majority of the Fund’s outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund’s assets and, subject to review and approval of the Board, will: (a) Set each Fund’s overall investment strategies; (b) allocate and, when appropriate, reallocate each Fund’s assets among one or more Subadvisers; (c) monitor and evaluate the performance of Subadvisers; and (d) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund’s investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O’Neill,
Deputy Secretary.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Effectuate an Amendment to Its Amended and Restated Certificate of Incorporation To Include a Reference to Section 242 of the General Corporation Law of the State of Delaware


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) ⁵ and Rule 19b–4 thereunder, ² notice is hereby given that on January 20, 2012, National Stock Exchange, Inc. filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (“NSX®” or “Exchange”) proposes to effectuate an amendment to its Amended and Restated Certificate of Incorporation to include a reference to Section 242 of the General Corporation Law of the State of Delaware.

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

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

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

1. Purpose

With this rule change, the Exchange is proposing to effectuate an amendment to its Amended and Restated Certificate of Incorporation (“Certificate”) to include a reference to Section 242 of the General Corporation Law of the State of Delaware (“Delaware Corporation Law”).

Section 242 of Delaware Corporation Law refers to amendments to certificates of incorporation after the receipt of payment for stock.³ Section 242 states that, after receipt of payment for stock, a corporation “may amend its certificate of incorporation * * * so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment.”⁴ Amended certificates of incorporation must explicitly reference Section 242 to be deemed acceptable for filing with the Delaware Secretary of State.

On November 28, 2011, the Exchange filed with the Commission, as part of its Exhibit 5 to a rule filing seeking Commission approval of the acquisition of the Exchange by CBOE Stock Exchange, LLC, a proposed form of Certificate. The Certificate in the form

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4 ¹¹ Del. C. 1953, 242(a).
proposed was approved by the
CBOE–2011–107).} However, the Certificate in the form
proposed failed to contain an explicit reference to Section 242 of Delaware
Corporation Law. Instead, the last sentence in the first paragraph of the
approved Certificate stated \footnote{15 U.S.C. 78b(b)(3)(A)(ii).} * * *
[p]ursuant to, and being duly adopted in
accordance with, Section 245 of the
General Corporation Law of the State of
Delaware, this * * * Certificate * * * amends and restates the Restated
Certificate of Incorporation in its
entirety * * *.’’

On December 30, 2011, the Certificate,
in the form approved by the
Commission (i.e., without explicit
reference to Section 242), was submitted
for filing to the Delaware Secretary of
State. The Delaware Secretary of State
refused to accept the Certificate unless
a reference to Section 242 was added to the
text of the Certificate. Such
reference was added and the Certificate,
as modified, was accepted by and
successfully filed with the Delaware
Secretary of State. As a result, pursuant
the instant rule filing, the Exchange is
proposing to amend the text of the
Certificate previously filed with, and
approved by, the Commission by
explicitly referencing Section 242 of the
Delaware Corporation Law in the text of the Certificate immediately before the
reference to Section 245. In so doing, the Exchange seeks to fully comply with
Delaware Corporation Law and with the
Securities Exchange Act of 1934 (the
“Act”).

2. Statutory Basis

The Exchange believes that the
proposed rule change is consistent with
the provisions of Section 6(b) of the
Act,\footnote{15 U.S.C. 78f(b).} in general, and Section 6(b)(4) of the
Act.\footnote{15 U.S.C. 78f(b)(4).} In particular, in that it is
designed, among other things, to
promote clarity, transparency and full
disclosure, in so doing, to prevent
fraudulent and manipulative acts and
practices, to promote just and equitable
principles of trade, 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.

Moreover, the proposed rule change is
not discriminatory in that it is solely
administrative and does not affect the
rights of any ETP Holder, does not impact any other provision of the
Certificate, and is consistent with the
Commission’s recent order approving
the Certificate. The proposed
amendment simply adds to the
Certificate an explicit cross-reference to
applicable law and consequently
constitutes a technical amendment that
relates solely to the administration of
the Exchange and the Exchange’s ability
to successfully file the Certificate with the
Delaware Secretary of State.

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

The Exchange does not believe that
the proposed rule change will result in
any burden on competition that is 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

The Exchange has neither solicited
nor received written comments on the
proposed rule change.

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

The proposed rule change has taken
effect upon filing pursuant to Section
19(b)(3)(A)(ii) of the Act\footnote{17 CFR 200.30–3(a)(12).} and
subparagraph (f)(3) of Rule 19b–4\footnote{17 CFR 240.19b–4.}
thereunder, because, as provided in
(f)(3), the proposed rule change is
considered solely with the
administration of the self-regulatory
organization. At any time within 60
days of the filing of the proposed rule
change, the Commission summarily may
temporarily suspend such rule change if
it appears to the Commission that such
action is necessary or appropriate in the
public interest, for the protection of
investors, or otherwise in furtherance
of the purposes of the Securities and

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

\begin{itemize}
  \item Use the Commission’s Internet
  comment form (http://www.sec.gov/
rules/sro.shtml);
  \item Send an email to rule-comments@sec.gov. Please include
  File Number SR–NSX–2012–03 on the
  subject line.
\end{itemize}

Paper Comments

\begin{itemize}
  \item Send paper comments in triplicate
    to Elizabeth M. Murphy, Secretary,
    Securities and Exchange Commission,
    100 F Street NE., Washington, DC
    20549–1090.
\end{itemize}

All submissions should refer to File
Number SR–NSX–2012–03. This file
number should be included on the
subject line if email 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 Web site (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 Web site 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
a.m. and 3 p.m. Copies of such filing
will also be available for inspection and
copying at the principal office of the
Exchange. 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
available publicly. All submissions
should refer to File No. SR–NSX–2012–
03 and should be submitted on or before

For the Commission, by the Division of
Trading and Markets, pursuant to delegated
authority.\footnote{Kevin M. O’Neill,
Deputy Secretary. [FR Doc. 2012–2131 Filed
1–31–12; 8:45 am]
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