

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65843; File No. SR-CBOE-2011-107)

November 28, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Amending and Restating the CBSX Operating Agreement and Adopting Rule 2.50

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup>, and Rule 19b-4 thereunder<sup>2</sup>, notice is hereby given that on November 28, 2011, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 and restate the Second Amended and Restated Operating Agreement (“Operating Agreement”) of CBOE Stock Exchange, LLC (“CBSX”) and adopt new Rule 2.50 in connection with CBSX’s proposed acquisition (the “Transaction”) of the National Stock Exchange, Inc. (“NSX”). The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, the Commission’s Public Reference Room, and on the Commission’s website at <http://www.sec.gov>.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Transaction

Currently, NSX is wholly and directly owned by NSX Holdings, Inc. (“NSX Holdings”). Under a Purchase Agreement (the “Purchase Agreement”) dated September 28, 2011 by and between NSX, NSX Holdings and CBSX, CBSX will acquire all of the outstanding capital stock of NSX on the date of or after all conditions precedent to closing<sup>3</sup> have been satisfied or waived, including approval by the Commission of this proposed rule change.

Following the Transaction, NSX will be a wholly owned subsidiary of CBSX. NSX will remain a Delaware for-profit stock corporation, with the authority to issue 1,000 shares of common stock, 100 shares of which would be held by CBSX. At all times, all of the outstanding stock of NSX would be owned by CBSX. NSX would remain registered as a national securities

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<sup>3</sup> Conditions precedent to closing the Transaction are formal requirements set forth in the Purchase Agreement and include delivery of certain documents (such as officers’ certificates, legal opinions, and agreements), compliance by each party with specified representations, warranties and covenants, and receipt of necessary approvals by each party.

exchange under Section 6 of the Act<sup>4</sup>, and accordingly, NSX would remain a self-regulatory organization (“SRO”)<sup>5</sup>.

In 2007, the Commission approved the establishment of CBSX as a facility, as defined in Section 3(a)(2) of the Act<sup>6</sup>, of CBOE<sup>7</sup>. As the SRO for CBSX, CBOE has regulatory responsibility for the activities of CBSX. CBSX administers a fully automated trading platform for securities other than options (the “Facility”). As a limited liability company, the governance structure and operating authority of CBSX are set forth in the Operating Agreement and the CBSX Certificate of Formation. In connection with the establishment of the Facility, CBOE adopted Rule 3.32 pertaining to ownership concentration and affiliation limitations<sup>8</sup>.

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<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> NSX would continue to adhere to the undertakings in the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Sanctions, including those related to a Regulatory Oversight Committee and the separation of the regulatory functions from the commercial interests of NSX. See Securities Exchange Act Release No. 51714 (May 19, 2005).

<sup>6</sup> 15 U.S.C. 78c(a)(2).

<sup>7</sup> See Securities Exchange Act Release No. 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007) (SR-CBOE-2006-110) (the “CBSX Approval Order”); see also Securities Exchange Act Release No. 55172 (January 25, 2007), 72 FR 4745 (February 1, 2007) (SR-CBOE-2006-110) (the “CBSX Notice of Filing”).

<sup>8</sup> See CBSX Order Approval and CBSX Notice of Filing. CBOE Rule 3.32(a) provides, in part:

For as long as CBSX LLC operates as a facility of the Exchange, no Trading Permit Holder, either alone or together with its Affiliates, at any time, may own, directly or indirectly, of record or beneficially, an aggregate amount of Shares that would result in a greater than twenty percent (20%) Percentage Interest in CBSX LLC (the “Concentration Limitation”).

In addition, the Certificate of Incorporation of CBOE Holdings, Inc., the owner of CBOE (“CBOE Holdings”), provides that no person (either alone or together with its related persons) may beneficially own more than 20% of the total outstanding shares of CBOE Holdings stock. See Article Sixth (b) of the Amended and Restated Certificate of Incorporation of CBOE Holdings, Inc.; see also Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-88).

As a limited liability company, ownership of CBSX is represented by limited liability membership interests. The holders of such interests are referred to as “Owners.” CBOE is one of the Owners of CBSX and owns all outstanding “Series A” Voting Shares<sup>9</sup> of CBSX, representing just under 50% of all outstanding shares of CBSX<sup>10</sup>. The outstanding “Series B” Voting Shares of CBSX are held by nine broker-dealers.

As provided in Section 8.9 of the Operating Agreement, the outstanding Series A Voting Shares, in the aggregate (and without being deemed to be a voting trust), are entitled to a number of votes equal to 50% of the total number of Voting Shares outstanding on each matter submitted to a vote of the Owners. Each outstanding Series B Voting Share is entitled to one vote on each matter submitted to a vote of the Owners.<sup>11</sup>

The CBSX Approval Order and the CBSX Notice of Filing describe various characteristics of CBSX, including: the relationship between CBSX and CBOE; changes in control of CBSX; the regulatory jurisdiction of the Commission and CBOE over the controlling

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<sup>9</sup> “Voting Shares” means those Shares entitled to vote on matters submitted to the Owners, which Voting Shares are held by the Voting Owners. See Section 2.1(a)(28) of the Operating Agreement.

<sup>10</sup> As noted in Section 3.2 of the Operating Agreement, it is the intention of the Owners that no other members of CBSX (other than Affiliates of CBOE) be owners of Series A Voting Shares, and that no additional Series A Voting Shares be authorized, created or issued for such purpose; provided however, that this provision is not intended to limit or restrict any rights of CBOE to transfer any of its Series A Voting Shares with the prior approval of the Commission as provided for in Article VI, including Section 6.14, of the Operating Agreement, or any other provision thereof, or any rights to be acquired by a transferee of those Shares as provided therein.

<sup>11</sup> The Operating Agreement also creates a Series C Non-Voting Restricted Shares; however, these Shares are not entitled to vote on any matter submitted to a vote of the Owners, and there are currently no Series C shares outstanding. See Section 8.9 of the Operating Agreement.

parties and the Owners; and the ownership and voting restrictions on Owners.<sup>12</sup> These provisions, as contained in the Operating Agreement and applicable CBOE rules, will remain unchanged after the Transaction except as otherwise described below.

b. Proposed Rule Change

In connection with the Transaction, CBOE proposes to amend and restate the Operating Agreement to be effective as of the closing of the Transaction. CBOE also proposes to adopt new Rule 2.50 regarding its policy with respect to NSX.

i. CBSX's Ownership of NSX

The proposed rule change includes several amendments related to CBSX's ownership of NSX. These amendments address the fact that CBSX will become a holding company of NSX after the Transaction to the extent related to CBSX's control of NSX and clarify CBSX's rights and responsibilities related to its role as a holding company of a registered national securities exchange (amendments related to such responsibilities are further discussed in Section (ii) below). For example, the proposed rule change amends Section 1.6 to provide that the Company's sole purposes (and any other lawful purposes related to those purposes) will be: (1) to act as a trading market for securities other than options as a facility of a registered national securities exchange and (2) to act as a holding company of NSX. The proposed rule change also

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<sup>12</sup> Section 6.12(a) of the Operating Agreement provides that no person (other than CBOE), either alone or together with its Affiliates, may directly or indirectly own an aggregate amount of Shares that would result in a greater than 20% Percentage Interest in CBSX (the "Concentration Limitation"). In addition, Section 8.10 provides that if an Owner of Series B Voting Shares that is also a CBOE member owns more than 20% of the outstanding Voting Shares ("Excess Shares"), alone or together with any Affiliate, such Owner will have no voting rights with respect to the Excess Shares.

amends several provisions to clarify that certain references to CBSX include its subsidiaries, including NSX.<sup>13</sup>

In addition, the proposal amends Section 6.12 to provide that the Concentration Limitation described in that section does not apply to CBOE or CBOE Holdings, and to expand applicability of the Concentration Limitation to persons and their Related Persons<sup>14</sup> rather than to persons and their Affiliates<sup>15</sup>. The proposal also amends Section 6.12(c) and (e) to impose on NSX equity trading permit holders the Concentration Limitation prohibitions described in those paragraphs, which are currently only imposed on CBOE Trading Permit Holders. The proposal makes similar amendments to Section 8.10 to expand applicability of the voting restriction

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<sup>13</sup> See, e.g., proposed Sections 1.6 and 9.15(a)(9) and (10) of the Operating Agreement.

<sup>14</sup> Proposed Rule 2.1(a)(23) of the Operating Agreement defines “Related Person” as (A) with respect to any person, all “affiliates” as such term is defined in Rule 12b-2 of the Exchange Act); (B) any person associated with a member (as the phrase “person associated with a member” is defined under Section 3(a)(21) of the Exchange Act); (C) any two or more persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of CBSX; (D) in the case of a person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b-7 of the Exchange Act) or director of such person and, in the case of a person that is a partnership or a limited liability company, any general partner, managing member or manager of such person, as applicable; (E) in the case of a person that is a natural person, any relative or spouse of such natural person, or any relative of such spouse who has the same home as such natural person or who is a director or officer of CBSX or any of CBSX’s parents or subsidiaries; (F) in the case of a person that is an executive officer (as defined under Rule 3b-7 of the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (G) in the case of a person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable. Under this definition, Related Persons include Affiliates and thus extends the Concentration Limitation imposed by proposed Rule 6.12 to a broader group of persons.

<sup>15</sup> Rule 2.1(a)(1) of the Operating Agreement defines “Affiliate” as, with respect to any person, any other person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such person. As used in this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract or otherwise with respect to such person.

described in that section to persons and their Related Persons and to provide that if any person, not just a CBOE Trading Permit Holder, exceeds the Concentration Limitation set forth in Section 6.12 of the Operating Agreement, then the Owner and its Related Persons will have no voting rights with respect to the shares in excess of such limitation unless it satisfies certain requirements set forth in proposed Section 8.10(b) through (d), which are similar to the requirements set forth in Section 6.12(b), (c) and (e). The proposed rule change also extends the applicability of the voting restriction in Section 8.10 to voting agreements, plans and arrangements.

The proposal also amends Section 9.15(a)(9) to clarify that with respect to a sale of material assets or ownership interests that requires approval pursuant to Section 9.15, “material assets or ownership interests” include subsidiaries of CBSX. In addition, the proposed rule change adds Section 15.19 to the Operating Agreement, which obligates CBSX, when voting as NSX’s sole shareholder in an election of the NSX board of directors, to vote in favor of ETP Holder Directors (a certain class of directors defined in the NSX Bylaws) that were nominated in accordance with the procedures set forth in NSX’s certificate of incorporation and bylaws.

ii. Self-Regulatory Function of NSX

The proposed rule change adds various provisions designed to protect the independence of the self-regulatory function of NSX and to clarify NSX’s jurisdiction with respect to CBSX, but only to the extent related to CBSX’s control of NSX. For example, the proposed rule change adds Section 5.7(b), which, among other things:

- for so long as CBSX controls NSX, only to the extent related to the activities of NSX, requires CBSX Owners, board of directors, officers and employees to give due

regard to the preservation of the independence of the self-regulatory function of NSX and to its obligations under the Act;

- prohibits these persons from taking any actions that would interfere with the effectuation of any decisions by the NSX board of directors relating to NSX's regulatory functions, including disciplinary matters, or with NSX's ability to carry out its responsibilities under the Act; and
- requires CBSX to comply with federal securities laws and the rules and regulations thereunder, and requires CBSX and its officers, directors, employees and agents to cooperate with the Commission and NSX pursuant to and to the extent of their regulatory authority.

In addition, the proposed rule change amends Section 6.15 to clarify possession of CBSX's and its Owners books and records by the Facility and NSX in connection with their oversight pursuant to the Act. The proposed rule change amends Section 6.15(a)<sup>16</sup>:

- to clarify that the Owners acknowledge that the books, records, premises, officers, directors, agents, and employees of the Owners will be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Act, but only to the extent they are related to the Facility; and
- to add the provision that the Owners acknowledge that the books, records, premises, officers, directors, agents, and employees of the Owners will be deemed to be

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<sup>16</sup> Section 6.15(a) of the Operating Agreement currently provides: "The Owners acknowledge that to the extent they are related to [CBSX's] activities, the books, records, premises, officers, directors, agents, and employees of the Owners shall be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Exchange Act."

the books, records, premises, officers, directors, agents, and employees of NSX for the purpose of and subject to oversight pursuant to the Act, but only to the extent they are related to the activities of NSX.

Similarly, the proposed rule change amends Section 6.15(b)<sup>17</sup>:

- to clarify that the books, records, premises, officers, directors, agents, and employees of CBSX will be deemed to be the books, records, premises, officers, directors, agents, and employees of CBSX for the purpose of and subject to oversight pursuant to the Act, but only to the extent related to the Facility; and
- to add the provision that the books, records, premises, officers, directors, agents, and employees of CBSX will be deemed to be the books, records, premises, officers, directors, agents, and employees of NSX for the purpose of and subject to oversight pursuant to the Act, but only to the extent related to the activities of NSX.<sup>18</sup>

The proposal also amends Section 6.15(c) to provide that CBSX and the Owners and their respective officers, directors, agents, and employees<sup>19</sup>, irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, CBOE and NSX for the purposes of any suit, action, or proceeding pursuant to U.S. federal securities laws or the rules or regulations

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<sup>17</sup> Section 6.15(b) of the Operating Agreement currently provides: “The books, records, premises, officers, directors, agents, and employees of [CBSX] shall be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Exchange Act.”

<sup>18</sup> CBSX’s complete records and books of account must be subject at all times to inspection and examination by CBOE (to the extent related to the Facility), NSX (to the extent related to CBSX’s control of NSX), and the Commission at no additional charge to CBOE, NSX and the Commission, as applicable. See proposed Section 13.2 of the Operating Agreement.

<sup>19</sup> Proposed Rule 6.15(c) (consent to jurisdiction) and (d) (consent in writing to applicability) also extend the requirements of these provisions to all agents and employees of the Company and its Owners, rather than only agents and employees whose principal place of business and residence is outside of the United States.

thereunder, commenced or initiated by the Commission arising out of, or relating to, the Facility or the Company's control of NSX, as applicable.

In addition, the proposed rule change amends Sections 9.15(c) and 9.16 to provide that CBSX directors agree to comply with the federal securities laws and the rules and regulations thereunder, and to cooperate with the Commission, CBOE, and NSX pursuant to their regulatory authority, as applicable, and the provisions of the Operating Agreement. The proposal also amends Section 9.15(c) to provide that CBSX directors will take into consideration whether any actions taken or proposed to be taken as a director for or on behalf of CBSX, or any failure or refusal to act, would constitute interference with CBOE's or NSX's regulatory functions and responsibilities, as applicable, in violation of the Operating Agreement or the Act.<sup>20</sup>

Additionally, the proposal amends Section 14.1(a) to provide that, for so long as CBSX controls NSX, before any amendment, alteration, or repeal of any provision of the Operating Agreement, to the extent related to CBSX's control of NSX, will be effective, such amendment, alteration, or repeal must be submitted to the NSX board of directors, and if CBOE and the NSX board of directors determine that such amendment, alteration, or repeal must be filed with or filed with and approved by the Commission, then such amendment, alteration, or repeal will not become effective until filed with or filed with and approved by the Commission, as the case may be. The proposal also adds a 10-day notice provision for any amendment, alteration, or repeal of the Operating Agreement made pursuant to Section 14.1(a) to provide CBOE and NSX with sufficient opportunity to review any potential regulatory impacts of such amendment, alteration, or repeal before it becomes effective.

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<sup>20</sup> Interference with respect to the Facility will be determined by the CBSX board designees of CBOE. See proposed Section 9.15(c) of the Operating Agreement.

The proposal also amends Section 15.2 to provide that nothing in the Operating Agreement will be interpreted to limit or impede the rights of the Commission, CBOE, or NSX to access and examine any Confidential Information (as defined in the Operating Agreement) pursuant to the U.S. federal securities laws and the rules thereunder, or to limit or impede the ability of an Owner or an officer, director, agent, or employee of an Owner to disclose any Confidential Information to the Commission, CBOE, or NSX. Proposed Section 15.2 also provides that the obligation of Owners not to disclose Confidential Information described in that section does not apply to CBOE's or NSX's communications with the Commission with respect to the conduct of the Facility's business or NSX's business, respectively. In addition, the proposal amends the representation being made by Owners in Section 15.17(a) with respect to the validity and enforceability of the Operating Agreement by excepting the requirement, as applicable to the Facility or NSX (with respect to CBSX's control of NSX), that the portions of the Operating Agreement that constitute rules of a facility of an exchange or rules of a self-regulatory organization, as applicable, be filed for public comment and approval by the Commission from that representation.

The proposed rule change adds CBOE Rule 2.50 to further preserve the self-regulatory function of NSX. Rule 2.50 proposes a policy that CBOE, as a partial owner of CBSX, will not take any action related to NSX's activities that would interfere with NSX's efforts to carry out its self-regulatory obligations under the Act and the rules and regulations thereunder. Additionally, proposed Rule 2.50 provides that the Exchange will exercise its powers as a partial owner of CBSX to support the fulfillment by NSX of its self-regulatory obligations, including the appropriate allocation by NSX of such financial, technological, technical and personnel resources as may be necessary or appropriate for NSX to meet its obligations under the

Exchange Act. While the Exchange is not a guarantor of NSX's compliance with the Exchange Act and will not be in a position to monitor the day-to-day operations of NSX, the purpose of proposed Rule 2.50(a) is to provide that the Exchange will, through CBSX and consistent with its relationship with CBSX, work with NSX to establish and maintain appropriate resources in connection with NSX's self-regulatory obligations, as well as to establish a framework by which NSX will affirmatively report deficiencies in fulfilling its self-regulatory obligations to the CBSX board of directors while taking action to remedy such deficiencies.

iii. Facility of CBOE

The proposed rule change amends various provisions to clarify that the part of CBSX that constitutes the Facility is a facility of CBOE under the Act, while the part of CBSX that relates to its control of NSX will not be a facility of CBOE. For example, the proposal amends Section 1.7 to clarify that the Facility (and not CBSX to the extent it will act as a holding company for NSX) is a facility of CBOE under the Act, and therefore the Facility will be subject to self-regulation by CBOE and oversight by the Commission. The proposal also amends Section 1.8 to clarify that only the Facility is a facility of CBOE.<sup>21</sup>

iv. Additional Changes

Finally, the proposed rule change makes several non-substantive technical and conforming changes throughout the Operating Agreement, including: updating the name and date of the Operating Agreement; updating the current Owners and their current percentage interests and CBSX shares owned<sup>22</sup>; replacing references to CBOE members with CBOE trading permit

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<sup>21</sup> See also proposed Sections 6.2(e), 6.15(c) and (d), 9.2(d), 9.15(a)(14) and 14.1(a) for additional such clarifications.

<sup>22</sup> See proposed Section 3.2(d) of and signature page and Exhibit A to the Operating Agreement.

holders<sup>23</sup>; updating the table of contents and section references; and adding new defined terms and renumbering the defined terms as necessary<sup>24</sup>. In connection with the updates to reflect the current Owners, the proposed rule change amends the definition of “Super Majority of the Owners” to mean, subject to the regulatory requirements described in Section 1.8 of the Operating Agreement, the affirmative vote of both (i) all of the Owners of the Series A Voting Shares at the time, and (ii) Owners of the Series B Voting Shares who then retain ownership of Series B Voting Shares and represent at least a twenty (20%) percentage interest in CBSX, which more accurately corresponds to CBSX’s current ownership structure.<sup>25</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act<sup>26</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act<sup>27</sup>. Specifically, the Exchange believes the amendments described in Item II(A)(1)(b)(iii), including amendments to Sections 1.7 and 1.8, that clarify the Facility is a facility of CBOE under the Act further the objective of Section 6(b)(1) of the Act because they ensure that CBOE will continue to have the necessary authority to perform its regulatory responsibilities with respect to the Facility under Section 6 of the Act. Additionally, this clarification of what constitutes the Facility ensures that CBSX, to the extent it controls NSX, is not part of the Facility and thus is not subject to CBOE’s regulatory authority over the Facility, which the

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<sup>23</sup> See proposed Sections 6.12(c) and (e) and 8.10 of the Operating Agreement.

<sup>24</sup> See proposed Section 2.1 of the Operating Agreement.

<sup>25</sup> See proposed Rule 2.1(a)(26). This change is consistent with the original structure of CBSX under which a super majority could be obtained with an affirmative vote of CBOE and two initial owners, who all initially had ten (10%) percentage interests in CBSX.

<sup>26</sup> 15 U.S.C. 78f.

<sup>27</sup> 15 U.S.C. 78f(b).

Exchange believes will preserve the independence of NSX's self-regulatory functions and allow NSX to fulfill its self-regulatory duties.

The Exchange also believes that this proposed rule change furthers the objectives of Section 6(b)(5) of the Act,<sup>28</sup> because the amendments summarized in this filing will ensure that CBSX and NSX continue to have governance and regulatory structures designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the amendments to Sections 6.12 and 8.10 described in Item II(A)(1)(b)(i) above extend certain ownership and voting restrictions to NSX equity trading permit holders in addition to CBOE trading permit holders to ensure that CBSX continues to promote equitable principles of trade by not allowing certain interested parties to have excessive influence over CBSX's activities.

The addition of Section 5.7(b) (described in Item II(A)(1)(b)(ii) above) is intended to preserve the independence of NSX's self-regulatory function and ensure that NSX is able to obtain any information it needs from the specified parties to detect and deter any fraudulent and manipulative acts in its marketplace and carry out its regulatory responsibilities under the Act. Similarly, the amendments to Section 6.15(a) and (b) (described in Item II(A)(1)(b)(ii) above) that clarify that CBSX's books and records with respect to the Facility and NSX's activities will be subject to the necessary oversight of the Act are consistent with Section 6(b)(5) of the Act, because they provide for the Commission, CBOE and NSX to have access to necessary information that will allow CBOE and NSX to efficiently and effectively enforce compliance with the Act and their respective rules, as well as allow the Commission to provide proper

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<sup>28</sup> 15 U.S.C. 78f(b)(5).

oversight, which will ultimately promote just and equitable principles of trade and protect investors. The amendment to Section 14.1(a) (described in Item II(A)(1)(b)(ii) above) is intended to make sure that NSX receives notice of any amendment to the Operating Agreement so that it can make any filings with the Commission necessary for NSX to fulfill its regulatory duties under the Act.

The Exchange represents that it remains committed to its role as a national securities exchange and does not believe that the proposed changes to the Operating Agreement will undermine the Exchange's responsibilities for regulating the Facility. The proposed rule change provides transparency and clarity with respect to the governance of CBSX and the status of CBSX as both a facility of CBOE and a holding company of NSX. Additionally, the proposed rule changes are intended to protect and maintain the integrity of the self-regulatory functions of CBOE with respect to the Facility and of NSX, and to allow both CBOE and NSX to carry out their regulatory responsibilities under the Act.

Moreover, the Exchange is not proposing any significant changes to CBSX's existing operational or trading structure in connection with the Transaction. Instead, the Exchange represents that the proposed rule change primarily consists of amendments to the Operating Agreement that will allow for CBSX's ownership of NSX, which are generally consistent with parallel provisions of governance documents of other companies that directly control SROs, which were previously approved by the Commission<sup>29</sup>, and with the principles articulated by the

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<sup>29</sup> See Articles Sixth, Fifteenth, and Sixteenth of the Amended and Restated Certificate of Incorporation of CBOE Holdings, Inc.; see also Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-88) (order approving the Amended and Restated Certificate of Incorporation of CBOE Holdings in connection with the demutualization of CBOE).

Commission<sup>30</sup>, while allowing CBOE to maintain its regulatory jurisdiction and authority over the Facility and NSX to remain an independent self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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

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<sup>30</sup> See Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (File No. S7-39-04).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-107 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2011-107. 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 will also be available for inspection and copying at the Exchange's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

you wish to make publicly available. All submissions should refer to File Number SR-CBOE-2011-107 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.<sup>31</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>31</sup> 17 CFR 200.30-3(a)(12).