

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-81849; File No. SR-BatsBYX-2017-19; SR-BatsBZX-2017-55; SR-BatsEDGA-2017-22; SR-BatsEDGX-2017-35)

October 11, 2017

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; Order Granting Approval of Proposed Rule Changes, as Modified by Amendments No. 1, to Harmonize the Corporate Governance Framework of each Exchange with that of Chicago Board Options Exchange, Incorporated and C2 Options Exchange, Incorporated

I. Introduction

On August 23, 2017, each of Bats BYX Exchange, Inc. (“BYX”), Bats BZX Exchange, Inc. (“BZX”), Bats EDGA Exchange, Inc. (“EDGA”), and Bats EDGX Exchange, Inc. (“EDGX”) (each, an “Exchange” and collectively, “Exchanges”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to align its corporate governance framework to the structure of other U.S. securities exchanges owned by its ultimate parent company, CBOE Holdings, Inc. (“CBOE Holdings”). On August 25, 2017, each of BYX, BZX, EDGA, and EDGX filed Amendment No. 1 to its respective proposed rule change. The proposed rule changes, as modified by Amendments No. 1, were published for comment in the Federal Register on September 6, 2017.³ The Commission received no comments on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release Nos. 81498 (August 30, 2017), 82 FR 42127 (September 6, 2017) (“BYX Notice”); 81497 (August 30, 2017), 82 FR 42181 (September 6, 2017) (“BZX Notice”); 81496 (August 30, 2017), 82 FR 42206 (September 6, 2017) (“EDGA Notice”); and 81503 (August 30, 2017), 82 FR 42153 (September 6, 2017) (“EDGX Notice,” and together with the BYX Notice, BZX Notice, and EDGA Notice, “Notices”).

proposed rule changes. This order grants approval of the proposed rule changes, each as modified by its respective Amendment No. 1.

II. Background

On December 16, 2016, the Commission approved proposed rule changes relating to a corporate transaction (“Transaction”) in which CBOE Holdings became the ultimate parent of BYX, BZX, EDGA, and EDGX.⁴ CBOE Holdings is also the parent of Chicago Board Options Exchange, Incorporated (“CBOE”) and C2 Options Exchange, Incorporated (“C2”). In connection with the Transaction, each of BYX, BZX, EDGA, and EDGX proposes to amend and restate its certificate of incorporation and bylaws⁵ to conform to the certificates of incorporation

⁴ See Securities Exchange Act Release No. 79585 (December 16, 2016), 81 FR 93988 (December 22, 2016) (SR-BatsBZX-2016-68; SR-BatsBYX-2016-29; SR-BatsEDGA-2016-24; SR-BatsEDGX-2016-60) (“Transaction Order”).

⁵ See BYX Notice, 82 FR at 42128; BZX Notice, 82 FR at 42181-82; EDGA Notice, 82 FR at 42206-07; EDGX Notice, 82 FR at 42154. Specifically, BYX proposes to replace the certificate of incorporation of BYX (“BYX Current Certificate”) in its entirety with the Amended and Restated Certificate of Incorporation of BYX (“BYX Proposed Certificate”) and to replace the Fifth Amended and Restated Bylaws of BYX (“BYX Current Bylaws”) in its entirety with the Sixth Amended and Restated Bylaws of BYX (“BYX Proposed Bylaws”). See BYX Notice, 82 FR at 42128. BZX proposes to replace the certificate of incorporation of BZX (“BZX Current Certificate”) in its entirety with the Amended and Restated Certificate of Incorporation of BZX (“BZX Proposed Certificate”) and to replace the Fifth Amended and Restated Bylaws of BZX (“BZX Current Bylaws”) in its entirety with the Sixth Amended and Restated Bylaws of BZX (“BZX Proposed Bylaws”). See BZX Notice, 82 FR at 42181. EDGA proposes to replace the certificate of incorporation of EDGA (“EDGA Current Certificate”) in its entirety with the Second Amended and Restated Certificate of Incorporation of EDGA (“EDGA Proposed Certificate”) and to replace the Sixth Amended and Restated Bylaws of EDGA (“EDGA Current Bylaws”) in its entirety with the Seventh Amended and Restated Bylaws of EDGA (“EDGA Proposed Bylaws”). See EDGA Notice, 82 FR at 42207. EDGX proposes to replace the certificate of incorporation of EDGX (“EDGX Current Certificate,” and together with the BYX Current Certificate, BZX Current Certificate, and EDGA Current Certificate, “Current Certificates”) in its entirety with the Second Amended and Restated Certificate of Incorporation of EDGX (“EDGX Proposed Certificate,” and together with the BYX Proposed Certificate, BZX Proposed Certificate, and EDGA Proposed Certificate, “Proposed Certificates”) and to replace the Sixth Amended and Restated Bylaws of EDGX (“EDGX Current Bylaws” and together with

and bylaws of CBOE and C2.⁶ In addition, each Exchange proposes to amend its rules to reflect the Proposed Bylaws, as well as to address regulatory revenues in the rules (rather than the bylaws), similar to the treatment of this provision by CBOE.⁷

Each Exchange represents that its Proposed Certificate and Proposed Bylaws reflect the expectation that the Exchange will be operated with a governance structure similar to that of CBOE and C2.⁸ Each Exchange states that aligning its governance documents with the governance documents of CBOE and C2 will preserve governance continuity across each of CBOE Holdings' six U.S. securities exchanges.⁹ Each Exchange further states that it will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its

the BYX Current Bylaws, BZX Current Bylaws, and EDGA Current Bylaws, "Current Bylaws") in its entirety with the Seventh Amended and Restated Bylaws of EDGX ("EDGX Proposed Bylaws," and together with the BYX Proposed Bylaws, BZX Proposed Bylaws, and EDGA Proposed Bylaws, "Proposed Bylaws"). See EDGX Notice, 82 FR at 42154.

⁶ The current certificates of incorporation of CBOE and C2 are the Third Amended and Restated Certificate of Incorporation of CBOE and the Fourth Amended and Restated Certificate of C2, respectively (collectively, "CBOE Certificate"), and the Eighth Amended and Restated Bylaws of CBOE and the Eighth Amended and Restated Bylaws of C2, respectively (collectively, "CBOE Bylaws"). See Notices, supra note 3.

⁷ See BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42192-93; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165. For a further description of the proposed changes to the certificates of incorporation, bylaws, and rules of the Exchanges, see Notices, supra note 3.

⁸ See BYX Notice, 82 FR at 42128; BZX Notice, 82 FR at 42182; EDGA Notice, 82 FR at 42207; EDGX Notice, 82 FR at 42154.

⁹ See BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42193; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165.

members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange's rules, as required by Section 6(b)(1) of the Act.¹⁰

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes, as modified by Amendments No. 1, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(1) of the Act,¹² which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The Commission also finds that the proposed rule changes are consistent with Section 6(b)(3) of the Act,¹³ which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and the administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission further finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

¹⁰ See BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42193; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165.

¹¹ In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(1).

¹³ 15 U.S.C. 78f(b)(3).

¹⁴ 15 U.S.C. 78f(b)(5).

coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission notes that the Proposed Certificates and Proposed Bylaws are substantially similar to the CBOE Certificate and CBOE Bylaws, with limited exceptions as discussed below. The Commission further notes that it received no comments on the proposed rule changes.

A. Ownership

BYX's and BZX's Proposed Certificates each specify that Bats Global Markets Holdings, Inc. ("Bats Global Markets Holdings") will be the sole owner of the common stock of the Exchange and that any sale, transfer, or assignment by Bats Global Markets Holdings of any shares of common stock of the Exchange will be subject to prior approval by the Commission pursuant to a rule filing.¹⁵ EDGA's and EDGX's Proposed Certificates each include a similar provision reflecting Direct Edge LLC ("Direct Edge") as sole owner of the common stock of the Exchange and prohibiting any sale, transfer, or assignment by Direct Edge of the Exchange's common stock without prior approval by the Commission pursuant to a rule filing.¹⁶

The Commission believes that specifying the sole owner of each Exchange as either Bats Global Markets Holdings or Direct Edge and the proposed restrictions on Bats Global Market

¹⁵ See BYX Proposed Certificate, Article Fourth; BZX Proposed Certificate, Article Fourth.

¹⁶ See EDGA Proposed Certificate, Article Fourth; EDGX Proposed Certificate, Article Fourth. Bats Global Markets Holdings and Direct Edge are each wholly-owned subsidiaries of CBOE V, LLC ("CBOE V") and CBOE V is a wholly-owned subsidiary of CBOE Holdings. Any change in CBOE V's status as sole stockholder of Bats Global Markets Holdings or sole member of Direct Edge, or of CBOE Holdings' status as sole member of CBOE V, must be approved by the Commission pursuant to a rule filing. See Transaction Order, 81 FR at 93990.

Holdings and Direct Edge that prevent these entities from selling, transferring, or assigning their common stock in BYX and BZX, and EDGA and EDGX, respectively, without the Commission's approval, taken together with the voting restrictions and ownership limitations in the governing documents of CBOE Holdings and the restrictions on CBOE V previously approved by the Commission, are designed to minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchanges to effectively carry out their regulatory oversight responsibilities under the Act.¹⁷ The Commission also notes that the restrictions on transfer of ownership interest in the Exchanges will be similar to those currently in place.¹⁸ In this regard, the Commission believes that the proposed rule changes are consistent with Section 6(b)(1) of the Act¹⁹ in particular, which requires that an

¹⁷ See Transaction Order, 81 FR at 93989-91. In addition to the restrictions on CBOE Holdings and CBOE V discussed above, see supra note 16, CBOE Holdings' governing documents place restrictions on the ability to own and vote shares of the capital stock of CBOE Holdings. Specifically, unless the CBOE Holdings Board of Directors waives such restrictions for a permissible reason, no person, alone or together with its related persons: (1) shall be entitled to vote or cause the voting of shares of stock of CBOE Holdings to the extent that such shares represent more than 20% of the then outstanding votes entitled to be cast; (2) shall be party to any agreement, plan, or other arrangement under circumstances that would result in the shares of CBOE Holdings stock not being voted, or the withholding of any related proxy, where the effect of such agreement, plan, or other arrangement would be to enable any person, alone or together with its related persons, to vote, possess the right to vote, or cause the voting of shares of stock of CBOE Holdings that would exceed 20% of the then outstanding votes entitled to be cast; or (3) shall be permitted to beneficially own directly or indirectly shares of stock of CBOE Holdings representing more than 20% of the shares then outstanding. See Transaction Order, 81 FR at 93989-90. See also Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082, 30084-85 (May 28, 2010) (SR-CBOE-2008-88) (approving proposed rule change relating to demutualization of CBOE) ("CBOE Demutualization Order").

¹⁸ See BYX Current Bylaws, Article IV, Section 7; BZX Current Bylaws, Article IV, Section 7; EDGA Current Bylaws, Article IV, Section 7; and EDGX Current Bylaws, Article IV, Section 7 (providing that stockholder may not transfer or assign, in whole or in part, its ownership interest).

¹⁹ 15 U.S.C. 78f(b)(1).

exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

B. Governance

In connection with the proposal to adopt the Proposed Certificates and Proposed Bylaws, each Exchange is proposing to replace certain provisions pertaining to governance of the Exchange with related provisions that are based on provisions currently in the CBOE Certificate and CBOE Bylaws. For each Exchange, these changes include, among others, provisions governing: the composition of the Exchange’s board of directors (“Board” and each member of the Board, a “Director”); the process for nominating, electing, removing, and filling vacancies of Directors; the Board committee structure; the authorization to create an Advisory Board; and the regulatory independence of the Exchange.²⁰

1. Board of Directors

Under the Proposed Bylaws, each Exchange’s Board will consist of at least five Directors. Each Exchange’s Board will determine, by resolution, the total number of Directors and the number of Non-Industry Directors and Industry Directors, if any.²¹ The number of Non-

²⁰ See BYX Notice, 82 FR at 42128-39; BZX Notice, 82 FR at 42182-92; EDGA Notice, 82 FR at 42207-17; EDGX Notice, 82 FR at 42154-65.

²¹ Under the Proposed Bylaws, an “Industry Director” is defined, subject to limited exclusions, as any director who (i) is an Exchange Member or otherwise subject to regulation by the Exchange; (ii) is a broker-dealer or an officer, director or employee of a broker-dealer or has been in any such capacity within the prior three years; (iii) is, or was within the prior three years, associated with an entity that is affiliated with a broker-dealer whose revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated; (iv) has a material ownership interest in a broker-dealer and has investments in broker-dealers that account for a material portion of the director’s net worth; (v) has a consulting or employment relationship with or has

Industry Directors will not constitute less than the number of Industry Directors, excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose. At all times at least 20% of the Directors will be Representative Directors as nominated or otherwise selected through the Representative Director Nominating Body, and the Board will determine the number of Representative Directors that are Non-Industry Directors and Industry Directors, if any.²²

provided professional services to the Exchange or any of its affiliates or has had such a relationship or has provided such services within the prior three years; or (vi) provides, or has provided within the prior three years, professional or consulting services to a broker-dealer, or to an entity with a 50% or greater ownership interest in a broker-dealer whose revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated, and the revenue from all such professional or consulting services accounts for a material portion of either the revenues received by the director or the revenues received by the director's firm or partnership. Under the Proposed Bylaws, a "Non-Industry Director" is defined as a person who is not an Industry Director. At all times, at least one Non-Industry Director will be a Non-Industry Director exclusive of the exceptions provided and will have no material business relationship with a broker or dealer or the Exchange or any of its affiliates. See BYX Proposed Bylaws, Article III, Section 3.1; BZX Proposed Bylaws, Article III, Section 3.1; EDGA Proposed Bylaws, Article III, Section 3.1; EDGX Proposed Bylaws, Article III, Section 3.1. "Exchange Member" will have the same meaning as the term "Member" in the rules of the Exchange. See BYX Proposed Bylaws, Article I, Section 1.1(f); BZX Proposed Bylaws, Article I, Section 1.1(f); EDGA Proposed Bylaws, Article I, Section 1.1(f); EDGX Proposed Bylaws, Article I, Section 1.1(f). The term "Member" means any registered broker or dealer that has been admitted to membership in the Exchange. See BYX Rule 1.5(n); BZX Rule 1.5(n); EDGA Rule 1.5(n); EDGX Rule 1.5(n).

²² See BYX Proposed Bylaws, Article III, Sections 3.1 and 3.2; BZX Proposed Bylaws, Article III, Sections 3.1 and 3.2; EDGA Proposed Bylaws, Article III, Sections 3.1 and 3.2; EDGX Proposed Bylaws, Article III, Sections 3.1 and 3.2. Under the Proposed Bylaws, a "Representative Director" is defined as a director recommended by the Representative Director Nominating Body. See BYX Proposed Bylaws, Article III, Section 3.2; BZX Proposed Bylaws, Article III, Section 3.2; EDGA Proposed Bylaws, Article III, Section 3.2; EDGX Proposed Bylaws, Article III, Section 3.2. The "Representative Director Nominating Body" is defined as either (i) the Industry-Director Subcommittee of the Nominating and Governance Committee if there are at least two Industry Directors on the Nominating and Governance Committee, or (ii) if the Nominating and Governance Committee has less than two Industry Directors, then the Representative Director Nominating Body shall mean the Exchange Member Subcommittee of the Advisory Board. See BYX Proposed Bylaws, Article I, Section 1.1(j); BZX Proposed Bylaws, Article I, Section 1.1(j); EDGA Proposed Bylaws, Article I, Section 1.1(j); EDGX Proposed Bylaws, Article I, Section 1.1(j). Each Exchange

Directors will serve one-year terms ending on the annual meeting following the meeting at which such Directors were elected or at such time as their successors are elected or appointed and qualified, except in the event of earlier death, resignation, disqualification, or removal.²³

The Board will be the sole judge of whether an Industry Director or Non-Industry Director fails to maintain the requisite qualifications, in which event the Director will be terminated. A Representative Director may only be removed for cause by a vote of the stockholders.²⁴ A vacancy on the Board may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. For vacancies of Representative Directors, the Representative Director Nominating Body will recommend an individual to be elected or provide a list of recommended individuals, and the position will be filled by the vote of a majority of the Directors.²⁵

The Representative Director Nominating Body will provide a mechanism for Exchange Members to provide input with respect to nominees for the Representative Directors. The Representative Director Nominating Body will issue a circular to Exchange Members identifying nominees selected by the Representative Director Nominating Body. Exchange Members may

represents that if there are less than two Industry Directors on the Nominating and Governance Committee, it would institute an Advisory Board, if not already established. See BYX Notice, 82 FR at 42130 n. 15; BZX Notice, 82 FR at 42184 n. 15; EDGA Notice, 82 FR at 42209 n. 15; EDGX Notice, 82 FR at 42156 n. 15. For a description of the proposed “Advisory Board,” see infra notes 60-62 and accompanying text.

²³ See BYX Proposed Bylaws, Article III, Section 3.1; BZX Proposed Bylaws, Article III, Section 3.1; EDGA Proposed Bylaws, Article III, Section 3.1; EDGX Proposed Bylaws, Article III, Section 3.1.

²⁴ See BYX Proposed Bylaws, Article III, Section 3.4; BZX Proposed Bylaws, Article III, Section 3.4; EDGA Proposed Bylaws; Article III, Section 3.4; EDGX Proposed Bylaws, Article III, Section 3.4.

²⁵ See BYX Proposed Bylaws, Article III, Section 3.5; BZX Proposed Bylaws, Article III, Section 3.5; EDGA Proposed Bylaws, Article III, Section 3.5; EDGX Proposed Bylaws, Article III, Section 3.5.

nominate alternative candidates for election to be Representative Directors by submitting a petition signed by individuals representing not less than 10% of the Exchange Members at the time, with a run-off election held if one or more valid petitions are received.²⁶ In any run-off election, each Exchange Member will have one vote for each Representative Director position to be filled that year; provided, however, that no Exchange Member, either alone or together with its affiliates, may account for more than 20% of the votes cast for a candidate.²⁷ Each Exchange's Nominating and Governance Committee will be bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body or, in the case of a run-off election, the Representative Director nominees who receive the most votes.²⁸ Subject to the specific provisions pertaining to nomination of Representative

²⁶ See BYX Proposed Bylaws, Article III, Section 3.2; BZX Proposed Bylaws, Article III, Section 3.2; EDGA Proposed Bylaws, Article III, Section 3.2; EDGX Proposed Bylaws, Article III, Section 3.2.

²⁷ See BYX Proposed Bylaws, Article III, Section 3.2; BZX Proposed Bylaws, Article III, Section 3.2; EDGA Proposed Bylaws, Article III, Section 3.2; EDGX Proposed Bylaws, Article III, Section 3.2. The CBOE Bylaws provide that in any run-off election for Representative Directors, a holder of a trading permit will have one vote with respect to each trading permit held by such trading permit holder for each Representative Director position to be filled. See CBOE Bylaws, Article III, Section 3.2. The Exchanges note that because no "trading permit" or similar concept exists on the Exchanges, the Proposed Bylaws provide instead that each Exchange Member shall have one vote for each Representative Director position to be filled. See BYX Notice, 82 FR at 42131 n. 16; BZX Notice, 82 FR at 42184 n. 16; EDGA Notice, 82 FR at 42209 n. 16; EDGX Notice, 82 FR at 42157 n.16. The Exchanges state that they do not believe this deviation from the CBOE Bylaws is significant and note that other Exchanges have similar practices. See BYX Notice, 82 FR at 42131 n. 16; BZX Notice, 82 FR at 42184 n. 16; EDGA Notice, 82 FR at 42209 n. 16; and EDGX Notice, 82 FR at 42157 n. 16 (citing Amended and Restated Bylaws of Miami International Securities Exchange, LLC, Article II, Section 2.4(f)).

²⁸ See BYX Proposed Bylaws, Article III, Section 3.1; BZX Proposed Bylaws, Article III, Section 3.1; EDGA Proposed Bylaws, Article III, Section 3.1; EDGX Proposed Bylaws, Article III, Section 3.1.

Directors and filling of vacancies, each Exchange’s Nominating and Governance Committee will have the authority to nominate individuals for election as Directors.²⁹

The Commission believes that the proposed composition of each Exchange’s Board satisfies the requirements in Section 6(b)(3) of the Act,³⁰ which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.³¹ In particular, at least one Non-Industry Director would be a Non-Industry Director exclusive of any exceptions and would have no material business relationship with a broker or dealer or the Exchange or any of its affiliates. The Commission previously has stated that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange’s ability to protect the public interest,³² and that they can help to ensure that no single group of market participants has the

²⁹ See BYX Proposed Bylaws, Article IV, Section 4.3; BZX Proposed Bylaws, Article IV, Section 4.3; EDGA Proposed Bylaws, Article IV, Section 4.3; EDGX Proposed Bylaws, Article IV, Section 4.3.

³⁰ 15 U.S.C. 78f(b)(3).

³¹ The Commission also notes that it previously found the composition requirements for the Boards of Directors of CBOE and C2, upon which the proposed requirements are based, to be consistent with the Act. See CBOE Demutualization Order, 75 FR at 30087-88; Securities Exchange Act Release Nos. 80523 (April 25, 2017), 82 FR 20399, 20400 (May 1, 2017) (SR-CBOE-2017-017) (“CBOE 2017 Order”); 80522 (April 25, 2017), 82 FR 20409, 20410 (May 1, 2017) (SR-C2-2017-009) (“C2 2017 Order”); 68767 (January 30, 2013), 78 FR 8216, 8217 (February 5, 2013) (SR-C2-2012-039); 68766 (January 30, 2013), 78 FR 8203, 8204-05 (February 5, 2013) (SR-CBOE-2012-116); 65980 (December 15, 2011), 76 FR 79252, 79253-54 (December 21, 2011) (SR-CBOE-2011-099) (“CBOE December 2011 Order”); 65979 (December 15, 2011), 76 FR 79239, 79241 (December 21, 2011) (SR-C2-2011-031) (“C2 December 2011 Order”); 61152 (December 10, 2009), 74 FR 66699, 66700-02 (December 16, 2009) (File No. 10-191) (granting the exchange registration of C2) (“C2 Exchange Order”).

³² See, e.g., Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70882 (December 22, 1998) (File No. S7-12-98) (Regulation of Exchanges and Alternative Trading Systems).

ability to systematically disadvantage others through the exchange governance process.³³ As it has previously stated, the Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of each Exchange’s Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.³⁴

The Commission also believes that the proposed requirement that at least 20% of the Directors be Representative Directors, and the means by which they will be chosen by Exchange Members, is consistent with Section 6(b)(3) of the Act,³⁵ because it provides for the fair representation of members in the selection of directors and the administration of each Exchange. Section 6(b)(3) of the Act requires that “the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.”³⁶ As the Commission previously has noted, this statutory requirement helps to ensure that members of each Exchange have a voice in the Exchange’s use of its self-regulatory authority, and that each Exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.³⁷

³³ See, e.g., Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065, 73067 (December 7, 2012) (File No. 10-207) (granting the exchange registration of the Miami International Securities Exchange, LLC) (“MIAX Exchange Order”).

³⁴ See, e.g., Securities Exchange Act Release Nos. 62716 (August 13, 2010), 75 FR 51295, 51298 (August 19, 2010) (File No. 10-198) (granting the exchange registration of BATS Y-Exchange, Inc.); 53382 (February 27, 2006), 71 FR 11251, 11261 (March 6, 2006) (SR-NYSE-2005-77) (approving the New York Stock Exchange Inc.’s business combination with Archipelago Holdings, Inc.); 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (File No. 10-131) (granting the exchange registration of The Nasdaq Stock Market, LLC) (“Nasdaq Exchange Order”).

³⁵ 15 U.S.C. 78f(b)(3).

³⁶ Id.

³⁷ See, e.g., Securities Exchange Act Release No. 81263 (July 31, 2017), 82 FR 36497, 36501 (SR-ISE-2017-32) (approving proposed rule change to harmonize corporate

2. Exchange Committees

Under the Proposed Bylaws, each Exchange will establish certain committees that consist solely of Directors. These Board committees will include an Executive Committee, a Regulatory Oversight Committee, a Nominating and Governance Committee, and such other standing and special committees as may be approved by the Board. In addition, each Exchange will have committees that are not comprised solely of Directors that may be provided for in the Exchange's bylaws or rules or created by the Board.³⁸

The Proposed Bylaws require that each Exchange maintain an Executive Committee.³⁹ The Executive Committee will include the Chairman of the Board; the Chief Executive Officer, if a Director; the Lead Director,⁴⁰ if any; at least one Representative Director; and such other number of Directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors, excluding the Chief Executive Officer from the calculation of Industry Directors for this purpose. Members of the Executive Committee, except for those specified above, will be recommended

governance framework of Nasdaq ISE, LLC with that of other exchanges owned by Nasdaq, Inc.) ("ISE Order"); MIA Exchange Order, 77 FR at 73067; Nasdaq Exchange Order, 71 FR at 3553.

³⁸ See BYX Proposed Bylaws, Article IV, Section 4.1; BZX Proposed Bylaws, Article IV, Section 4.1; EDGA Proposed Bylaws, Article IV, Section 4.1; EDGX Proposed Bylaws, Article IV, Section 4.1.

³⁹ See BYX Notice, 82 FR at 42135; BZX Notice, 82 FR at 42188-89; EDGA Notice, 82 FR at 42214; EDGX Notice, 82 FR at 42161. See also BYX Proposed Bylaws, Article IV, Sections 4.1 and 4.2; BZX Proposed Bylaws, Article IV, Sections 4.1 and 4.2; EDGA Proposed Bylaws, Article IV, Sections 4.1 and 4.2; EDGX Proposed Bylaws, Article IV, Sections 4.1 and 4.2.

⁴⁰ Under the Proposed Bylaws, the Board of each Exchange may appoint one of the Non-Industry Directors to serve as the Lead Director and perform such duties and possess such powers as the Board prescribes. See BYX Proposed Bylaws, Article III, Section 3.7; BZX Proposed Bylaws, Article III, Section 3.7; EDGA Proposed Bylaws, Article III, Section 3.7; EDGX Proposed Bylaws, Article III, Section 3.7.

by the Nominating and Governance Committee for approval by the Board and committee members will not be subject to removal except by the Board. The Executive Committee will have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange, with limited exceptions.⁴¹

Each Exchange proposes to eliminate its current Nominating and Member Nominating Committees and prescribe that their duties be performed by its newly formed Nominating and Governance Committee.⁴² The Nominating and Governance Committee will consist of at least five Directors, with a majority of Directors that are Non-Industry Directors. Members of the committee will be recommended by the Nominating and Governance Committee for approval by the Board and will not be subject to removal except by the Board. The Nominating and Governance Committee will have the authority to nominate individuals for election as Directors and have such other duties or exercise such other authority as may be prescribed by resolution of the Board. If the Nominating and Governance Committee has two or more Industry Directors, there shall be an Industry-Director Subcommittee consisting of all such Directors, which will act as the Representative Director Nominating Body.⁴³

Each Exchange proposes to modify the required composition, appointment procedures, and duties of its Regulatory Oversight Committee.⁴⁴ Under the Proposed Bylaws, the Regulatory

⁴¹ See BYX Proposed Bylaws, Article IV, Section 4.2; BZX Proposed Bylaws, Article IV, Section 4.2; EDGA Proposed Bylaws, Article IV, Section 4.2; EDGX Proposed Bylaws, Article IV, Section 4.2.

⁴² See BYX Notice, 82 FR at 42135; BZX Notice, 82 FR at 42189; EDGA Notice, 82 FR at 42214; EDGX Notice, 82 FR at 42161.

⁴³ See BYX Proposed Bylaws, Article IV, Section 4.3; BZX Proposed Bylaws, Article IV, Section 4.3; EDGA Proposed Bylaws, Article IV, Section 4.3; EDGX Proposed Bylaws, Article IV, Section 4.3. See also *supra* note 22.

⁴⁴ See BYX Notice, 82 FR at 42134-35; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42160-61.

Oversight Committee of each Exchange will consist of at least three Directors, all of whom will be Non-Industry Directors. Members of the Regulatory Oversight Committee will be recommended by the Non-Industry Directors on the Nominating and Governance Committee for approval by the Board and will not be subject to removal except by the Board. The Regulatory Oversight Committee will have such duties and exercise such authority as may be prescribed by resolution of the Board, bylaws, or Exchange rules.⁴⁵

Each Exchange proposes to eliminate its Compensation Committee. The Exchanges explain that the responsibilities of their Compensation Committees largely are duplicative of those of the Compensation Committee of their parent company, CBOE Holdings, other than to the extent that the Exchange Compensation Committees recommend the compensation of executive officers whose compensation is not already determined by the CBOE Holdings

⁴⁵ See BYX Proposed Bylaws, Article IV, Section 4.4; BZX Proposed Bylaws, Article IV, Section 4.4; EDGA Proposed Bylaws, Article IV, Section 4.4; EDGX Proposed Bylaws, Article IV, Section 4.4. Unlike the Proposed Bylaws, the Current Bylaws explicitly delineate particular responsibilities of the Regulatory Oversight Committee. See BYX Current Bylaws, Article V, Section 6(c); BZX Current Bylaws, Article V, Section 6(c); EDGA Current Bylaws, Article V, Section 6(c); EDGX Current Bylaws, Article V, Section 6(c). The Exchanges state that, under the Proposed Bylaws, the Regulatory Oversight Committee will continue to have the duties and authority delineated in the Current Bylaws, with the exception that the Regulatory Oversight Committee will no longer consult the Chief Executive Officer with respect to establishing the goals, assessing the performance, and fixing compensation of the Chief Regulatory Officer. The Exchanges state that this change is consistent with the Exchanges' desire to maintain the independence of the regulatory functions of the Exchanges. See BYX Notice, 82 FR at 42135; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42161. In addition, the Proposed Bylaws eliminate the requirement in the Current Bylaws that the Chief Regulatory Officer is a designated officer of the Exchange. See BYX Current Bylaws, Article VII, Section 9; BZX Current Bylaws, Article VII, Section 9; EDGA Current Bylaws, Article VII, Section 9; EDGX Current Bylaws, Article VII, Section 9. The Exchanges represent that notwithstanding the proposed elimination of this provision, the Exchange have no intention to eliminate the role of the Chief Regulatory Officer. See BYX Notice, 82 FR at 42137; BZX Notice, 82 FR at 42190; EDGA Notice, 82 FR at 42215-16; EDGX Notice, 82 FR at 42163.

Compensation Committee.⁴⁶ The Exchanges represent that currently, each of the executive officers whose compensation would need to be determined by the Exchange-level Compensation Committee are officers of both the Exchange and CBOE Holdings, but should compensation need to be determined in the future for any Exchange officer who is not also a CBOE Holdings officer, the Exchange Board or senior management will perform such action without the use of a compensation committee, as provided for in Article V, Section 5.11 of the Proposed Bylaws.⁴⁷

Each Exchange also proposes to eliminate its Audit Committee because the Audit Committees' functions are duplicative of the functions of the Audit Committee of CBOE Holdings. The Exchanges state that CBOE Holdings' Audit Committee is composed of at least three CBOE Holdings Directors, all of whom must be independent within the meaning given to that term in the CBOE Holdings Bylaws and Corporate Governance Guidelines and Rule 10A-3 under the Act.⁴⁸ The Exchanges also state that the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board in fulfilling its oversight responsibilities in assessing controls that mitigate the regulatory and operational risks associated with operating each Exchange and to assist the CBOE Holdings Board in discharging its responsibilities relating to, among other things, CBOE Holdings' financial statements and disclosure matters, internal controls, and oversight and risk management.⁴⁹ The Exchanges further state that CBOE Holdings' financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings' subsidiaries, including each Exchange, and therefore the CBOE

⁴⁶ See BYX Notice, 82 FR at 42133; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42159.

⁴⁷ See BYX Notice, 82 FR at 42133; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42159.

⁴⁸ 17 CFR 240.10A-3.

⁴⁹ See BYX Notice, 82 FR at 42133-34; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212-13; EDGX Notice, 82 FR at 42159-60.

Holdings Audit Committee's purview necessarily includes each Exchange.⁵⁰ Finally, the Exchanges note that despite the elimination of Exchange-level Audit Committees, unconsolidated financial statements of each Exchange will still be prepared for each fiscal year.⁵¹

Each Exchange proposes to eliminate its Appeals Committee, which is a Board-level committee that presides over all appeals related to disciplinary and adverse action determinations in accordance with Exchange rules. The Exchanges state that while they are proposing to eliminate the Appeals Committee as a specified Board-level committee, each Exchange would have the ability to appoint a Board-level or an Exchange-level Appeals Committee pursuant to Article IV, Section 4.1 of the Proposed Bylaws. According to the Exchanges, they would prefer not to have to maintain and staff a standing Appeals Committee, but rather would like to provide their Boards with the flexibility to determine whether to establish a Board-level or Exchange-level Appeals Committee.⁵² The Exchanges note that CBOE and C2 maintain an exchange-level Appeals Committee rather than a Board-level Appeals Committee and that other exchanges do not require standing Appeals Committees.⁵³

Further, each Exchange proposes to eliminate a provision of its Current Bylaws that allows the Chairman, with approval of the Board, to appoint a Finance Committee to advise the

⁵⁰ See BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42160.

⁵¹ See BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42160.

⁵² See BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42160.

⁵³ See BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42160. For example, BOX Options Exchange, LLC does not mandate an Appeals Committee under its bylaws or exchange rules. See bylaws of BOX Options Exchange, LLC; rules of BOX Options Exchange, LLC.

Board with respect to the oversight of the financial operations and conditions of the Exchange.⁵⁴ The Exchanges note that they do not currently maintain, and have no intention of establishing, Finance Committees and that CBOE and C2 do not have exchange-level Finance Committees. The Exchanges state that they will retain the authority, under Article IV, Section 4.1 of the Proposed Bylaws, to establish a Finance Committee in the future if so desired.⁵⁵

The Commission believes that each Exchange's proposed committees, which are similar to the committees maintained by CBOE and C2,⁵⁶ are designed to help enable the Exchange to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁵⁷ The Commission further believes that each Exchange's proposed committees, including their composition and the means by which committee members will be chosen, are consistent with Section 6(b)(3) of the Act because relevant committees provide for the fair representation of members in the administration of that Exchange's affairs.⁵⁸

With respect to the proposal to eliminate each Exchange's Compensation Committee and Audit Committee, the Commission notes that this change is comparable to the governing structures of other exchanges, including CBOE and C2, which the Commission has previously

⁵⁴ See BYX Notice, 82 FR at 42134 (citing BYX Current Bylaws, Article V, Section 6(f)); BZX Notice, 82 FR at 42188 (citing BZX Current Bylaws, Article V, Section 6(f)); EDGA Notice, 82 FR at 42213 (citing EDGA Current Bylaws, Article V, Section 6(f)); EDGX Notice, 82 FR at 42160 (citing EDGX Current Bylaws, Article V, Section 6(f)).

⁵⁵ See BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42160.

⁵⁶ See CBOE Bylaws, Article IV, Sections 4.1-4.4; C2 Bylaws, Article IV, Sections 4.1-4.4.

⁵⁷ 15 U.S.C. 78f(b)(1).

⁵⁸ See 15 U.S.C. 78f(b)(3).

approved.⁵⁹ As more fully set forth in the Notices, the Exchanges state that their respective Compensation Committees' and Audit Committees' responsibilities largely are duplicative of those of the Compensation Committee and Audit Committee of CBOE Holdings. With respect to the proposal to eliminate each Exchange's Appeals Committee and the specific provision permitting a Finance Committee, the Commission notes that the Act does not require the Exchanges to maintain such committees and each Exchange will have the ability, under the Proposed Bylaws, to establish an Appeals Committee or Finance Committee in the future, if desired.

3. Advisory Board

Each Exchange proposes to adopt Article VI, Section 6.1 of the Proposed Bylaws, which provides that the Board may establish an Advisory Board which will advise the Board and management regarding matters of interest to Exchange Members. If established, the Board would set the number of members of the Advisory Board, and at least two members would be Exchange Members or persons associated with Exchange Members. The Nominating and Governance Committee would recommend members of the Advisory Board for approval by the Board.⁶⁰ Each Exchange states that it believes an Advisory Board could provide a vehicle for Exchange management to receive advice from the perspective of Exchange Members and

⁵⁹ See CBOE 2017 Order, 82 FR at 20400; C2 2017 Order, 82 FR at 20410; Securities Exchange Act Release Nos. 64127 (March 25, 2011), 76 FR 17974, 17976 (March 31, 2011) (SR-CBOE-2011-010) ("CBOE March 2011 Order"); 64128 (March 25, 2011), 76 FR 17973, 17974 (March 31, 2011) (SR-C2-2011-003) ("C2 March 2011 Order"); 62304 (June 16, 2010), 75 FR 36136, 36137 (June 24, 2010) (SR-NYSEArca-2010-31); 60276 (July 9, 2009), 74 FR 34840, 34841 (July 17, 2009) (SR-NASDAQ-2009-042).

⁶⁰ See BYX Proposed Bylaws, Article VI, Section 6.1; BZX Proposed Bylaws, Article VI, Section 6.1; EDGA Proposed Bylaws, Article VI, Section 6.1; EDGX Proposed Bylaws, Article VI, Section 6.1.

regarding matters that impact Exchange Members.⁶¹ Each Exchange further explains that an Advisory Board would be completely advisory in nature and would not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. The Exchanges note that while under the CBOE Bylaws an Advisory Board is mandatory, the Exchanges would like the flexibility to determine if an Advisory Board should be established in the future.⁶²

The Commission believes that each Exchange's proposal to authorize an Advisory Board to advise the Board and management with respect to matters of interest to Exchange Members is consistent with the Act. The Commission notes that the Advisory Board will be advisory in nature and will not be vested with decision-making authority or the authority to act on behalf of the Exchange. Nevertheless, if established, the Advisory Board could serve as a supplementary adjunct advisory body that can provide an additional forum for Exchange Members to be heard and provide input to Exchange management above and beyond the formal role played by Representative Directors, as discussed above. The Commission further notes that the composition and function of the Advisory Board is the same as that for CBOE and C2, and that, while the CBOE Bylaws currently mandate the establishment of an Advisory Board, the Commission previously approved a proposal for a permissive Advisory Board by CBOE and C2.⁶³

⁶¹ See BYX Notice, 82 FR at 42136; BZX Notice, 82 FR at 42189; EDGA Notice, 82 FR at 42214; EDGX Notice, 82 FR at 42162.

⁶² The Exchanges further note that there is no statutory requirement to maintain an Advisory Board and the Current Bylaws do not require the Exchanges to establish an Advisory Board. See BYX Notice, 82 FR at 42136; BZX Notice, 82 FR at 42189-90; EDGA Notice, 82 FR at 42215; EDGX Notice, 82 FR at 42162.

⁶³ See CBOE December 2011 Order, 76 FR at 79254; C2 December 2011 Order, 76 FR at 79241-42; CBOE March 2011 Order, 76 FR at 17976; C2 March 2011 Order, 76 FR at 17974.

4. Regulatory Independence

The Proposed Certificates and Proposed Bylaws, as well as proposed Exchange rules, include provisions designed to help maintain the independence of the regulatory functions of each Exchange,⁶⁴ which provisions are substantially similar to those included in the governing documents of other exchanges.⁶⁵ Specifically:

- In discharging his or her responsibilities as a member of the Board, each Director shall take into consideration the effect that his or her actions would have on the ability of the Exchange to carry out the Exchange's responsibilities under the Act and on the ability of the Exchange: to engage in conduct that fosters and does not interfere with the Exchange's ability to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board or as an officer or employee of the Exchange, each Director, officer or employee shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission, and the Exchange pursuant to its regulatory authority.⁶⁶

⁶⁴ See BYX Notice, 82 FR at 42140; BZX Notice, 82 FR at 42193; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42166.

⁶⁵ See, e.g., ISE Order, 82 FR at 36503-05; CBOE Demutualization Order, 75 FR at 30089; C2 Exchange Order, 74 FR at 66704-05.

⁶⁶ See BYX Proposed Certificate, Article Fifth(d); BZX Proposed Certificate, Article Fifth(d); EDGA Proposed Certificate, Article Fifth(d); EDGX Proposed Certificate, Article Fifth(d). The Exchanges note that this provision contains language similar to that

- All confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of the Exchange shall: (1) not be made available to any persons other than to those officers, Directors, employees, and agents of the Exchange that have a reasonable need to know the contents thereof; (2) be retained in confidence by the Exchange and its officers, Directors, employees, and agents; and (3) not be used for any commercial purposes.⁶⁷
- Under the Proposed Bylaws, as is the case under the Current Bylaws, the books and records of each Exchange must be maintained in the United States.⁶⁸

in the Current Bylaws. See BYX Notice, 82 FR at 42128 and n. 4 (citing BYX Current Bylaws, Article III, Sections 1(d) and (e)); BZX Notice, 82 FR at 42182 and n. 4 (citing BZX Current Bylaws, Article III, Sections 1(d) and (e)); EDGA Notice, 82 FR at 42207 and n. 4 (citing EDGA Current Bylaws, Article III, Sections 1(d) and (e)); EDGX Notice, 82 FR at 42154 and n. 4 (citing EDGX Current Bylaws, Article III, Sections 1(d) and (e)).

⁶⁷ See BYX Proposed Certificate, Article Eleventh; BZX Proposed Certificate, Article Eleventh; EDGA Proposed Certificate, Article Eleventh; EDGX Proposed Certificate, Article Eleventh. The Commission notes that, as is currently the case, the requirement to keep information confidential will not be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or limit or impede the ability of any officers, Directors, employees, or agents of the Exchange to disclose such confidential information to the Commission. See BYX Proposed Certificate, Article Eleventh; BZX Proposed Certificate, Article Eleventh; EDGA Proposed Certificate, Article Eleventh; EDGX Proposed Certificate, Article Eleventh. See also BYX Current Bylaws, Article XI, Section 3; BZX Current Bylaws, Article XI, Section 3; EDGA Current Bylaws, Article XI, Section 3; EDGX Current Bylaws, Article XI, Section 3.

⁶⁸ See BYX Proposed Bylaws, Article VIII, Section 8.12; BZX Proposed Bylaws, Article VIII, Section 8.12; EDGA Proposed Bylaws, Article VIII, Section 8.12; EDGX Proposed Bylaws, Article VIII, Section 8.12. See also BYX Current Bylaws, Article XI, Section 3; BZX Current Bylaws, Article XI, Section 3; EDGA Current Bylaws, Article XI, Section 3; EDGX Current Bylaws, Article XI, Section 3. The Commission notes that such books and records would be subject to examination by the Commission pursuant to the federal securities laws and the rules and regulations thereunder.

- Under the Proposed Certificates and Proposed Bylaws, any amendments to those documents will not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Act and the rules promulgated thereunder.⁶⁹
- Additionally, each Exchange proposes a rule that would prohibit the Exchange from using any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines for non-regulatory purposes or to make distributions to the stockholder.⁷⁰

The Commission believes that the provisions discussed in this section, which are designed to help ensure the independence of each Exchange's regulatory function and facilitate

⁶⁹ See BYX Proposed Certificate, Article Seventh; BZX Proposed Certificate, Article Seventh; EDGA Proposed Certificate, Article Seventh; EDGX Proposed Certificate, Article Seventh; BYX Proposed Bylaws, Article IX, Section 9.3; BZX Proposed Bylaws, Article IX, Section 9.3; EDGA Proposed Bylaws, Article IX, Section 9.3; EDGX Proposed Bylaws, Article IX, Section 9.3. The Commission notes that, although the Current Certificates and Current Bylaws do not include a similar, explicit requirement regarding the filing of amendments pursuant to Section 19 of the Act, the Current Certificates and Current Bylaws, as rules of the Exchange, are nonetheless subject to the requirements of Section 19 of the Act and the rules and regulations thereunder.

⁷⁰ See proposed BYX Rule 15.2; proposed BZX Rule 15.2; proposed EDGA Rule 15.2; proposed EDGX Rule 15.2. The proposed rule further provides that such regulatory revenues will be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or, as the case may be, will be used to pay restitution and disgorgement of funds intended for customers (except in the event of liquidation of the Exchange, in which case Bats Global Markets Holdings, with respect to BYX and BZX, and Direct Edge, with respect to EDGA and EDGX, will be entitled to the distribution of the remaining assets of the Exchange). The Exchanges state that this provision is similar to a provision in the Current Bylaws and also to CBOE Rule 2.51, except that, unlike CBOE Rule 2.51, the proposed rule explicitly states that regulatory funds may not be distributed to the stockholder. See BYX Notice, 82 FR at 42138-39; BZX Notice, 82 FR at 42192; EDGA Notice, 82 FR at 42217; and EDGX Notice, 82 FR at 42164. See also BYX Current Bylaws, Article X, Section 4; BZX Current Bylaws Article X, Section 4; EDGA Current Bylaws, Article X, Section 4; EDGX Current Bylaws, Article X, Section 4.

the ability of each Exchange to carry out its responsibility and operate in a manner consistent with the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁷¹

The Commission believes that the proposed provisions relating to the books and records of each Exchange are designed to maintain the independence of the Exchanges' self-regulatory function, and are consistent with the Act. The Commission notes that these provisions are substantially similar to those the Commission has previously found to be consistent with the Act in the context of the corporate governance structures of other exchanges.⁷² The Commission also notes that the governing documents of CBOE Holdings and CBOE V previously approved by the Commission provide that all books and records of the Exchanges reflecting confidential information pertaining to the self-regulatory function of the Exchanges will be subject to confidentiality restrictions.⁷³

The Commission finds that the proposed process regarding amendments to the Proposed Certificates and Proposed Bylaws is consistent with Section 6(b)(1) of the Act, because it reflects the obligation of the Board to ensure compliance with the rule filing requirements under the Act. Additionally, the Commission finds these changes to be consistent with Section 19(b)(1) of the Act and Rule 19b-4 thereunder,⁷⁴ which require that a self-regulatory organization file with the Commission all proposed rules, as well as all proposed changes in, additions to, and deletions of its existing rules. These provisions clarify that amendments to the Proposed Certificates and

⁷¹ 15 U.S.C. 78f(b)(1).

⁷² See, e.g., MIA Exchange Order, 77 FR at 73071.

⁷³ See Transaction Order, 81 FR at 93991-92.

⁷⁴ 15 U.S.C. 78f(b)(1); 17 CFR 240.19b-4.

Proposed Bylaws constitute proposed rule changes within the meaning of Section 19(b)(2) of the Act and Rule 19b-4 thereunder, and are subject to the filing requirements of Section 19 of the Act and the rules and regulations thereunder.

The Commission also finds that the prohibition on the use of regulatory fees or fines to fund non-regulatory purposes or to make distributions to the stockholder is consistent with Section 6(b)(1) of the Act,⁷⁵ because it is designed to further each Exchange's ability to effectively comply with its statutory obligations and is designed to ensure that the regulatory authority of the Exchange is not improperly used.⁷⁶ This restriction on the use of regulatory funds is intended to preclude each Exchange from using its authority to raise regulatory funds for the purpose of benefiting its stockholder.⁷⁷

C. Related Rule Amendments

Each Exchange proposes to amend its rules in conjunction with the changes in the Proposed Bylaws.⁷⁸ Specifically, each Exchange proposes to update certain cross-references to the bylaws in its rules and to move certain definitions from the bylaws to the rules.⁷⁹

⁷⁵ 15 U.S.C. 78f(b)(1).

⁷⁶ See, e.g., ISE Order, 82 FR at 36505 (approving a prohibition on the use of regulatory fines, fees, or penalties to pay dividends). See also CBOE Demutualization Order, 75 FR at 30089 (approving CBOE Rule 2.51).

⁷⁷ See BYX Notice, 82 FR at 42138; BZX Notice, 82 FR at 42192; EDGA Notice, 82 FR at 42217; EDGX Notice, 82 FR at 42164.

⁷⁸ See BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42192-93; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165.

⁷⁹ See proposed BYX Rules 1.1, 2.10, and 8.6; proposed BZX Rules 1.1, 2.10, and 8.6; proposed EDGA Rules 1.1, 2.10, and 8.6; proposed EDGX Rules 1.1, 2.10, and 8.6. The Exchanges also propose to move the prohibition on the use of regulatory revenues for non-regulatory purposes from the Current Bylaws to the rules. See supra note 70 and accompanying text.

The Commission finds that these proposed rule changes are consistent with the Act in that they are necessary to update cross-references and certain defined terms in the rules and would assist Exchange Members and the public in understanding the Exchanges' rules.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸⁰ that the proposed rule changes (SR-BatsBYX-2017-19; SR-BatsBZX-2017-55; SR-BatsEDGA-2017-22; and SR-BatsEDGX-2017-35), each as modified by its respective Amendment No. 1, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸¹

Eduardo A. Aleman
Assistant Secretary

⁸⁰ 15 U.S.C. 78s(b)(2).

⁸¹ 17 CFR 200.30-3(a)(12).