SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE’s Rulebook and By-Laws

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on September 23, 2019, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the compositional requirements of the Exchange’s board (“Board”) and Regulatory Oversight Committee (“ROC”), and (iv) make additional, non-substantive edits.

The text of the proposed rule change is available on the Exchange’s website at http://ise.cchwallstreet.com/, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the 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 aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its Rulebook and By-Laws to (i) remove obsolete provisions relating to the organization and administration of committees, (ii) modify Director categorizations, (iii) amend the Board and ROC compositional requirements, and (iv) make additional, non-substantive edits. Each change is discussed below.3

Rules 200–203

Chapter 2 of the Exchange’s Rulebook presently contains a number of rules relating to the organization and administration of committees of the Exchange. In particular, Rules 200–203 set forth provisions for the establishment of committees, removal of committee members, committee procedures and the general duties and powers of committees, all of which have been in place since the Exchange’s inception. The Exchange has since amended its committee structure and related rules to align with those of its affiliates.4 Accordingly, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange’s Limited Liability Company Agreement (“LLC Agreement”) and its By-Laws.

Historically, Rules 200 and 201 authorized the Chief Executive Officer of the Exchange to establish committees not comprised of directors pursuant to delegated authority by the Board, and to appoint or remove any such committee members with Board approval.5 With

3 All references herein and in the Exhibit 5 to “the Company” mean the Exchange. Company is defined in the By-Laws to mean Nasdaq ISE, LLC.
5 For example, the Exchange’s former Business Conduct Committee (“BCC”) was established by the Chief Executive Officer pursuant to delegated authority. As noted above, the BCC was recently replaced by the Exchange Review Council in SR–ISE–2018–59. See Securities Exchange Act Release No. 83703 (July 25, 2018), 83 FR 36092 (July 31, 2018) (SR–ISE–2018–59) (establishing, among other changes, an Exchange Review Council substantially similar to Exchange Review Council of Nasdaq BX, Inc. to replace the Business Conduct Committee). As a result of these changes, Exchange’s board and committee structure is generally harmonized with its affiliates, Nasdaq BX, Inc. (“BX”), The Nasdaq Stock Market LLC (“Nasdaq”), and Nasdaq PHIX LLC (“Phlx”).
the changes in SR–ISE–2017–32 and SR–ISE–2018–59, these rules have been superseded by By-Law provisions that specify the committees composed solely of Directors and committees not composed solely of Directors, including the appointment and removal of such committee members. In this respect, the Exchange notes that it is following the approach of its affiliates, BX, Nasdaq, and Phlx, which similarly have provisions in their respective By-Laws, instead of their rulebooks, pertaining to committees composed solely of Directors and committees not composed solely of Directors. The Exchange further seeks to delete Rules 202 and 203 given that similar provisions governing committee procedures and general duties and powers are now set forth in Section 9(g) of the LLC Agreement and in By-Law Article III and Article VI.

By-Law Article I

Currently, the definition of “Non-Industry Director” in the Exchange By-Laws refers to, among other individuals, an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange. Because only Nasdaq currently operates an equities listing market, the Exchange seeks to amend the definition of Non-Industry Director to refer to an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates. The Exchange believes that the proposed changes will bring greater clarity to the Exchange’s rules by aligning the By-Law provision to how the Exchange currently operates. The Exchange notes that the qualifications for a Non-Industry Director are not expanding under this proposal and as a practical matter, no changes to the current composition of Non-Industry Directors on the Exchange’s Board are contemplated by this rule change.

Today, a Non-Industry Director who is not designated by the Exchange as a Public Director under (i) of the definition of Non-Industry Director, and that does not explicitly fall under (ii) (i.e., “an officer, director or employee of an issuer of securities listed on the national securities exchange operated by the Exchange”) would still fall under (iii) an individual who would not be an Industry Director. With the proposed changes, these Non-Industry Directors could fall under both (ii) and (iii) because they would be representative of issuers listed on the Exchange’s affiliate, Nasdaq, and at the same time, not be considered Industry Directors. The Exchange also proposes to make conforming changes to the definition of a “Non-Industry member” of a committee.

Currently, the Exchange’s Board compositional requirements require at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives). As set forth in Article I, Section (a), a “Public Director” is defined as a Director who has no material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA. “Issuer representative” is not defined specifically in the Exchange’s By-Laws, but is implicitly defined in the term Non-Industry Director as “an officer, director, or employee of an issuer of securities listed on the national securities exchange operated by the Exchange.” The Exchange now proposes to clarify in the definition of Public Director that, for the avoidance of doubt, a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates shall not be precluded from being considered a Public Director solely on the basis of such directorship. The Exchange believes that a director of a listed company can adequately represent the interests of listed companies on the Board and therefore be considered an issuer representative. At the same time, the Exchange does not believe that such a directorship always constitutes a material business relationship with a broker or dealer, the Exchange or its affiliates, or FINRA, which would prohibit the individual from being considered a Public Director. Of course, such issuer representative must still meet the requirements of a Public Director and not have such material business relationships by definition. Thus in limited circumstances, the Exchange believes that it is possible for directors of listed companies to be considered both Public Directors and issuer representatives. In light of the foregoing, the Exchange also proposes to make conforming changes to the definition of a “Public member” of a committee.

The Exchange notes that with the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and issuer representatives), Industry Directors, and Member Representative Directors. Accordingly, current Board

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The term “Member Representative Director” means a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the Exchange’s By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an issuer of securities listed on the national securities exchange operated by the Exchange.”

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The term “Member Representative Director” means a Director who has been elected or appointed after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to the Exchange’s By-Laws. A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an issuer of securities listed on the national securities exchange operated by the Exchange.”

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The Exchange notes that with the proposed changes, the composition of the Board would still be required to reflect a balance among Non-Industry Directors (including Public Directors and issuer representatives), Industry Directors, and Member Representative Directors. Accordingly, current Board
qualification requirements such as the number of Non-Industry Directors equaling or exceeding the sum of the number of Industry Directors and Member Representative Directors would continue to apply.\textsuperscript{17} By-Law Article III, Section 2(a)

The Exchange proposes to amend By-Law Article III, Section 2(a) to revise the qualifications for any position on the Board required to be representative of issuers. As discussed above, Article III, Section 2(a) requires the Board be composed of at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives).\textsuperscript{18} The Exchange adopted this provision when it conformed its By-Laws to those of Nasdaq as part of its effort to harmonize corporate governance processes with its affiliated exchanges.\textsuperscript{19} As noted above, unlike Nasdaq, the Exchange does not currently operate a national securities exchange.\textsuperscript{20} The Exchange’s proposal would also change the Board composition requirement to more closely track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be “representative of issuers and investors.”

By-Law Article III, Section 5(c)

Currently, By-Law Article III, Section 5(c) requires that the Regulatory Oversight Committee (“ROC”) be comprised of three members, each of whom shall be a Public Director and an “independent director” as defined in Nasdaq Rule 5605. The Exchange proposes to amend Section 5(c) to require that the ROC shall be comprised of at least three members, as is currently set forth in the ROC Charter.\textsuperscript{21} All members of the ROC will continue to be Public Directors and “independent directors” as defined in Nasdaq Rule 5605. Lastly, the Exchange also proposes to make technical changes in Section 5(c) to correct a typographical error and to update Nasdaq’s name.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,\textsuperscript{22} in general, and furthers the objectives of Section 6(b)(1), Section 6(b)(3), and Section 6(b)(5) of the Act,\textsuperscript{23} in particular, which require, among other things, an exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act; that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.

Rules 200–203

As discussed above, the Exchange proposes to delete Rules 200–203 as obsolete or duplicative because the provisions related to the organization and administration of committees are now set forth in the Exchange’s LLC Agreement and By-Laws. The Exchange believes that deleting rules that no longer apply to the Exchange’s current committee structure will more clearly identify currently applicable rules, which will remove impediments to and perfect the mechanism of a free and open market. The Exchange further believes that the proposed rule change will eliminate potential confusion regarding which rules apply to the organization and administration of committees, which ultimately protects investors and the public interest.

By-Law Article I

The Exchange believes that the changes to the definitions of Non-Industry Director and Non-Industry member proposed above will enhance the clarity of these provisions given that only the Exchange’s affiliate (Nasdaq) currently operates an equities listing market. Accordingly, the proposed changes should more accurately reflect how the Exchange currently operates. The Exchange also believes that the proposed changes to the definitions of Public Director and Public member are consistent with the Act as these modifications are intended to make clear that a Director is not barred from being considered a Public Director merely because the Director serves as a director of an issuer of securities listed on a national securities exchange operated by the Exchange or one of its affiliates, and are consistent with current corporate governance practices.\textsuperscript{24} Furthermore, as discussed above, the requirements that the number of Non-Industry Directors (including at least one Public Director and at least one Director representative of issuers and investors) equal or exceed the sum of the number of Industry Directors and Member Representative Directors, and at least 20% of the Directors be Member Representative Directors, would continue to apply.\textsuperscript{25} Accordingly, the Exchange believes that the proposed changes will more accurately reflect the Exchange’s current operations and governance practices while continuing to comport with the Exchange’s statutory obligations regarding fair representation under Section 6(b)(3) of the Act.

By-Law Article III, Section 2(a)

The Exchange believes that its proposal to expand the Board qualifications from an issuer representative to a representative of issuers and investors, and eliminate the requirement that the Board have two such representatives if the Board consists of ten or more Directors is consistent with the Act. The Exchange notes that the proposed changes track the statutory language included in Section 6(b)(3) of the Act, which requires one or more directors to be “representative of issuers and investors.” The Exchange also notes that the elimination of the requirement to have at least two Director positions representative of issuers if the Board consists of ten or more Directors is consistent with Section 6(b)(3) of the Act, which only requires the Board to have one such representative. Furthermore, the Exchange will continue to require the Board...
III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that waiver of the operative delay would allow the Exchange to effect the changes to its Rulebook and By-Laws, which would eliminate obsolete provisions in the Exchange’s Rulebook and better align provisions in the Exchange’s By-Laws with those in the By-Laws of its affiliates, in time for the Exchange Board meeting on September 25, 2019. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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
- Send an email to rule-comments@sec.gov. Please include File Number SR–ISE–2019–24 on the subject line.

Paper Comments
- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2019–24. 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 website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2019–24 and should be submitted on or before October 30, 2019.
For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.  

Jill M. Peterson,  
Assistant Secretary.

[FR Doc. 2019–22015 Filed 10–8–19; 8:45 am]  
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Minor Updates and Consolidate Various Exchange Rules in Connection With Regulatory Reports, Records, and Audits on the Exchange, and Move Those Rules From the Currently Effective Rulebook to Proposed Chapter 7 of the Shell Structure for the Exchange’s Rulebook That Will Become Effective Upon the Migration of the Exchange’s Trading Platform to the Same System Used by the Cboe Affiliated Exchanges

October 3, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”), and Rule 19b–4 thereunder, notice is hereby given that on September 27, 2019, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change. The text of the proposed rule change is provided in Exhibit 5.

The Exchange proposes to consolidate current rules in connection with regulatory reports, records, and audits, including the rules related to the Consolidated Audit Trail (“CAT”), on the Exchange into sections of proposed Chapter 7 in the shell Rulebook. The Exchange notes that in addition to consolidating and moving the various rules related to reports, records, and audits to proposed Chapter 7, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change moves and, where applicable, consolidates the rules as follows:

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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to make minor updates and consolidate various Exchange Rules in connection with regulatory reports, records, and audits on the Exchange, and move those Rules from the currently effective Rulebook (“current Rulebook”) to proposed Chapter 7 of the shell structure for the Exchange’s Rulebook that will become effective upon the migration of the Exchange’s trading platform to the same system used by the Cboe Affiliated Exchanges (as defined below) (“shell Rulebook”). The text of the proposed rule change is also available on the Exchange’s website (http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the 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 aspects of such statements.

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

1. Purpose

In 2016, the Exchange’s parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (“Cboe Global”), which is also the parent company of Cboe C2 Exchange, Inc. (“C2”), acquired Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX” or “EDGX Options”), Cboe BZX Exchange, Inc. (“BZX” or “BZX Options”), and Cboe BYX Exchange, Inc. (“BYX”) and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the “Cboe Affiliated Exchanges”). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences, between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its trading platform to the same system used by the Cboe Affiliated Exchanges, which the Exchange expects to complete on October 7, 2019. In connection with this technology migration, the Exchange has a shell Rulebook that resides alongside its current Rulebook, which shell Rulebook will contain the Rules that will be in place upon completion of the Cboe Options technology migration.

The Exchange proposes to consolidate current rules in connection with regulatory reports, records, and audits, including the rules related to the Consolidated Audit Trail (“CAT”), on the Exchange into sections of proposed Chapter 7 in the shell Rulebook. The Exchange notes that in addition to consolidating and moving the various rules related to reports, records, and audits to proposed Chapter 7, the proposed rule change deletes the rules from the current Rulebook. The proposed rule change moves and, where applicable, consolidates the rules as follows:

CHAPTER 7—REGULATORY REPORTS, RECORDS, AND AUDITS

Section A. General

7.1  Maintenance, Retention, and Furnishing of Books, Records, and Other Information

7.1(a)  ........................................................................................................ 15.1.03.
7.1(b)  ........................................................................................................ 15.1.02.
7.1(c)  ........................................................................................................ 15.1.03.
7.1(d)  ........................................................................................................ 15.1.04.

7.1(e)  ........................................................................................................ 15.1.02.

7.1(f)  ........................................................................................................ 15.1.03.

7.1(g)  ........................................................................................................ 15.1.04.

7.1(h)  ........................................................................................................ 15.1.02.

7.1(i)  ........................................................................................................ 15.1.03.

7.1(j)  ........................................................................................................ 15.1.04.

7.1(k)  ........................................................................................................ 15.1.02.

7.1(l)  ........................................................................................................ 15.1.03.

7.1(m)  ........................................................................................................ 15.1.04.

7.1(n)  ........................................................................................................ 15.1.02.

7.1(o)  ........................................................................................................ 15.1.03.

7.1(p)  ........................................................................................................ 15.1.04.

7.1(q)  ........................................................................................................ 15.1.02.

7.1(r)  ........................................................................................................ 15.1.03.

7.1(s)  ........................................................................................................ 15.1.04.

7.1(t)  ........................................................................................................ 15.1.02.

7.1(u)  ........................................................................................................ 15.1.03.

7.1(v)  ........................................................................................................ 15.1.04.

7.1(w)  ........................................................................................................ 15.1.02.

7.1(x)  ........................................................................................................ 15.1.03.

7.1(y)  ........................................................................................................ 15.1.04.

7.1(z)  ........................................................................................................ 15.1.02.

7.1(aa) ..................................................................................................... 15.1.03.

7.1(ab) ..................................................................................................... 15.1.04.

7.1(ac) ..................................................................................................... 15.1.02.

7.1(ad) ..................................................................................................... 15.1.03.

7.1(ae) ..................................................................................................... 15.1.04.

7.1(af) ..................................................................................................... 15.1.02.

7.1(ag) ..................................................................................................... 15.1.03.

7.1(ah) ..................................................................................................... 15.1.04.

7.1(ai) ..................................................................................................... 15.1.02.

7.1(aj) ..................................................................................................... 15.1.03.

7.1(ak) ..................................................................................................... 15.1.04.

7.1(al) ..................................................................................................... 15.1.02.

7.1(am) ..................................................................................................... 15.1.03.

7.1(an) ..................................................................................................... 15.1.04.

7.1(ao) ..................................................................................................... 15.1.02.

7.1(ap) ..................................................................................................... 15.1.03.

7.1(aq) ..................................................................................................... 15.1.04.

7.1(ar) ..................................................................................................... 15.1.02.

7.1(as) ..................................................................................................... 15.1.03.