace a reference to “CHX rule” with “Rule” under Article 15, Rule 1(a).
- Replace all references to “CHX Matching System” with “Matching System” under Article 1, Rule 2(c)(1); Article 17, Rules 5(a), 5(c)(3)(A) and 5(c)(3)(B); and in the title of Article 20. Correspondingly, amend Article 1, Rule 1(z)

defining “Trading Facilities” to include “Matching System” as an example of a Trading Facility.¹¹

- Replace references to “CHX Book Feed” with “Book Feed” (resulting in the “CHX Book Feed” service being renamed “Book Feed”) under Article 4, Rule 1 and Article 18, Rule 1(b)(1)(B).
- Replace a reference to “CHX Participant Firm” with “Participant Firm” (defined under Article 1, Rule 1(s)) under paragraph .03 of the Interpretations and Policies under Article 17, Rule 3.
- Replace references to “CHX Participant” with “Exchange Participant” under Article 20, Rule 13, as the term “Participant” is a defined term under both Article 1, Rule 1(s) (referring to members of the Exchange) and the Regulation NMS Plan to Implement a Tick Size Pilot Program¹² (“Tick Size Plan”) (referring to certain national securities exchanges as a group). Utilizing the term “Exchange Participant” under Article 20, Rule 13, as opposed to “Participant,” would ensure that Tick Size Plan Rules applicable to Exchange members will continue to be clearly distinguished from those applicable to the Exchange. However, under Article 4, Rule 1(a), the Exchange proposes to replace “CHX Participant” with “Participant,” as the rule is not related to the Tick Size Plan.
- Replace references to “CHX Connect” with “Connect” (resulting in the “CHX Connect” service being renamed “Connect”) under Article 4, Rule 2.

¹¹ In previous rule filings, the Exchange explained that the Matching System is a part of the Exchange’s “Trading Facilities,” which is defined under Article 1, Rule 1(z) of the Rules. See e.g., Exchange Act Release No. 34-81315 (August 4, 2017), 82 FR 37479, 37484 (August 10, 2017) (SR-CHX-2017-12).

¹² See Exchange Act Release No 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015).

- Replace references to “CHX Article” with “Article” under Article 9, Rule 17 and Article 16, Rule 4(d)(2).
- Replace references to “CHX Market Maker Trading Account” with “Market Maker Trading Account” under Article 16, Rule 1(f).
- Replace references to “CHX-registered Institutional Broker” with “Institutional Broker” (defined under Article 1, Rule 1(n)) under Article 17, Rule 5(a).

f. Fee Schedule

The Exchange proposes to amend the Fee Schedule as follows:

- Replace a reference to “the Chicago Stock Exchange, Inc.” “NYSE Chicago, Inc.” in the title of the Fee Schedule.
- Delete references to obsolete “operative dates” under Sections A and C.
- Replace references to “CHX” with “Exchange” under Sections C, D.1 and D.2(b).
- Replace references to the “CHX Routing Services” with “Routing Services” under Sections E.6, E.8(c) and E.9(c).
- Replace a reference to “non-CHX executed trades” with “away executed trades” under Section E.7(a).
- Replace a reference to “a CHX-registered Institutional Broker” with “an Institutional Broker” under Section E.7(a).
- Replace a reference to “CHX Connect” with “Connect” under Section L.
- Replace a reference to “CHX Book Feed” with “Book Feed” under Section M.
- Replace references to “CHX Article” with “Article” under Section P and the subtitle to the Minor Rule Violation Plan.

(3) Amendments to Certain Exchange Corporate Governance Provisions

In addition to the name changes, the proposed changes are designed to align the Exchange’s corporate governance framework to the existing structure at the other NYSE Group Exchanges, particularly as it relates to board and committee structure, administration, and governance practices, and to make certain clarifying and updating changes. The proposed Exchange Certificate, Exchange Bylaws and Rules reflect the expectation that the Exchange will be operated with a governance structure substantially similar to that of other NYSE Group Exchanges, primarily NYSE National and NYSE Arca.

The proposed amendments described below are primarily based on the Amended and Restated Certificate of Incorporation of NYSE National, Inc. (“NYSE National Certificate”), the Fifth Amended and Restated By-Laws of NYSE National, Inc. (“NYSE National Bylaws”), and the Amended and Restated NYSE Arca, Inc. (“NYSE Arca Bylaws”). In addition, the amendments to the indemnification provisions are based on the Eighth Amended and Restated Bylaws of Intercontinental Exchange, Inc. (“ICE Bylaws”) and the Sixth Amended and Restated Bylaws of Intercontinental Exchange Holdings, Inc. (“ICE Holdings Bylaws”). Finally, the proposed clarification and updating changes are described below.

a. Exchange Certificate

Introductory Paragraphs

The Exchange proposes to make non-substantive changes to the introductory paragraphs. It would amend the first introductory paragraph to insert “228,” between the “Section” and “242,” as Article NINTH was adopted in a manner consistent with Section 228 of the DGCL.¹³ The Exchange notes that the introductory paragraph of the NYSE National Certificate also refers

¹³ See Del. Code tit. 8, §228.

to Sections 228, 242 and 245 of the DGCL.¹⁴ The Exchange also proposes to amend the third introductory paragraph to be similar to the second introductory paragraph of the NYSE National Certificate, so that it provides that pursuant to Sections 242 and 245 of the DGCL, the proposed Exchange Certificate hereby amends and restates the current Exchange Certificate in its entirety.

Articles THIRD and NINTH

In a non-substantive change, the Exchange proposes to amend Articles THIRD and NINTH to replace references to “Delaware” with “the State of Delaware,” such that all references to the “state of Delaware” under the proposed Exchange Certificate are consistent with the NYSE National Certificate.

Article FIFTH

Current Article FIFTH includes requirements related to the composition of the board of directors of the Exchange (“Board” and each member of the Board a “Director”). The Exchange proposes to amend Article FIFTH as follows.

Proposed paragraph (a). Current paragraph (a) (Authority) provides that the business and affairs of the Exchange shall be managed by the Board pursuant to the Rules and the Exchange Bylaws and that the Board has the authority to establish committees of the Board and to delegate authority to such committees, subject to the Rules and the Exchange Bylaws.

The Exchange proposes to amend paragraph (a) to be similar to Article FIFTH(a) of the NYSE National Certificate and provide additional clarity regarding board elections. Notably, proposed paragraph (a) omits provisions related to the creation of Board committees, as such provisions would be addressed in Article IV of the proposed Exchange Bylaws, as described below. Proposed paragraph (a) also adopts additional language related to the nomination of

¹⁴ See Del. Code tit. 8, §§228, 242, and 245.

Directors for election that is similar to language under Article II, Section 2(f) of the proposed Exchange Bylaws. Therefore, proposed Article FIFTH(a) provides as follows:¹⁵

General. The governing body of the Exchange shall be its Board of Directors which shall exercise all powers conferred to it by the laws of the State of Delaware. In furtherance of and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt the bylaws and the rules of the Exchange and to amend or repeal any provision thereof subject to such conditions as the bylaws or rules may provide. Directors shall be elected by the stockholders of the Exchange. Elections of directors of the Exchange need not be by written ballot unless the bylaws so provide. Except as otherwise provided in the Bylaws or the rules, the stockholders shall nominate directors for election at the annual meeting of the stockholders. Such nominations shall comply with the Exchange's rules and the Bylaws.

Deleting Current Paragraphs (b) – (e) and (g). The Exchange proposes to delete current paragraphs (b) (Number and Composition of Directors), (c), (d) (Terms) and (e) (Election and Qualification of Directors) as redundant of identical provisions found under Article II, Section 2(a), (b), (e) and (c) of the proposed Exchange Bylaws, respectively. The Exchange also proposes to delete current paragraph (g) (Vacancies) as redundant of Article II, Section 5 of the proposed Exchange Bylaws.

¹⁵ The full text of the Exchange Certificate and Exchange Bylaws are set forth in Exhibits 5A and 5B, respectively. The Exchange notes that the Exchange Certificate and Exchange Bylaws use the term “Corporation” instead of “Exchange.” To avoid possible confusion, excerpts of the Exchange Certificate and Exchange Bylaws noted in this proposed rule change use the term “Exchange.”

Proposed paragraph (b). Current paragraph (f) (Removal of Directors) provides that no Director may be removed from office by a vote of the stockholders at any time except for cause and defines “cause” as (i) a breach of a director’s duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (iv) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

The Exchange proposes to move current paragraph (f) to proposed paragraph (b) and to amend the provision to be similar to Article FIFTH(b) of the NYSE National Certificate by permitting any Director to be removed from office by a vote of the stockholders at any time with or without cause, except that Non-Affiliated Directors, as defined under Article II, Section 2(a) of the proposed Exchange Bylaws, may only be removed for cause. The Exchange proposes to amend the definition of “cause” to provide that the list set forth in the provision is inclusive.¹⁶

¹⁶ See Eighth Amended and Restated Bylaws of Cboe BZX Exchange, Inc. (“Cboe BZX Bylaws”), Section 3.4(c) (providing that “[n]o Representative Director may be removed from office by a vote of the stockholders at any time except for cause, which shall include, but not limited to, (i) a breach of a Representative Director’s duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) transactions from which a Representative Director derived an improper personal benefit, or (iv) a failure of a Representative Director to be free from a statutory disqualification (as defined in Section 3(a)(39) of the Act”) (emphasis added). See also NYSE Operating Agreement, Article II, Section 2.03(l) (providing that cause “shall include, without limitation, the failure of [a] Director to be free of any statutory disqualification...”) and NYSE American Operating Agreement, Article II, Section 2.03(l) (same).

The Exchange understands that NYSE National expects to propose the same definitional change to Article FIFTH(b) of the NYSE National Certificate in a separate filing with the Commission.

Consistent with the proposed changes in Articles THIRD and NINTH, the Exchange also proposes to replace a reference to “Delaware” with “the State of Delaware.”

Proposed paragraph (c). Proposed paragraph (c) provides that the stockholder shall have authority to fix compensation of all directors for services to the Corporation as directors, officers or otherwise, which is similar to the last sentence under Article III, Section 3.15 of the NYSE National Bylaws.

Article SEVENTH

Current Article SEVENTH provides that the Board shall have the power to adopt, amend or repeal the Exchange Bylaws and the Rules and that the Exchange Bylaws may also be amended or repealed, or new bylaws may be adopted, by action taken by the stockholders of the Exchange.

The Exchange proposes to amend Article SEVENTH¹⁷ by adding language that provides that before any amendment to, alteration or repeal of any provision of the Exchange Bylaws under this Article SEVENTH shall be effective, those changes shall be submitted to the Board and if the same must be filed with or filed with and approved by the Commission the proposed changes to the Exchange Bylaws shall not become effective until filed with or filed with and approved by the Commission, as the case may be. The Exchange does not propose to adopt additional language found under Article SEVENTH of the NYSE National Certificate requiring changes to the bylaws of the NYSE National be effected in compliance with Section 19 of the Exchange Act, as it would be redundant of Article VII, Sec. 1 of the proposed Exchange Bylaws, which requires that any amendments to the Exchange Bylaws be filed with or filed with and approved by the Commission before becoming effective.

¹⁷ See NYSE National Certificate, Article SEVENTH.

Article EIGHTH

Proposed Article EIGHTH. Current paragraph (a) permits the Exchange to provide indemnification to certain persons. The Exchange now proposes to delete paragraph (a) in its entirety as it is duplicative of the indemnification provision in Article VI, Section 1 of the Exchange Bylaws and so unnecessary to include here.

Current paragraph (b) (Limitation of Liability) provides that to the fullest extent of the DGCL, no Director shall be liable to the Exchange or its stockholders for monetary damages for breach of fiduciary as a Director, except where such liability arises as a result of a violation of the federal securities laws.

The Exchange proposes to amend current paragraph (b) to conform to Article EIGHTH of the NYSE National Certificate.

Article ELEVENTH

Current Article ELEVENTH permits the Exchange to effect amendments to the Exchange Certificate and requires any proposed change to the Exchange Certificate be approved by the Board and by a majority of the stockholders of the Exchange present in person or by proxy at the meeting of the stockholders at which the amendment is submitted.

To better align current Article ELEVENTH with Article ELEVENTH of the NYSE National Certificate, the Exchange proposes to amend Article ELEVENTH to (1) modify the stockholder approval requirement to require a proposed amendment to the Exchange Certificate be approved by a majority of the stockholders of the Exchange, as opposed to the majority of the stockholders present in person or by proxy at the meeting of stockholders at which the amendment is submitted; and (2) clarify that any changes to the Exchange Certificate must be approved by, or filed with, the Commission, in compliance with Section 19 of the Exchange Act,

and must be approved by the Board, before such changes become effective. The first proposed change is consistent with Section 242(b) of the DGCL, which provides, among other things, that amendments to the certificate of incorporation that require shareholder approval be approved by “a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class,”¹⁸ as opposed to a majority present at a meeting. The proposed change is also consistent with Article ELEVENTH of the NYSE National Certificate, which requires that any amendment to the NYSE National Certificate be effected in a manner prescribed at the time by statute (e.g., Section 242(b) of the DGCL).

b. Exchange Bylaws

Article I (Officers; Registered Agent)

Proposed Section 1. Current Section 1 (Registered Office) provides that the registered office of the Exchange in the State of Delaware shall be at such location within the State of Delaware as shall from time to time be determined by the Board.

In an administrative change, the Exchange proposes to amend Section 1 to be similar to Article II, Section 2.1 of the NYSE National Bylaws. Specifically, proposed Section 1 adopts additional language that provides that the registered agent of the Exchange in the State of Delaware shall be such person or entity as shall from time to time be determined by the Board. The Exchange would make conforming edits to the title of Section 1.

Article II (Directors)

Proposed Section 1. Current Section 1 (Powers) provides that the business and affairs of the Exchange shall be managed by the Board, except as otherwise delegated to committee(s) of the Board pursuant to the Exchange Bylaws or Rules. It does not address the Board’s powers in

¹⁸ Del. Code tit. 8, §242(b).

relation to the Exchange Act or any individual, corporation, partnership or other entity that holds a permit issued by the Corporation to trade securities on the market operated by the Corporation (each, a “Participant”).

The Exchange proposes to amend Section 1 to be substantially similar to Article III, Section 3.1 of the NYSE National Bylaws, adding the definitions of “rules,” “Exchange Act,” and “Participant,” which are not previously defined.¹⁹ The revised provision would provide as follows:

The business and affairs of the Exchange shall be managed by its Board of Directors. The Board of Directors, acting in accordance with the terms of these bylaws and the rules of the Exchange ("rules"), shall be vested with all powers necessary for the governing of the Exchange as an "exchange" within the meaning of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the regulation of the business conduct of any individual, corporation, partnership or other entity that holds a permit issued by the Exchange to trade securities on the market operated by the Exchange (each, a “Participant”), and the promotion of the welfare, objects and purposes of the Exchange.

Proposed Section 2. Current Section 2 (Number, Term of Office and Qualifications) addresses the general composition of the Board and the terms of Directors, which were adopted at the time the Exchange was acquired by ICE and are substantially similar to the requirements

¹⁹ Exchange “Participants” are the equivalent of NYSE National “ETP Holders.” See Arca Bylaws, Section 3.01(b).

under the NYSE National Bylaws and NYSE Arca Bylaws.²⁰ None of the proposed changes to Section 2 are substantive.

Proposed Section 2 maintains the substance of current Section 2. However, to further align terminology used within the Exchange Certificate with the other NYSE Group Exchanges,²¹ the Exchange proposes to amend Section 2 to replace references to (1) “STP Participant” with “Non-Affiliated” under paragraph (a),²² such that “STP Participant Directors” are thereafter referred to as “Non-Affiliated Directors,” and (2) “shareholder” with “stockholders” under paragraph (f). The Exchange also proposes to (1) replace a reference to the “Securities Exchange Act of 1934, as amended (‘Exchange Act’)” with “Exchange Act” under paragraph (a), as the shorthand term is already defined under proposed Article II, Section 1; (2) replace references to “Bylaws” with “bylaws” under paragraphs (b), (c) and (f), and (3) replace a reference to “Exchange” with “Corporation” under paragraph (f), as the shorthand term is already defined under Article 1, Section 1.²³

The Exchange further proposes to amend the title of proposed Section 2 to “General Composition and Term of Office,” so as to be consistent with the titles of Section 3.2 (General Composition) and 3.3 (Terms of Office) of the NYSE National Bylaws.

²⁰ See NYSE National Bylaws, Article III, Section 3.2 and 3.3; and NYSE Arca Bylaws, Article III, Section 3.02. See also 83 FR 34182, 34189, supra note 5.

²¹ See Article II, Section 2.03(a) of the Eleventh Amended and Restated Operating Agreement of NYSE (“NYSE Operating Agreement”); Article II, Section 2.03(a) of the Eleventh Amended and Restated Operating Agreement of NYSE American (“NYSE American Operating Agreement”); NYSE Arca Bylaws, Article III, Section 3.02; and NYSE National Bylaws, Article III, Section 3.2.

²² The Exchange proposes to replace all subsequent references to “STP Participant” with “Non-Affiliated” under proposed Article II, Sections 3 and 5.

²³ The Exchange proposes to replace all subsequent references to “Exchange” with “Corporation” under proposed Article II, Section 6; Article VII, Section 3; and Article X, Sections 1 and 2.

Proposed Section 3. Current Section 3 (Nomination and Election) provides the nomination and election process for STP Participant Directors (renamed “Non-Affiliated Directors”²⁴). None of the changes to Section 3 are substantive.

The Exchange proposes to maintain the current nomination and election process and to amend paragraph (a) to clarify that the Nominating Committee shall nominate Non-Affiliated Directors only. Such change would be consistent with Article FIFTH(a) of the proposed Exchange Certificate, which provides, in part, that, except as otherwise provided in the Exchange Bylaws (i.e., proposed Section 3) or the Rules, the stockholders shall nominate Directors for election at the annual meeting of the stockholders.²⁵ The Exchange also proposes to move the second and third sentences of current paragraph (a) to proposed Article IV, Section 7, which provides the composition requirements for the Nominating Committee and defines “Permit Holder representative,” as described below.

In addition, the Exchange proposes to amend paragraph (b) to delete the second sentence defining “Participant,” as it is already defined under proposed Article 1, Section 1, and to delete paragraph (d), which provides that the Board shall appoint the Nominating Committee, as duplicative of proposed Article IV, Section 2, which provides that the Board will appoint all committees of the Board, as described below.

Proposed Section 4. Current Section 4 (Chairman) includes various requirements and responsibilities of the chairman of the Board (“Chairman”).

²⁴ See supra note 22.

²⁵ See also NYSE National Bylaws, Article III, Section 3.4 and NYSE Arca Bylaws, Article III, Section 3.02.

The Exchange proposes to amend Section 4 to be consistent with the first sentence of Article III, Section 3.5 of the NYSE National Bylaws.²⁶ First, it would specify that the chairman must be elected by majority vote. Second, the references to the Chief Executive Officer (“CEO”) of the Exchange would be deleted, in accordance with the changes made to the composition of the Board at the time the Exchange was acquired,²⁷ which no longer require that the CEO serve on the Board. The proposed change would be consistent with the governing documents of the other NYSE Group Exchanges, none of which place limitations on which director may be elected as chairman.²⁸

The proposed changes to current Section 4(b) would conform it to the last two sentences of Article III, Section 3.5 of the NYSE National Bylaws. The proposed changes would eliminate language related to the appointment of members to Board committees, which is no longer required here, as it would be addressed in proposed Article IV, as described below. Therefore, proposed Section 4 provides as follows:

The Board of Directors, acting through a vote of a majority of its directors, shall elect the Chairman of the Board from among the directors of the Corporation. Unless another director is appointed by the Board for such purpose in the Chairman’s absence, the Chairman shall preside at all meetings of the stockholders and the Board. The Chairman shall also have

²⁶ See also Arca Bylaws Article 3.02(d).

²⁷ See 83 FR 34182, 34187, *supra* note 5.

²⁸ See NYSE National Bylaws, Article III, Section 3.5; and NYSE Arca Bylaws, Article III, Section 3.02(d). The NYSE Operating Agreement and NYSE American Operating Agreement do not address how their respective chairman will be elected, or who may serve.

such other duties, authority and obligations as may be given to him or her by these bylaws or by the Board of Directors.

Deleting Current Section 5. Current Section 5 (Vice Chairman) provides the requirements and responsibilities of the vice chairman of the Board (“Vice Chairman”).

The Exchange proposes to delete current Section 5 in its entirety.²⁹ The Exchange notes that none of the governing documents of the other NYSE Group Exchanges require the designation of a Vice Chairman.

Proposed Section 5. Current Section 6 (Vacancies) provides the requirements and procedures for filling vacancies on the Board.

In an administrative change, the proposed edits would eliminate the current requirement that the Chairman and Vice Chairman provide the Board with the names to fill vacancies on the Board no later than five business days before the relevant vote. Such proposed change would be consistent with the governing documents of the other NYSE Group Exchanges, none of which require such notice.³⁰

Proposed Section 6. Current Section 7 (Participation in Meeting, Action or Proceeding) prohibits a Director from being disqualified from participating in any meetings by reason of having made a prior inquiry, examination or investigation of the subject under consideration and prohibits a Director from participating in the determination of any matter in which such Director is personally interested.

²⁹ Section numbers of the subsequent sections in Article III would be revised accordingly. The Exchange proposes to delete all subsequent references to “Vice Chairman” under proposed Article II, Sections 4, 5 and 10.

³⁰ See NYSE National Bylaws, Article III, Section 3.6; NYSE Arca Bylaws, Article III, Section 3.03; NYSE Operating Agreement, Article II, Section 2.03(1); and NYSE American Operating Agreement, Article II, Section 2.03(1).

The Exchange proposes to eliminate the provision prohibiting the disqualification of a Director by reason of the Director having made prior inquiry, examination or investigation of the subject matter under consideration, as none of the governing documents of the other NYSE Group Exchanges have a similar provision. However, the Exchange proposes to maintain the prohibition of a Director from participating in the determination of any matter in which such Director is personally interested.

Proposed Section 7. Current Section 8 (Place of Meetings; Mode) provides requirements related to the place and mode of Board meetings.

The Exchange proposes to conform current Section 8 to Article III, Section 3.8 of the NYSE National Bylaws by eliminating reference to the Executive Committee, as it is redundant of the preceding language stating that members of the Board or any Board committee (which would include the Executive Committee) may attend a Board meeting.

Proposed Section 8. Current Section 9 (Regular Meetings) specifies that regular meetings may be held, with or without notice, at such time or place as the Board or Executive Committee specifies in a resolution.

The Exchange proposes that only the Board, not the Executive Committee, determine the time or place of its regular meetings. The change would be consistent with the governing documents of the other NYSE Group Exchanges, which do not provide that a committee may call a meeting of their respective board of directors.³¹ In addition, the Exchange proposes an administrative change to eliminate the requirement for a Board resolution. The Exchange notes that the change would be consistent with the governing documents of NYSE Arca, NYSE and

³¹ See NYSE Arca Bylaws Article III, Section 3.05; NYSE National Bylaws Article III, Section 3.9; NYSE Operating Agreement, Article II, Section 2.03(c); and NYSE American Operating Agreement, Article II, Section 2.03(c).

NYSE American, which do not require a board resolution for meetings to be called.³² The Exchange does not propose to amend the Exchange Bylaws' current provision stating that regular meetings of the Exchange Board may be held with or without notice.³³

Proposed Section 9. Current Section 10 (Special Meetings), paragraph (a) permits special meetings of the Board to be called on two days' notice to each Director by the Chairman, the Vice Chairman or the CEO and shall be called by the Secretary upon the written request of any five Directors and paragraph (b) requires the person calling a special meeting to fix the time and place at which the meeting will be held, as well as additional requirements related to effecting adequate notice.

The Exchange proposes to amend paragraph (a) to reduce the minimum notice requirement from two days to one day and reduce the number of Directors' written requests required from five Directors to three Directors then in office. As such, proposed Section 9 is largely similar to Article III, Section 3.10(a) of the NYSE National Bylaws, except for minimum notice requirement of one day. The Exchange submits that reducing the minimum notice requirement to one day is reasonable as it facilitates the Board meeting quickly and notes that one day of notice would be consistent with the bylaws of other national securities exchanges.³⁴

³² See NYSE Arca Bylaws, Article III, Section 3.05; NYSE Operating Agreement, Article II, Section 2.03(c); and NYSE American Operating Agreement, Article II, Section 2.03(c).

³³ Similarly, NYSE National Bylaws Article III, Section 3.9 does not require notice for regular meetings. The Exchange expects NYSE National to propose that such provision be amended to remove the requirement for a resolution.

³⁴ See NYSE Operating Agreement, Article II, Section 2.03(c) (requiring 12 or 24 hours of notice, with the exception of mailed notice); NYSE American Operating Agreement, Article II, Section 2.03(c) (requiring 12 or 24 hours of notice, with the exception of mailed notice); Cboe BZX Bylaws, Section 3.11 (requiring 24 hours of notice); Tenth Amended and Restated Bylaws of Cboe Exchange, Inc. ("Cboe Exchange Bylaws"), Section 3.11 (requiring 24 hours of notice); and Bylaws of Nasdaq, Inc., Article IV,

The Exchange also proposes to amend paragraph (b) by eliminating the requirement that the person calling the special meeting fix the time and place of the meeting, as proposed Article II, Section 7 already addresses the place and mode of Board meetings. Otherwise, the current requirements related to adequate notice are retained under proposed paragraph (b).

The changes to current Section 10 are administrative in nature.

Proposed Section 10. Current Section 11 (Quorum and Action by the Board) provides certain requirements related to quorum and action by the Board. Notably, current Section 11 (1) defines a “quorum” to be one-half of the number of directors then in office (including not less than 50 percent of the Public Directors³⁵); (2) states that the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors except as may be otherwise specifically provided by statute, the Exchange Certificate, Exchange Bylaws or Rules; (3) provides that if at least 50 percent of the Public Directors are (a) present at or (b) have waived their attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than 50 percent of the Public Directors be present to constitute the quorum shall be deemed satisfied; and (4) provides that if a quorum shall not be present at any meeting of the Board, a majority of the Directors present at the meeting may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present.

To better align proposed Section 10 with Article III, Section 3.11 of the NYSE National Bylaws, the Exchange proposes to

Section 4.12 (requiring that notice be sent no later than “the day before the day” of the meeting, with the exception of mailed notice).

³⁵ Article II, Section 2 of the proposed Exchange Bylaws defines “Public Directors” as Directors who are persons from the public that are not affiliated with a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates.

1. add an introductory sentence that provides that each Director shall be entitled to one vote;
2. amend the definition of “quorum” by
 - stating that the presence of a majority of the number of Directors then in office is required, rather than one half; and
 - (b) deleting the requirement that a quorum include no less than 50% of the Public Directors; and
3. amend the title to “Voting; Quorum and Action by the Board.”

The proposed quorum provision would be consistent with the quorum provisions of the other NYSE Group Exchanges, which all provide that the presence of a majority of the directors constitutes a quorum, and do not impose requirements regarding the number of public directors.³⁶ In addition, the Exchange proposes to add language clarifying that the proposed quorum requirement would apply “[e]xcept as otherwise required by law.”³⁷ Correspondingly, the Exchange proposes to replace a reference to “statute” with the broader term “law,” as the later contemplates non-statutory law, such as common law.

Therefore, proposed Section 10 provides as follows:

Each director shall be entitled to one vote. Except as otherwise required by law, at all meetings of the Board of Directors, the presence of a majority of the number of directors then in office shall constitute a quorum for the transaction of business. The act of a majority of the directors present at

³⁶ See NYSE Arca Bylaws Article III, Section 3.07; NYSE National Bylaws Article III, Section 3.11; NYSE Operating Agreement, Article II, Section 2.03(d); and NYSE American Operating Agreement, Article II, Section 2.03(d). The NYSE Arca provision requires that the majority be of the number of directors, while the other provisions cited require the majority be of the number of directors then in office.

³⁷ See DCGL Section 141(b).

any meeting at which there is a quorum shall be the act of the Board of Directors except as may be otherwise specifically provided by law, the certificate of incorporation, the bylaws or the rules. If a quorum shall not be present at any meeting of the Board of Directors, a majority of the directors present at the meeting may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present.

Proposed Section 13. Current Section 14 (Informal Action) permits the Board to take action without a meeting by written consent of all of the Directors and requires such written action be filed with the minutes of proceedings of the Board.

In an administrative change, the Exchange proposes to amend the provision to be substantially similar to Article III, Section 3.14 of the NYSE National Bylaws. Specifically, the title would be revised to state, “Action in Lieu of Meeting”³⁸ and the revised text would permit the Board and any committee of the Board to take action by written consent. Notably, as in the NYSE National provision, the proposed provision would include additional language clarifying that action by written consent may be taken by any committee of the Board and that such consent may be delivered in writing or by electronic transmission.³⁹

Proposed Section 14. Current Section 15 (Compensation) provides that the directors may be paid their reasonable expenses, if any, of attendance at each meeting of the Board or a committee of the Board and that the Directors, irrespective of any personal interest of any of its members, shall have authority to fix the compensation of all directors for services to the Exchange.

³⁸ See also NYSE Arca Bylaws Article III, Section 3.09; NYSE Operating Agreement, Article II, Section 2.03(g); and NYSE American Operating Agreement, Article II, Section 2.03(g).

³⁹ See also NYSE Arca Bylaws Article III, Section 3.09.

The Exchange proposes to maintain the first sentence permitting Directors to be paid for their reasonable expenses. However, the Exchange proposes to move the provision related to the Board fixing Director compensation to Article FIFTH(c) of the proposed Exchange Certificate, as amended to be similar to the last sentence of Article III, Section 3.15 of the NYSE National Bylaws.

The changes to current Section 15 are administrative in nature.

Current Section 17. Current Section 17 (Interpretation of Bylaws and Rules) provides that the Board shall have the power to interpret the Exchange Bylaws and the Rules and any interpretation made by it shall be final and conclusive. The Exchange proposes to delete current Section 17 in its entirety as none of the other NYSE Group Exchanges have similar provisions in their respective governing documents.

Article III (Stockholders)

Article III contains provisions relating to the stockholders of the Exchange. With the exception of current Sections 5 and 14, the Exchange proposes to conform the provisions in Article III to Article IV of the NYSE National Bylaws, so as streamline provisions across the two NYSE Group Exchanges that have stockholders, for the sake of efficiency.⁴⁰ The proposed changes are administrative in nature, relating primarily to the administrative processes relating to the stockholder, and will have no material substantive effect on the current operations or governance of the Exchange.

Proposed Section 1. Current Section 1 (Annual Meetings) provides that the annual meeting shall be held on a business day in April each year, or on such other dates determined by

⁴⁰ NYSE Arca is a non-stock corporation, and so has a member instead of stockholders. See NYSE Arca Bylaws, Article II, Section 2.01. Holdings is the sole stockholder of the Exchange.

the Board, for the purpose of electing Directors and the transaction of other business. The Exchange proposes to amend Section 1 to be substantially similar to Article IV, Section 4.1 of the NYSE National Bylaws. Notably, proposed Section 1 eliminates the requirement that the annual meeting be held in April. Proposed Section 1 also includes additional language that provides specific requirements for written notice to shareholders.⁴¹ Unlike Article IV, Section 4.1 of the NYSE National Bylaws, proposed Section 1 includes an additional clarifying clause providing that the aforementioned written notice requirement shall apply “[e]xcept as otherwise required by law.”

Proposed Section 2. Current Section 2 (Special Meetings) provides that the special meetings of the stockholders may be called by the Board or the CEO. The Exchange proposes to amend Section 2 to be similar to Article IV, Section 4.2 of the NYSE National Bylaws, except that proposed Section 2 includes additional language that provides that the written notice requirements shall apply “[e]xcept as otherwise required by law.” Notably, proposed Section 2 permits the Chairman, Board, CEO and the stockholders to call a special meeting; includes written shareholder notice requirements consistent with Section 222 of the DGCL⁴²; and limits the business transacted at special meetings to the purpose(s) stated in the written notice.

Deleting Current Sections 3 and 4. Current Section 3 (Place of Meetings) provides requirements for the place of stockholder meetings and current Section 4 (Notice of Meetings) provides notice requirements for stockholder meetings. Given that proposed Sections 1 and 2 provide time, place and notice requirements for stockholder meetings, as described above,

⁴¹ See Del. Code tit. 8, §222.

⁴² See Del. Code tit. 8, §222.

current Sections 3 and 4 are obviated and the Exchange therefore proposes to delete these provisions entirely.⁴³

Deleting Current Sections 6 and 7. Current Section 6 (Meeting of All Stockholders) permits notice of stockholder meetings to be waived if all stockholders agree in writing and current Section 7 (Record Dates) provides procedures related to record dates.

The Exchange notes that current Section 6 is redundant of proposed Section 4, which addresses waiver of notice, and the provisions under current Section 7 are redundant of Section 213 (Fixing date for determination of stockholders of record) of the DGCL. As such, the Exchange proposes to delete Sections 6 and 7 entirely.

Proposed Section 4. Current Section 8 (List of Stockholders) requires the Exchange officer who has charge of the stock ledger of the Exchange to prepare, at least 10 days before each meeting of stockholders a complete list of stockholders entitled to vote at the meeting.

In an administrative change, the Exchange proposes to amend the provision such that, as permitted by Section 219(a) of the DGCL, the “Corporation,” and not an officer of the Exchange specifically, is required to prepare the list of stockholders entitled to vote.⁴⁴ The Exchange proposes to make other non-substantive amendments so that proposed Section 4 is similar to Article IV, Section 4.3 of the NYSE National Bylaws.

Proposed Section 5. Current Section 9 (Quorum and Vote Required for Action) sets forth the quorum and voting requirements.

The Exchange proposes to amend the provision to be substantially similar to Article IV, Section 4.4 of the NYSE National Bylaws. Notably, proposed Section 9 eliminates the plurality vote requirement for Directors and establishes a majority vote requirement for all business

⁴³ Section numbers of the subsequent sections in Article IV would be revised accordingly.

⁴⁴ Del. Code tit. 8, §219(a).

brought before the stockholders, except as otherwise required by law or the Exchange Certificate.

Proposed Section 6. Current Section 10 (Proxies) provides that each stockholder entitled to vote at a meeting of the stockholders may authorize another person or persons to act for the stockholder by proxy and provides other requirements related to the proxies generally.

The Exchange proposes to amend the provision to be substantially similar to Article IV, Section 4.5 of the NYSE National Bylaws and to amend the title to state, “Voting of Shares; Proxies.” Notably, proposed Section 6 is largely similar to current Section 10, except that proposed Section 6 additionally provides that each stockholder of the Exchange at each meeting of the stockholders is entitled to one vote in person or by proxy for each share of capital stock having voting power held by such stockholder.

Deleting Current Sections 11-13. Current Section 11 (Voting Shares) provides that each share having voting power is entitled to one vote, current Section 12 provides that business at a meeting of the stockholders may be decided by voice vote unless the presiding officer orders voting by ballot and current Section 13 permits the presiding officer at a meeting of the stockholders to appoint one or more inspectors to take certain actions at the meeting.

The Exchange proposes to delete current Section 11 as redundant of proposed Section 6. The Exchange also proposes to delete current Sections 12 and 13 as they are not necessary as an administrative matter. There are no similar provisions under the NYSE National Bylaws.

Proposed Section 7. Current Section 14 (Informal Action) permits stockholder action to be taken by written consent and provides certain requirements related to such written consent.

The Exchange proposes to amend the provisions to permit stockholder action to be taken by written consent and to the extent provided by the DGCL, but only if the matter to be voted

upon were approved by the Board and the Board had directed that the matter be brought before the stockholders. The Exchange also proposes to amend the title to read “Action in Lieu of Meeting.”

Article IV (Committees)

Current Article IV provides requirements related to committees of the Board. The Exchange proposes to amend Article IV to eliminate the requirement that the Exchange maintain Audit, Compensation and Finance Committees, as matters that would normally be considered by those committees will be addressed by the Board or upstream by the audit and compensation committees of ICE. Therefore, proposed Article IV is similar to Article V of the NYSE National Bylaws, streamlining provisions across NYSE Group Exchanges, except that the Exchange will maintain an Executive Committee and Judiciary Committee, as Article 12 of the Rules (Disciplinary Matters and Trial Proceedings) require that such committees exist, as described below.

In addition, the Exchange proposes to incorporate provisions regarding each Board committee (the Regulatory Oversight Committee (“ROC”), Nominating Committee, and Executive Committee) into the Bylaws, ensuring that such committees are established in the governing documents of the Exchange.

Proposed Section 1. Current Section 1 (Number of Committees)

provides that the committees of the Exchange shall consist of an Executive Committee, a Nominating Committee, an Audit Committee, a Compensation Committee, a Regulatory Oversight Committee (“ROC”), a Finance Committee, a Judiciary Committee and such other committees as may be provided in the bylaws or rules or as may be from time to time established by the Board of Directors.

Proposed Section 1 maintains the requirements of current Section 1, except that it omits references to the Audit, Compensation and Finance Committees, for the reasons noted above.

Proposed Section 2. Current Section 2 (Appointment of Committees) provides the requirements for the appointment of the committees.

The Exchange proposes to amend Section 2 to be similar to Article V, Section 5.2 of the NYSE National Bylaws and to amend the title to state, “Appointment; Vacancies; and Removal.” Specifically, proposed paragraph (a) is substantially similar to Article V, Section 5.2 of the NYSE National Bylaws and provides that the Board shall appoint, consistent with the Exchange Bylaws, the members of all committees of the Board, and the Board may, at any time, with or without cause, remove any member of a committee so appointed, unless otherwise provided therein.

Proposed paragraph (b) provides that any vacancy occurring in a committee shall be filled by the Board, consistent with the DGCL.⁴⁵

Proposed Sections 3, 4 and 5. Current Section 3 (Powers and Duties of Committees) provides that all committees shall have such duties and may exercise such authority as may be prescribed for them in the Exchange Bylaws or in the Rules or by the Board. Current Section 4 (Conduct of Proceedings) provides requirements related to committee proceedings. The Exchange proposes to move current Section 3 to proposed Section 4 and current Section 4 to proposed Section 5.

The Exchange also proposes to adopt proposed Section 3 (General Provisions), which is substantially similar to Article V, Section 5.3 of the NYSE National Bylaws and provides

⁴⁵ See Del. Code tit. 8, §141(c)(1). The Exchange expects that NYSE National will propose to amend Section 5.2(b) of the NYSE National Bylaws to comport to Article IV, Section 2(b) of the proposed Exchange Bylaws.

general provisions related to the composition and voting requirements of the committees. Therefore, proposed Section 3 provides as follows:⁴⁶

(a) Except as otherwise provided in this Article IV, each committee shall be comprised of at least three people and may include persons who are not members of the Board; provided, however, that such committee members who are not also members of the Board shall only participate in committee actions to the extent permitted by law. In appointing new members to committees of the Board, the Board is responsible for determining that any such committee meets the composition requirements set forth in this Article IV.

(b) The presence of a majority of the members of a committee shall be necessary to constitute a quorum for the transaction of business at a meeting of a committee.

(c) The act of a majority of the members present at any meeting at which there is a quorum shall be the act of such committee, except as may be otherwise specifically required by these bylaws of the Corporation, the rules, or applicable law.

(d) Unless otherwise restricted by these bylaws, the rules, applicable law, or rules of the particular committee, members of a committee or of any subcommittee thereof may participate in meetings by means of conference call or similar communications equipped by means of which all persons

⁴⁶ See supra note 15.

participating in the meeting can hear each other, and such participation shall constitute presence in person at the meeting.

(e) No member of a committee shall participate in the adjudication of any matter in which he or she is personally interested, although his or her presence at a meeting at which such matter is considered shall count toward the quorum requirements for the meeting.

Proposed Section 6. Article 2, Rule 4 (Regulatory Oversight Committee) of the current Rules provides requirements related to size, composition and purpose of the ROC. It states that the ROC “shall assist the Board in monitoring the design, implementation and effectiveness of the Exchange’s programs to promote and enforce compliance with the federal securities laws, SEC rules and CHX rules.”⁴⁷ It provides that the ROC’s powers and responsibilities shall be set out in a charter approved by the Board.

The Exchange proposes to delete current Article 2, Rule 4 and add a new Article IV, Section 6 to the proposed Exchange Bylaws. Proposed Section 6 establishes the powers and responsibilities of the ROC, rather than referring to a charter, as in current Article 2, Rule 4. The proposed provision is substantially the same as the related provisions in the governing documents of the other NYSE Group Exchanges,⁴⁸ except that the Exchange proposes to add additional language clarifying that the majority affirmative vote requirement is based on the “directors then in office,” as opposed to total number of Director slots on the Board. Therefore, proposed Section 6 provides as follows:⁴⁹

⁴⁷ Article 2, Rule 4 of the Rules.

⁴⁸ See NYSE National Bylaws, Article III, Section 5.6; NYSE Arca Rule 3.3; NYSE Operating Agreement, Article II, Section 2.03(h)(ii); and NYSE American Operating Agreement, Article II, Section 2.03(h)(ii).

⁴⁹ See supra note 15.

(a) The Board shall, on an annual basis, appoint the Regulatory Oversight Committee (“ROC”).

(b) The ROC shall consist of at least three members, each of whom shall be a Public Director of the Corporation. The Board, on affirmative vote of a majority of directors then in office, may, at any time remove a member of the ROC for cause. A failure of the member to qualify as a Public Director shall constitute a basis to remove a member of the ROC for cause. If the term of office of a ROC committee member terminates under this Section, and the remaining term of office of such committee member at the time of termination is not more than three months, during the period of vacancy the relevant committee shall not be deemed to be in violation of the compositional requirements of such ROC by virtue of such vacancy.

(c) The ROC shall oversee the Corporation’s regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Corporation’s regulatory and self-regulatory organization responsibilities; assess the Corporation’s regulatory performance; and advise and make recommendations to the Board or other committees of the Board about the Corporation’s regulatory compliance, effectiveness and plans. In furtherance of its functions, the ROC shall (i) review the regulatory budget of the Corporation and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (ii) meet regularly with the Chief Regulatory Officer in executive session; (iii) in consultation with the Chief Executive Officer of

the Corporation, establish the goals, assess the performance, and recommend the compensation of the Chief Regulatory Officer; and (iv) keep the Board informed with respect to the foregoing.

Proposed Section 7. Article 2, Rule 11 (Nominating and Governance Committee) of the current Rules provides that there shall be a Nominating Committee which shall have the composition and responsibilities set out in the Exchange's Bylaws.

The Exchange proposes to delete current Article 2, Rule 11, and add a new Article IV, Section 7 of the proposed Exchange Bylaws. The title of new Section 7 would be "Nominating Committee," and the provision would be substantially similar to Article V, Section 5.7 of the NYSE National Bylaws, except that proposed Section 7 also provides a definition for "Permit Holder representative." Therefore, proposed Section 7 provides that:

The Nominating Committee shall consist solely of Non-Affiliated Directors, as defined above, and/or Permit Holder representatives, and shall be responsible for approving and submitting names of candidates for election to the position of Non-Affiliated Director pursuant to, and in accordance with, Article II, Section 3 and that "Permit Holder representative" shall mean an officer, director, employee or agent of a Permit Holder.

Proposed Section 8. Article 2, Rule 2 (Executive Committee) of the current Rules provides requirements related to size, composition and purpose of the Executive Committee.

The Exchange proposes to delete current Article 2, Rule 2 and add a new Article IV, Section 8 of the proposed Exchange Bylaws. The proposed provision provides that the Executive Committee shall consist of Directors, including the Chairman, a majority of the committee members (including the Chairman if the Chairman is a Public Director) shall be

Public Directors, the Chairman shall be the Chairman of the Executive Committee and the Executive Committee shall have such powers as may be set forth in the Rules or delegated to it by the Board.

Notably, in an administrative change, proposed Section 8 does not include the provision of the current Article 2, Rule 2 that gives the Executive Committee authority to act for the Board in between Board meetings, with some limitations.⁵⁰ The elimination of such provision would be consistent with the governing documents of the other NYSE Group Exchanges, which, like the proposed provision, allow the relevant board of directors to delegate authority, but do not provide specific committees with the authority to act for the board between meetings.⁵¹

With respect to proposed Article IV, the Exchange proposes to make conforming amendments to Article 2 of the current Rules, as described below.

Article V (Officers)

Current Article V (Officers) includes provisions related to officers of the Exchange. Generally, the Exchange proposes to amend Article V to be similar to Article VI of the NYSE National Bylaws, as described below. The changes to current Article V are administrative in nature.

⁵⁰ Article 2, Rule 2 of the CHX Rules provides that “between meetings of the Board of Directors, [the Executive Committee] shall have, and may exercise, all the rights, powers, authority, duties and obligations of the Board of Directors not otherwise delegated to another committee or an officer or officers of the Exchange by the bylaws, rules or by the Board of Directors, except the authority to propose amendments to the certificate of incorporation, to adopt an agreement of merger or consolidation, to recommend to stockholders the sale, lease or exchange of all or substantially all of the property and assets of the Exchange or to recommend to the stockholders a dissolution of the Exchange or the revocation of a dissolution.”

⁵¹ See NYSE Arca Bylaws Article IV, Section 4.01(a); NYSE National Bylaws Article V, Section 5.1; NYSE Operating Agreement, Article II, Section 2.03(h); and NYSE American Operating Agreement, Article II, Section 2.03(h).

Proposed Section 1. Current Section 1 provides that officers of the Exchange shall include the CEO, one or more Vice Presidents, Chief Regulatory Officer, a Secretary, a Treasurer and such other officers as the Board or CEO may determine, and permits the Board or CEO to appoint officers, except that the CEO may only be appointed by the Board.

The Exchange proposes to amend Section 1 to be substantially similar to Article VI, Section 6.1 of the NYSE National Bylaws.⁵² Therefore, proposed Section 1 provides that the Board shall elect officers of the Exchange as it deems appropriate, which may include a CEO, President, Chief Regulatory Officer, Secretary, Treasurer, and such other officers as the Board may determine and any two or more offices may be held by the same person, except that the Chief Regulatory Officer and the Secretary may not hold either the office of CEO or President.

Deleting Current Section 2. Current Section 2 (Compensation) provides that the compensation of the CEO shall be fixed by the Compensation Committee and that the compensation of other officers shall be fixed by the CEO in consultation with the Compensation Committee.

As noted above, the Exchange is proposing to eliminate the Compensation Committee, as matters related to compensation of officers will be handled upstream of the Exchange. Such administrative change would consistent with the other NYSE Group Exchanges, which do not provide for their respective boards of directors to determine officer compensation.⁵³ Therefore, the Exchange proposes to delete current Section 2 in its entirety.

Proposed Section 2. Current Section 3 (Term of Office; Removal; Vacancies) provides that each officer of the Exchange shall hold office until the officer's successor is appointed and

⁵² See also NYSE Arca Bylaws, Article V, Section 5.01.

⁵³ See NYSE National Bylaws, Article IV; NYSE Arca Bylaws, Article V; NYSE Operating Agreement, Article II, Section 2.04; and NYSE American Operating Agreement, Article II, Section 2.04.

qualified or until the earlier of the officer's death, resignation or removal. It further includes provisions related to the removal of officers.

The Exchange propose to move current Section 3 to proposed Section 2, to amend the provision to be substantially similar to Article VI, Sections 6.2 and 6.3 of the NYSE National Bylaws⁵⁴ and to amend the title to state, "Tenure and Appointment; Removal and Vacancies." Specifically, proposed paragraph (a), which is substantially similar to Section Article VI, 6.2 of the NYSE National Bylaws, provides that each officer of the Exchange shall hold office until his or her successor is appointed and qualified, or until his or her earlier death, resignation, retirement or removal. Moreover, proposed paragraph (b), which is substantially similar to Article VI, Section 6.3 of the NYSE National Bylaws, provides that any officer of the Exchange may be removed at any time by the Board, with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed and that vacancies in any office of the Exchange may be filled for the unexpired term by the Board.

Deleting Current Section 4. Current Section 4 (Chief Executive Officer) includes provisions related to the CEO's obligations, powers and responsibilities. The Exchange notes that none of the other NYSE Group Exchanges have similar provisions in their respective governing documents or rules.⁵⁵ The Exchange propose to delete current Section 4 in its entirety.

Deleting Current Section 5. Current Section 5 (Officers Appointed by Chief Executive Officer) includes provisions related to the appointment of officers by the CEO. Given that the

⁵⁴ The proposed provision is consistent with the governing documents of the other NYSE Group Exchanges. See NYSE Arca Bylaws, Article V, Section 5.03; NYSE Operating Agreement, Article II, Section 2.04(b); and NYSE American Operating Agreement, Article II, Section 2.04(b).

⁵⁵ See NYSE National Bylaws, Article IV; NYSE Arca Bylaws, Article V; NYSE Operating Agreement, Article II, Section 2.04; and NYSE American Operating Agreement, Article II, Section 2.04.

CEO will no longer have the authority to appoint officers of the Exchange, pursuant to proposed Section 1, the Exchange propose to delete current Section 5 in its entirety.

Proposed Section 3. The Exchange propose to adopt proposed Section 3 (Powers and Duties), which is similar to Article VI, Section 6.4 of the NYSE National Bylaws and Article V, Section 5.02 of the NYSE Arca Bylaws.⁵⁶ Specifically, proposed Section 3 provides that each of the offices of the Exchange shall, unless otherwise ordered by the Board, have such powers and duties as customarily pertain to the respective office, and such further powers and duties as from time to time may be conferred by the Board, or by an officer delegated such authority by the Board.

Article VI (Indemnification)

Current Article VI includes various provisions related to indemnification by the Exchange.

Given that the Exchange is now a wholly-owned indirect subsidiary of ICE, the Exchange believes it appropriate to harmonize the Exchange's indemnification provisions with those of ICE and the Exchange's intermediate holding company, ICE Holdings.⁵⁷

Specifically, the Exchange proposes to delete Sections 1-5 under current Article VI in their entirety and replace it with proposed Section 1 (Indemnification), which is substantially similar to the ICE and ICE Holdings provisions, except that proposed Section 1 utilizes the term

⁵⁶ The proposed provision is consistent with the governing documents of the other NYSE Group Exchanges. See NYSE Operating Agreement, Article II, Section 2.04(c); and NYSE American Operating Agreement, Article II, Section 2.04(c).

⁵⁷ See ICE Bylaws, Article X, Section 10.6, and ICE Holdings Bylaws, Article X, Section 10.6.

“officer” instead of “Senior Officers,” so as to be consistent with the Exchange’s terminology. Therefore, proposed Section 1 provides as follows:⁵⁸

- (a) The Exchange shall, to the fullest extent permitted by law, as those laws may be amended and supplemented from time to time, indemnify any director or officer made, or threatened to be made, a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director or officer of the Exchange or a predecessor corporation or, at the Exchange’s request, a director, officer, partner, member, employee or agent of another corporation or other entity; provided, however, that the Exchange shall indemnify any director or officer in connection with a proceeding initiated by such person only if such proceeding was authorized in advance by the Board of Directors of the Exchange. The indemnification provided for in this Section 7.6 shall:
 - (i) not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office;
 - (ii) continue as to a person who has ceased to be a director or officer; and
 - (iii) inure to the benefit of the heirs, executors and administrators of an indemnified person.
- (b) Expenses incurred by any such person in defending a civil or criminal action, suit or proceeding by reason of the fact that he is or was a director

⁵⁸ See supra note 15.

or officer of the Exchange (or was serving at the Exchange's request as a director, officer, partner, member, employee or agent of another corporation or other entity) shall be paid by the Exchange in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Exchange as authorized by law. Notwithstanding the foregoing, the Exchange shall not be required to advance such expenses to a person who is a party to an action, suit or proceeding brought by the Exchange and approved by a majority of the Board of Directors of the Exchange that alleges willful misappropriation of corporate assets by such person, disclosure of confidential information in violation of such person's fiduciary or contractual obligations to the Exchange or any other willful and deliberate breach in bad faith of such person's duty to the Exchange or its stockholders.

(c) The foregoing provisions of this Section 7.6 shall be deemed to be a contract between the Exchange and each director or officer who serves in such capacity at any time while this bylaw is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts. The rights provided to any person by this bylaw shall be enforceable against the Exchange by such person, who

shall be presumed to have relied upon it in serving or continuing to serve as a director or officer or in such other capacity as provided above.

(d) The Board of Directors in its discretion shall have power on behalf of the Exchange to indemnify any person, other than a director or officer, made or threatened to be made a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, or his or her testator or intestate, is or was an officer, employee or agent of the Exchange or, at the Exchange's request, is or was serving as a director, officer, partner, member, employee or agent of another corporation or other entity.

(e) To assure indemnification under this Section 7.6 of all directors, officers, employees and agents who are determined by the Exchange or otherwise to be or to have been "fiduciaries" of any employee benefit plan of the Exchange that may exist from time to time, Section 145 of the Delaware General Corporation Law shall, for the purposes of this Section 7.6, be interpreted as follows: an "other enterprise" shall be deemed to include such an employee benefit plan, including without limitation, any plan of the Exchange that is governed by the Act of Congress entitled "Employee Retirement Income Security Act of 1974," as amended from time to time; the Exchange shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the Exchange also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the

plan; excise taxes assessed on a person with respect to an employee

benefit plan pursuant to such Act of Congress shall be deemed “fines.”

Deleting Sections 2 - 5. The Exchange notes that current Section 2 (Contract) is a statement of law regarding the enforceability of contracts, and therefore is in effect regardless of whether the provision is included in the Exchange Bylaws. Therefore, the Exchange proposes to delete current Section 2 in its entirety.

The Exchange proposes to delete current Section 3 (Discretionary Indemnification Coverage) and Section 4 (Continuity of Indemnification), as discretionary indemnification by the Board is addressed in proposed Section 1(d) and continuity of indemnification is addressed in proposed Section 1(a).

Finally, the Exchange proposes to delete Section 5 (Corporation Not Liable). A more comprehensive statement of the Exchange’s limitation of liability may be found under Article 3, Rule 19 of the Rules. The Exchange proposes to delete Section 5 as duplicative of such Rule 19. The Exchange believes that having Article 2, Rule 19 of the Rules be the sole statement of the Exchange’s limitation of liability provisions will reduce possible confusion that may result from a restatement of such provisions under the Exchange Bylaws and is also consistent with the Exchange’s observation that Participants are more likely to utilize the Rules as a reference to the operation and obligations of the Exchange rather than the Exchange Bylaws.

Article VII (Amendments)

Proposed Section 1. Current Section 1 (Bylaws) provides that the Exchange Bylaws may be modified by the Board or the stockholders.

The Exchange proposes to amend Section 1 (Bylaws) to be similar to Article VIII, Section 8.1 of the NYSE National Bylaws. Specifically, proposed Section 1 maintains the

language from current Section 1 with an additional sentence stating that before any amendment to, alteration or repeal of any provision of the bylaws of the Exchange under this Article VII shall be effective, those changes shall be submitted to the Board and if the same must be filed with or filed with and approved by the Commission, then the proposed changes to the bylaws of the Exchange shall not become effective until filed with or filed with and approved by the Commission, as the case may be.

The Exchange does not propose to adopt the contractual provision in Section 8.1 of the NYSE National Bylaws that requires shareholder action to effect amendments to certain of the bylaws. The current Exchange Bylaws does not have a similar requirement, and the Exchange notes the bylaws of other national securities exchanges, such as Cboe BZX, similarly permit amendments to the bylaws be effected by either the board or shareholders, without carving out exceptions.⁵⁹

Article VIII (Certificates of Stock and their Transfer)

Article VIII contains provisions relating to the certificates of stock of the Exchange. Except as set forth below, the Exchange proposes to conform the provisions in Article VIII to Article IX of the NYSE National Bylaws, so as streamline provisions across the two NYSE Group Exchanges that have stock certificates, for the sake of efficiency. The proposed changes are administrative in nature, relating primarily to the administrative processes relating to shares, and will have no material substantive effect on the current operations or governance of the Exchange.

⁵⁹ See CBOE Exchange Bylaws, Article IX, Sections 9.1 and 9.2; Cboe BZX Bylaws, Article IX, Sections 9.1 and 9.2; see also NYSE Arca Bylaws Article IX (providing that the bylaws may be amended by the NYSE Arca board of directors, without requiring action by the member).

Proposed Section 1. Current Section 1 (Form and Execution of Certificates) provides requirements related to the execution of stockholder certificates.

The Exchange proposes to amend Section 1 to be largely similar to Article IX, Section 9.1 of the NYSE National Bylaws. Specifically, proposed Section 1 maintains the substance of current Section 1, but includes additional language that any and all signatures on a certificate may be facsimiles. However, proposed Section 1 differs from Article IX, Section 9.1 of the NYSE National Bylaws in that proposed Section 1 provides that the certificate may be signed by “any two authorized officers,” instead of listing the specific officers authorized to execute a certificate, which better reflects the requirements of Section 158 of the DGCL.⁶⁰

Proposed Section 2. Current Section 2 (Conditions to Transfer) sets forth the documentation required for a sale, transfer or other disposition of stock of the Exchange.

The Exchange proposes to amend Section 2 to be substantially similar to Article IX, Section 9.4 of the NYSE National Bylaws. Specifically, proposed Section 2 adopts taxonomy similar to Article IX, Section 9.4 of the NYSE National Bylaws, and omits current clause (d), which permits the CEO to adopt additional procedures with respect to the transfer of stock. The change is administrative.

Proposed Section 3. Current Section 3 (Replacement Certificates) provides the Board with the authority to direct that new stockholder certificates be issued.

The Exchange proposes to amend Section 3 to be substantially similar to Article IX, Section 9.2 of the NYSE National Bylaws. Notably, consistent with the DGCL,⁶¹ proposed Section 3 states that the Exchange generally (as opposed to the Board specifically) has the

⁶⁰ See Del. Code tit. 8, §158.

⁶¹ See Del. Code tit. 8, §167.

authority to issue replacement certificates, clarifies that the Exchange can issue one or more replacement certificates and replaces the pronoun “his” with the more specific “such owner’s.”

Proposed Section 6. The Exchange propose to adopt Section 6 (Notice on Certificates), which is substantially similar to Article IX, Section 9.3 of the NYSE National Bylaws and consistent with the DGCL⁶² for shares subject to certain restrictions and limitations.

Article IX (Self-Regulatory Function of the Corporation)

Current Article IX (Contracts, Loans, Checks and Deposits) includes administrative provisions related to authority to execute contracts (Section 1) and loans (Section 2); issue checks or other negotiable instruments (Section 3); and deposit of Exchange funds (Section 4). Section 1 is a statement of law regarding the persons authorized to execute contracts on behalf of the Exchange. Also, the Exchange notes that none of the other NYSE Group Exchanges have provisions similar to Sections 2-4 in their respective governing documents or rules. Therefore, the Exchange proposes to delete current Article IX in its entirety. As the provisions are administrative, the proposed deletion would have no material substantive effect on the current operations or governance of the Exchange.

Current Article X (Self-Regulatory Function of the Corporation) includes special obligations and requirements related to the Exchange’s status as an SRO. The Exchange proposes to move current Article X to proposed Article IX and to amend certain provisions to be similar to related provisions under Article X of the NYSE National Bylaws, as follows.

⁶² See Del. Code tit. 8, §202.

Proposed Section 1. Current Section 1 (Management of the Corporation) requires the Board to consider the Exchange’s SRO status and certain requirements under the Exchange Act when managing the business and affairs of the Exchange.

Proposed Section 1 maintains the substance of current Section 1, but includes various non-substantive terminology changes, including replacing a reference to “Exchange Act of 1934” with “Exchange Act,” which is a defined term under the Exchange Bylaws.⁶³

Proposed Section 2. Current Section 2 (Participation in Board and Committee Meetings) prohibits any persons that are not Directors or necessary officers, staff, counsel or other advisors from participating in Board and committee meetings.

Proposed Section 2 maintains the substance of current Section 2, but includes various non-substantive terminology changes, including replacing a reference to “committees of the Corporation” with “committees of the Board,” which is consistent with language used under Article II of the proposed Exchange Bylaws.

Proposed Section 3. Current Section 3 (Confidentiality of Information and Records Relating to SRO Function) requires certain books and records of the Exchange to remain confidential with certain specified exceptions.

The Exchange proposes to amend Section 3 to be substantially similar to Article X, Section 10.3 of the NYSE National Bylaws. Proposed Section 3 maintains the substance of current Section 3 and includes additional language (a) permitting disclosure of the specified confidential information to “personnel of the Commission” and (b) stating that nothing in such Section shall be interpreted as to limit or impede the rights of the Commission to access and examine confidential information pursuant to the federal securities laws and the rules and

⁶³ See Article II, Section 2 of the proposed Exchange Bylaws.

regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission.

Proposed Section 5. Current Section 5 (Regulatory Fees and Penalties) requires that any revenues received by the Exchange from regulatory fees or regulatory penalties be applied to fund the legal and regulatory operations of the Exchange only.

The Exchange proposes to maintain the substance of Section 5, but to substantially conform the provision to the governing documents of the other NYSE Group Exchanges.⁶⁴ The proposed language would expand the scope of the provision to include regulatory assets and fines as well as fees or penalties, and would add a prohibition on the payment of distributions to other entities. Therefore, proposed Section 5 provides as follows:⁶⁵

Any regulatory assets or any regulatory fees, fines or penalties collected by the Exchange's regulatory staff will be applied to fund the legal, and regulatory and surveillance operations of the Exchange, and the Exchange shall not distribute such assets, fees fines or penalties to pay dividends or be distributed to any other entity. For purposes of this Section, regulatory penalties shall include restitution and disgorgement of funds intended for customers.

Article X (General Provisions)

Current Article XI (General Provisions) includes provisions related to the Exchange's fiscal year (Section 1), the payment of dividends (Section 2), reserve funds (Section 3),

⁶⁴ See NYSE National Bylaws, Article X, Section 10.4; NYSE Arca Bylaws, Article II, Section 2.06; NYSE Operating Agreement, Article IV, Section 4.05; and NYSE American Operating Agreement, Article IV, Section 4.05.

⁶⁵ See supra note 15.

subsidiary corporations (Section 4) and severability (Section 5). The Exchange proposes to move current Article XI to proposed Article X and to amend certain sections thereunder as follows.

Proposed Section 2. Current Section 2 (Dividends) permits the Board to declare dividends upon the capital stock of the Exchange.

Proposed Section 2 maintains the substance of current Section 2, except that it replaces the phrase “Subject to any provisions or any applicable statute,” which qualifies the Board’s authority to issue dividends, with “Subject to any applicable law” so as to eliminate redundant language and clarify that proposed Section 2 would be subject to any non-statutory law, such as common law.

Proposed Section 4. Current Section 4 (Subsidiary Corporations) authorizes the Board to constitute any officer of the Exchange to vote the stock of any subsidiary corporation on behalf of the Exchange and, in absence of specific action by the Board, the CEO has the authority to represent the Corporation and to vote the stock of any subsidiary corporation on behalf of the Exchange.

Proposed Section 4 maintains the substance of current Section 4, except that it authorizes the CEO and the “Secretary of the Corporation” to act on behalf of the Exchange pursuant to proposed Section 4. The Exchange believes that permitting the Secretary of the Exchange to act on behalf of the Exchange pursuant to proposed Section 4 is appropriate given that the Secretary is frequently tasked to execute the Exchange’s actions, especially as it relates to corporate governance.

The change is administrative and non-controversial. Under Section 4, the Board may constitute any officer of the Exchange, which includes the Secretary, to vote the stock of any subsidiary of the Exchange. The Board has approved the proposed changes to the Bylaws,

including the proposed changes to Section 4 adding the reference to the Secretary of the Exchange. By approving the proposed changes to Section 4, the Board granted the Secretary the authority described therein. Moreover, proposed Section 4 would continue to permit the Board to revoke such voting power or constitute another officer with such voting power.

c. Holdings Bylaws

Article VII, Section 7.6 (Indemnification and Insurance)

Section 7.6 of the current Holdings Bylaws contains various provisions related to indemnification and insurance. To better align the indemnification provisions of the Holdings Bylaws with those of ICE, ICE Holdings, and the proposed Exchange Bylaws, the Exchange proposes to replace current subparagraphs (A) through (K) with proposed subparagraphs (A) through (E), which are identical to paragraphs (a) – (e) of Article VI of the proposed Exchange Bylaws.

Article XII, Section 12.1 (Waiver of Ownership Limits and Voting Limits to Permit Merger)

Article XII, Section 12.1 of the Holdings Bylaws was adopted prior to the acquisition of the Exchange and Holdings by ICE, and made certain determinations with respect to ICE, ICE Holdings, NYSE Holdings and NYSE Group and the acquisition that were necessary for the waiver of ownership and voting limitations then in place.⁶⁶ As the acquisition is complete, the provision is obsolete. Accordingly, the Exchange proposes to delete it.

Article VIII through Article XI

⁶⁶ See 83 FR 34182, supra note 5, at 34184.

Each of Articles VIII through XI of the Holdings Bylaws are currently marked as “Reserved.” In light of the proposed deletion of Article XII of the Holdings Bylaws, as described above, the Exchange proposes to delete Articles VIII through XI as no longer necessary.

d. Rules

In light of the Article IV of the proposed Exchange Bylaws, the Exchange proposes to amend Article 2 of the current Rules to effect the following changes:

- Amend Rule 1 (Appointment and Approval) to provide that the committees provided for in this Article shall be appointed as provided in the Exchange Bylaws or as set out in Article 2 of the proposed Rules, and to eliminate language related to the appointment of members of committees of the Board, as Article IV of the proposed Exchange Bylaws supersedes such provisions.
- Delete current Rules 2 (Executive Committee), 3 (Finance Committee) and 4 (Regulatory Oversight Committee), as the provisions related to the Executive Committee are now under Article IV, Section 8 of the proposed Exchange Bylaws; the Finance Committee has been eliminated, as noted above; and the provisions related to the ROC are now under Article IV, Section 6 of the proposed Exchange Bylaws.
- Move current Rule 5 (Committee on Exchange Procedure) to proposed Rule 2 and eliminate reference to current Rule 10, as it will no longer exist, as noted below. Correspondingly, amend Article 20, Rule 10(e)(2)(A) to replace reference to “Article 2, Rule 5” with “Article 2, Rule 2.”
- Delete current Rule 6 (Reserved), as it is currently a placeholder citation.
- Move current Rule 7 (Judiciary Committee) to proposed Rule 3.

- Delete current Rules 8 (Compensation Committee) and 9 (Audit Committee), as the Compensation and Audit Committees have been eliminated, as noted above. Correspondingly, the Exchange proposes to replace references to the “Audit Committee of the Board” under Article 22, Rule 19(m)(5)(B) of the current Rules with “Board.”
- Delete current Rule 10 (Participant Advisory Committee) as none of the other NYSE Group Exchanges have a similar committee. The Exchange believes that the requirement that the Board be composed of at least 20% Non-Affiliated Directors⁶⁷ and that the Committee on Exchange Procedure⁶⁸ and the Judiciary Committee⁶⁹ be comprised solely of Participants ensure fair representation of Participants on the Board.
- Delete current Rule 11 (Nominating and Governance Committee) as it has been restated under Article IV, Section 7 of the proposed Exchange Bylaws.
- Move current Rule 12 (Committee Quorum) to proposed Rule 4 and eliminate language related to quorums of committees of the Board, as committee quorum is now addressed under Article IV, Section 3(b) of the proposed Exchange Bylaws. Therefore, proposed Rule 4 provides that one-half of its members, including the ex-officio ones, shall constitute a quorum of each committee provided for in Article 2 of the proposed Rules, which only includes the Committee on Exchange Procedure and the Judiciary Committee, neither of which are committees of the Board.

⁶⁷ See Article II, Section 2 of the proposed Exchange Bylaws.

⁶⁸ See Article 2, Rule 2 of the proposed Rules.

⁶⁹ See Article 2, Rule 3 of the proposed Rules.

In addition, the Exchange proposes to correct a typographical error under the first sentence of Article 18, Rule 1(b)(5) to delete the words “the of.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,⁷⁰ in general, and furthers the objectives of Section 6(b)(1)⁷¹ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

Specifically, the proposed amendments related to the name change of the Exchange and Holdings are non-substantive changes that do not impact the governance or ownership of the Exchange. The Exchange believes that the proposed amendments would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because ensuring that the Exchange Certificate and Bylaws, Holdings Certificate and Bylaws, Rules and Fee Schedule accurately reflect the name changes would contribute to the orderly operation of the Exchange by adding clarity and transparency to such documents and rules.

The Exchange believes that the proposed amendments to the Exchange Bylaws and Certificate would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the

⁷⁰ 15 U.S.C. 78f(b).

⁷¹ 15 U.S.C. 78f(b)(1).

Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because such amendments would add or expand upon existing provisions to protect and maintain the independence and integrity of the Exchange and its regulatory function and reinforce the notion that the Exchange is not solely a commercial enterprise, but a national securities exchange subject to the obligations imposed by the Exchange Act. Such provisions include vesting the Board with all powers necessary for the governing of the Exchange as an "exchange" within the meaning of the Exchange Act and the regulation of the business conduct of any Participant; ensuring that regulatory assets, fees, fines, and penalties may only be used to fund legal, regulatory and surveillance operations; and providing that any amendments to the Exchange Bylaws or Certificate must be submitted to the Board and, as applicable, shall not be effective until filed with or filed with and approved by the Commission. The Exchange believes that such provisions are consistent with and will facilitate a governance structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to the Exchange.

The Exchange believes that the provisions relating to Board committees contemplated by the proposed rule change would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because they would incorporate the establishment and responsibilities of each Board committee, as well as more general provisions regarding their composition, quorum and voting requirements, into the Exchange governing documents. In particular, the Exchange believes that, by establishing the powers and responsibilities of the ROC, proposed Article IV, Section 6 of the

Exchange Bylaws, is designed to insulate the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can carry out its regulatory obligations in furtherance of Section 6(b)(1) of the Exchange Act. Indeed, the Exchange believes that inclusion of the provision in the Exchange Bylaws would underscore the importance of the Exchange's regulatory function and specifically empower an independent committee of the Board to oversee regulation and meet regularly with the Chief Regulatory Officer.

At the same time, the Exchange believes that the proposal to eliminate the requirement that the Exchange maintain Audit, Compensation and Finance Committees is consistent with Section 6(b)(1) of the Exchange Act because audit, compensation and financial matters would be addressed by the Board or by the audit and compensation committees of ICE, as applicable. The proposed change would streamline corporate governance and enhance efficiency and consistency by ensuring that such matters are addressed in the same manner among the NYSE Group Exchanges.

Also, the proposed amendments to harmonize certain provisions under the Exchange Certificate and Bylaws with similar provisions under the governing documents of other NYSE Group Exchanges, ICE and ICE Holdings would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members. For example, the proposed changes would create greater conformity between the Exchange's provisions relating to stockholders, officers, and stock certificates and those of its affiliates, particularly NYSE National and NYSE Arca. The Exchange believes that such conformity would streamline the NYSE Group Exchanges' corporate processes, create more equivalent governance processes among them, and also provide

clarity to the Exchange's members, which is beneficial to both investors and the public interest. At the same time, the Exchange will continue to operate as a separate self-regulatory organization and to have rules, membership rosters and listings distinct from the rules, membership rosters and listings of the other NYSE Group Exchanges.

Finally, the proposed amendments to clarify the meaning of certain provisions under the Exchange Certificate and the Exchange Bylaws, to better comport certain provisions with the DGCL and to effect non-substantive changes would facilitate the Exchange's continued compliance with the Exchange Certificate and Bylaws and applicable law, which would further enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b)(1) of the Exchange Act.⁷²

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,⁷³ in that it is 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 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.

Specifically, the proposed amendments related to the name changes would reduce potential investor and market participant confusion and therefore remove impediments to and

⁷² 15 U.S.C. 78f(b)(1).

⁷³ 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system by ensuring that investors and market participants can more easily navigate, understand and comply with the Exchange Certificate and Bylaws, Holdings Certificate and Bylaws, Rules and Fee Schedule.

Also, the proposed amendments to harmonize certain provisions under the Exchange Certificate and Bylaws with similar provisions under the governing documents of certain Exchange affiliates would promote consistency among the governing documents of the NYSE Group Exchanges, ICE and ICE Holdings, which would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest. The proposed amendments would make the governing framework, corporate requirements and administrative processes relating to the Board, Board committees, officers, stockholders, and other corporate matters more similar to those of the NYSE Group Exchanges, in particular NYSE National and NYSE Arca, which have been well-established as fair and designed to protect investors and the public interest.⁷⁴

In particular, the Exchange believes that, by establishing the powers and responsibilities of the ROC; vesting the Board with all powers necessary for the governing of the Exchange as an "exchange" within the meaning of the Exchange Act and the regulation of the business conduct of any Participant; ensuring that regulatory assets, fees, fines, and penalties may only be used to fund legal, regulatory and surveillance operations; and providing that any amendments to the Exchange Bylaws or Certificate must be submitted to the Board and, as applicable, shall not be effective until filed with or filed with and approved by the Commission, the proposed rule change would act to insulate the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can carry out its regulatory obligations, ensuring that

⁷⁴ See 83 FR 24517, 25431, supra note 5.

Participants are protected from unfair, unfettered actions by an exchange pursuant to its rules, and that, in general, the Exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. Therefore, the Exchange believes that the proposed rule change would prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the proposed amendments to clarify the meaning of certain provisions under the Exchange Certificate and the Exchange Bylaws, to better comport certain provisions with the DGCL and effect non-substantive changes removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from corporate governance provisions that are either unclear or inconsistent with the governing law. The Exchange also believes that the proposed amendments remove impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The Exchange further believes that the proposed amendments would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

For these reasons, the Exchange believes that the proposed rule change is consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Exchange Act.

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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the marketing and corporate governance and administration of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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) of the Act⁷⁵ and Rule 19b-4(f)(6) thereunder.⁷⁶

At any time within 60 days of the filing of the 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.

⁷⁵ 15 U.S.C. 78s(b)(3)(A).

⁷⁶ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2018-05 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.

All submissions should refer to File Number SR-CHX-2018-05. This file number should be included on the subject line if e-mail 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2018-05, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁷

Eduardo A. Aleman
Assistant Secretary

⁷⁷ 17 CFR 200.30-3(a)(12).