responsibilities. Despite signs of improvement, the Exchange further stated that the ongoing extenuating circumstances of the COVID–19 pandemic make it impractical to ensure that individuals designated to act in these capacities are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules.

The Exchange observed that, following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government. However, on February 24, 2021, FINRA began providing the General Securities Principal (Series 24) Examination online through an interim accommodation request process. Prior to this change, if individuals wanted to take these qualifying examinations, they were required to accept the health risks associated with taking an in-person examination. Even with the expansion of online qualifications examinations, the Exchange stated that extending the expiration date of the relief set forth in SR–NYSEAMER–2020–85 until June 30, 2021 is still needed. The Exchange stated that this temporary relief will provide flexibility to allow individuals who have been designated to function in a principal sufficient time to schedule, study for, and take the applicable examination before the temporary relief expires. Notably, the Exchange stated that it does not anticipate providing any further extensions to the temporary amendments and that any individuals designated to function as a principal on or after March 3, 2021 will need to successfully pass an appropriate qualification examination within 120 days.

For these reasons, 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 30-day operative delay and designates the proposal 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 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–NYSEAMER–2021–24 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–NYSEAMER–2021–24. 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 such 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–NYSEAMER–2021–24 and should be submitted on or before May 26, 2021.

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

J. Matthew DeLesDernier, Assistant Secretary.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Sixth Amended and Restated Bylaws of Cboe EDGX Exchange, Inc.’s Parent Corporation, Cboe Global Markets, Inc. To Implement Proxy Access

April 29, 2021. Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), 1 and Rule 19b–4 thereunder, notice is hereby given that on April 16, 2021, Cboe EDGX Exchange, Inc. (“Exchange” or “EDGX”) 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

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change with respect to amendments to the Sixth Amended and Restated Bylaws (the “CGM Bylaws”) of

22 See supra notes 13 and 14. The Exchange states that Prometric has also had to close some reopened test centers due to incidents of COVID–19 cases.
23 See supra note 13 (including the February 24, 2021 announcement of the interim accommodation process for candidates to take certain examinations, including the General Securities Principal (Series 24) Examination. online).
25 For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).
its parent corporation, Cboe Global Markets, Inc. ("Cboe" or "Corporation"). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgxf/), 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

Cboe has received a stockholder proposal submitted pursuant to Rule 14a–8 under the Act which requested that the CGM Board take steps to implement a “proxy access” bylaw provision. In general, proxy access bylaws allow a stockholder, or group of stockholders, who comply with certain requirements, to nominate candidates for service on a board and have those candidates included in a company’s proxy materials. Such provisions have become common among S&P 500 companies. Cboe has determined to take the stockholder’s requested steps to implement proxy access. Accordingly, the Exchange now proposes to make these changes by adopting new Section 2.16 of the CGM Bylaws and making certain conforming changes to current Sections 2.10 and 2.11 of the CGM Bylaws, all of which are described further below.

In developing its proposal, Cboe generally tried to balance the relative weight of arguments for and against proxy access provisions. On the one hand, Cboe recognizes the significance of this issue to some investors, who see proxy access as an important accountability mechanism that allows them to participate in board elections through the nomination of stockholder candidates that are presented in a company’s proxy statement. On the other hand, Cboe’s proposed proxy access provision includes certain procedural requirements that are designed to help ensure, among other things, that Cboe and its stockholders will have full and accurate information about nominating stockholders and their nominees and that such stockholders and nominees will comply with applicable laws, regulations and other requirements. Additionally, the Exchange notes the proposed terms are common among companies that have adopted proxy access. The Exchange also notes that the parent companies of other exchanges have adopted substantively similar proxy access provisions and the Exchange does not believe such provisions are materially different than the Exchange’s proposal.

The proposed rule change would add new Section 2.16 to the CGM Bylaws. Section 2.16 would permit a stockholder, or group of up to 20 stockholders, to nominate director nominees for the Cboe Board, so long as the stockholder(s) have owned at least three percent of Cboe’s outstanding shares of capital stock continuously for at least three years. The director nominees would be included in Cboe’s annual meeting proxy materials. The proposed provision would limit the number of proposed director nominees to the lesser of (i) two or (ii) 20% of the number of Cboe directors in office (rounded down to the nearest whole number, but no less than two) provided that the stockholder(s) and nominee(s) satisfy the other conditions specified in the CGM Bylaws as described further below.

Proposed Section 2.16(a)

The Exchange first proposes to amend the CGM Bylaws to, as set forth in the first sentence of proposed Section 2.16(a), require the Corporation to include in its proxy statement, its form proxy and any ballot distributed at the stockholder meeting, the name of, and certain Required Information about, any person nominated for election (the “Stockholder Nominee”) to the Board by a stockholder or group of stockholders (the “Eligible Stockholder”) that satisfies the requirements set forth in the proxy access provision of CGM Bylaws.

Proposed Section 2.16(a) will also make clear that Cboe is able to solicit against any Stockholder Nominee or include in its proxy materials the Corporation’s own statements or other information relating to any Eligible Stockholder or Stockholder Nominee, including any information provided to the Corporation pursuant to Section 2.16. This provision clarifies that just because Cboe must include a Stockholder Nominee in its proxy materials if the proxy access provisions are satisfied, Cboe does not necessarily have to support that nominee.

Proposed Section 2.16(b)

Proposed Section 2.16(b) will provide that in order to utilize this provision, the Eligible Stockholder must expressly request at the time of providing a required notice to the Corporation of the proxy access nomination (the “Notice of Proxy Access Nomination”) to have its nominee included in the Corporation’s proxy materials. Proposed Section 2.16(b) also establishes the deadline for a timely Notice of Proxy Access Nomination. Specifically, such a notice must be delivered to the Cboe’s Secretary at the principal executive offices of the Corporation not earlier than the open of business on the one hundred fifteenth (150th) day and not later than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the date that Cboe first distributed its proxy statement to stockholders for the previous year’s annual meeting of stockholders provided, however, that in the event the annual meeting is more than thirty (30) days before or after the anniversary date of the prior year’s

3 See 17 CFR 240.14a-8, which requires companies that are subject to the federal proxy rules to include shareholder proposals in companies’ proxy statements to shareholders, subject to certain procedural and substantive requirements.

4 More than 75% of S&P 500 companies have adopted proxy access bylaw provisions.

6 The Required Information is the information provided to Cboe’s Corporate Secretary about the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation’s proxy statement by the regulations promulgated under the Act, and if the Eligible Stockholder so elects, a written statement, not to exceed 500 words, in support of the Stockholder Nominee(s)’ candidacy (the “Supporting Statement”, as defined further below).

7 As used throughout the CGM Bylaws, the term “Eligible Stockholder” includes each member of a stockholder group that submits a proxy access nomination to the extent the context requires.

8 When the Corporation includes proxy access nominees in the proxy materials, such individuals will be included in addition to any persons nominated for election by the Board to the Board or any committee thereof.

8 When the Corporation includes proxy access nominees in the proxy materials, such individuals will be included in addition to any persons nominated for election by the Board to the Board or any committee thereof.
annual meeting, or if no annual meeting
was held in the preceding year, to be
timely, the Notice of Proxy Access
Nomination must be received at the
principal executive offices of the
Corporation no earlier than one hundred
fifty (150) days before such annual
meeting and no later than the later of
one hundred twenty (120) days before
such annual meeting or the tenth (10th)
day following the day on which public
announcement (as defined in Section
2.11) of the date of such meeting is first
made by the Corporation. Further
Section 2.16 will provide that in no
event shall any adjournment or
postponement of an annual meeting or
the announcement thereof commence a
new time period (or extend any time
period) for the giving of a Notice of
Proxy Access Nomination as described
above. Cboe believes this notice period
will provide stockholders an adequate
window to submit nominees via proxy
access, while also providing the
Corporation adequate time to diligence
a proxy access nominee before
including them in the proxy statement
for the next annual meeting of
stockholders.

Proposed Section 2.16(c)

Proposed Section 2.16(c) specifies
that the maximum number (“the
Permitted Number”) of Stockholder
Nominees nominated by all Eligible
Stockholders that will be included in
Cboe’s proxy materials with respect to
an annual meeting of stockholders shall
not exceed the greater of two or 20% of
the total number of directors in office
(rounded down to the nearest whole
number) as of the last day on which a
Notice of Proxy Access Nomination may
be delivered pursuant to and in
accordance with the proxy access
provision of the Bylaws (the “Final
Proxy Access Nomination Date”). In the
event that one or more vacancies for any
reason occurs after the Final Proxy
Access Nomination Date but before the
date of the annual meeting and the
Board resolves to reduce the size of the
Board in connection therewith, the
Permitted Number of Stockholder
Nominees included in Cboe’s proxy
materials shall be calculated based on
the number of directors in office as so
reduced. In addition, the Permitted
Number shall be reduced by (i) the
number of individuals who will be
included in the Corporation’s proxy
materials as director nominees
recommended by the Board pursuant to
an agreement, arrangement or other
understanding with a stockholder or
group of stockholders (other than any
such agreement, arrangement or
understanding entered into in
connection with an acquisition of stock
from the Corporation by such
stockholder or group of stockholders)
and/or (ii) the number of directors in
office as of the Final Proxy Access
Nomination Date who were included in
the Corporation’s proxy materials as
Stockholder Nominees for any of the
two preceding annual meetings of
stockholders (including any persons
counted as Stockholder Nominees
pursuant to the immediately succeeding
sentence) and whose reelection at the
upcoming annual meeting is being
recommended by the Board. Any
individual nominated by an Eligible
Stockholder for inclusion in the proxy
materials pursuant to the proxy access
provision of the CGM Bylaws whom the
Board decides to nominate as a nominee
of the Board, and any individual
 nominated by an Eligible Stockholder
for inclusion in the proxy materials
pursuant to the proxy access provision
but whose nomination is subsequently
withdrawn, shall be counted as one of
the Stockholder Nominees for purposes
of determining when the Permitted
Number of Stockholder Nominees has
been reached. Any Eligible Stockholder
submitting more than one Stockholder
Nominee for inclusion in the proxy
materials shall rank such Stockholder
Nominees based on the order that the
Eligible Stockholder desires such
Stockholder Nominees to be selected for
inclusion in the proxy statement in the
event that the total number of
Stockholder Nominees submitted by
Eligible Stockholders pursuant to the
proxy access provision exceeds the
Permitted Number of nominees allowed.
In the event that the number of
Stockholder Nominees submitted by
Eligible Stockholders pursuant to
Section 2.16 exceeds the Permitted
Number of nominees allowed, the
highest ranking Stockholder Nominee
who meets the requirements of the
proxy access provision of the Bylaws
from each Eligible Stockholder will be
selected for inclusion in the proxy
materials until the Permitted Number is
reached, going in order of the amount
(largest to smallest) of shares of Cboe’s
outstanding capital stock each Eligible
Stockholder disclosed as owned in its
respective Notice of Proxy Access
Nomination submitted to Cboe. If the
Permitted Number is not reached after
the highest ranking Stockholder
Nominee who meets the requirements of
the proxy access provision of the
Bylaws from each Eligible Stockholder
has been selected, then the next highest
ranking Stockholder Nominee who
meets the requirements of Section 2.16
from each Eligible Stockholder will be
selected for inclusion in the
Corporation’s proxy materials, and this
process will continue as many times as
necessary, following the same order
each time, until the Permitted Number is
reached. Additionally,
notwithstanding anything to the
contrary contained in proposed Section
2.16, Cboe will not be required to
include any Stockholder Nominees in
its proxy materials pursuant to Section
2.16 for any meeting of stockholders for
which the Secretary receives a notice
(whether or not subsequently
withdrawn) that the Eligible
Stockholder or any other stockholder
intends to nominate one or more
persons for election to the Board
pursuant to Section 2.11 of the CGM
Bylaws. Cboe believes it is reasonable to
limit the Board seats available to proxy
access nominees and to establish
procedures for selecting candidates if
the nominee limit is exceeded. The
limitation on Board seats available to
proxy access nominees ensures that
proxy access cannot be used to take over
the entire Board, which is not the stated
purpose of proxy access campaigns. The
procedures for selecting candidates if
the nominee limit is exceeded establish
clear and rational guidelines for an
ordinarily nomination process to avoid
the Corporation having to make arbitrary
judgments among candidates.

Proposed Section 2.16(d)

Proposed Section 2.16(d) defines who
may qualify as an “Eligible
Stockholder”. Particularly, an Eligible
Stockholder is a stockholder or group of
no more than 20 stockholders that (i)
has owned continuously for at least
three years (the “Minimum Holding
Period”) a number of shares of capital
stock of the Corporation that represents
at least three percent of the outstanding
shares of capital stock of the
Corporation as of the date the Notice of
Proxy Access Nomination is received
(“Required Shares”), (ii) continues
to own the Required Shares through the
date of the annual meeting and (iii)
meets all other requirements of
proposed Section 2.16. Cboe believes it
is reasonable to require each member of
a nominating group to provide such
information so that both the Corporation
and its stockholders are fully informed
about the entire group making the proxy

Footnote 9

For this purpose, any two or more funds that are
part of the same Qualifying Fund Group may be
counted as one stockholder. A “Qualifying Fund
Group” means two or more funds that are (i)
under common management and investment control,
(ii) under common management and funded primarily
by the same employer or (iii) a “group of
investment companies” as such term is defined in
Section 12(d)(1)(G)(ii) of the Investment
Corporation Act of 1940, as amended.
access nomination. As such, Section 2.16(d) further makes clear that whenever the Eligible Stockholder consists of a group of stockholders (including a group of funds that are part of the same Qualifying Fund Group), (i) each provision in Section 2.16 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares that each member has owned continuously for the Minimum Holding Period in order to meet the three percent ownership requirement of the "Required Shares" definition) and (ii) a breach of any obligation, agreement or representation under Section 2.16 by any member of such group shall be deemed a breach by the Eligible Stockholder. No stockholder may be a member of more than one group of stockholders constituting an Eligible Stockholder with respect to any annual meeting.

Proposed Section 2.16(e)

Proposed Section 2.16(e) clarifies, for the avoidance of doubt, how "ownership" will be defined for purposes of meeting the ownership requirements of the Required Shares. Specifically, an Eligible Stockholder shall be deemed to "own" only those outstanding shares of Cboe's capital stock as to which the stockholder possesses both: (i) The full voting and investment rights pertaining to the shares; and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares: (A) That are (1) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed; (2) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell; or (3) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument or agreement entered into by such stockholder or any of its affiliates, whether an instrument or agreement is to be settled with shares or with cash based on the notional amount

or value of shares of Cboe's outstanding capital stock, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (A) Reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares; and/or (B) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or its affiliates.

Further, a stockholder shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's ownership of shares shall be deemed to continue during any period in which (i) the stockholder has loaned such shares provided that the stockholder has the power to recall such loaned shares on five (5) business days' notice and includes in the Notice of Proxy Access Nomination an agreement that it will (1) recall such loaned shares upon being notified that any of its Stockholder Nominees will be included in the Corporation's proxy materials and (2) hold such shares through the date of the annual meeting or (ii) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. Section 2.16(e) also clarifies that the terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of Cboe's capital stock are "owned" by these purposes shall be determined by the Board. For purposes of Section 2.16, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the rules and regulations of the Act. 10 An Eligible Stockholder shall include in its Notice of Proxy Access Nomination the number of shares it is deemed to own for the purposes of proposed Section 2.16. In proposing the Required Shares and the Minimum Holding Period, Cboe seeks to ensure that the Eligible Stockholder has had a sufficient stake in the Corporation for a sufficient amount of time and is not pursuing a short-term agenda.

Proposed Section 2.16(f)

Proposed Section 2.16(f) sets forth the information that an Eligible Stockholder must provide to Cboe's Corporate Secretary in writing within the deadline discussed above in order to make a proxy access nomination. This information includes:

• A statement by the Eligible Stockholder (1) setting forth and certifying as to the number of shares it owns and has owned continuously for the Minimum Holding Period and (2) agreeing to continue to own the Required Shares through the date of the annual meeting;

• one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven calendar days prior to the date the Notice of Proxy Access Nomination is delivered to Cboe's Secretary at the principal executive offices of the Corporation, the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide, within five (5) business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date:

• a copy of the Schedule 14N that has been filed with the SEC as required by Rule 14a–18 under the Act; 11

• the information, representations and agreements and other documents that are required to be set forth in or included with a stockholder’s notice of nomination given pursuant to Section 2.11 of the CGM Bylaws;

• the written consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected;

• a representation that the Eligible Stockholder:

- Acquired the Required Shares in the ordinary course of business and not with the intent to change or influence
control of Choe, and does not presently have such intent;
• has not nominated and will not nominate for election any individual as a director at the annual meeting, other than its Stockholder Nominee(s);
• has not engaged and will not engage in, and has not and will not be a participant in another person’s, “solicitation” within the meaning of Rule 14a–1(l) under the Act in support of the election of any individual as a director at the annual meeting, other than its Stockholder Nominee(s) or a nominee of the Board;
• has not distributed and will not distribute to any stockholder of the Corporation any form of proxy for the annual meeting other than the form distributed by the Corporation;
• has complied and will comply with all laws, rules and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting, and
• has provided and will provide facts, statements and other information in all communications with Choe and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
• an undertaking that the Eligible Stockholder agrees to
• Assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder’s communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation;
• Indemnify and hold harmless the Corporation and each of its Directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its Directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this Section 2.16 or any solicitation or other activity in connection therewith; and
• file with the Securities and Exchange Commission any solicitation or other communication with the stockholders of the Corporation relating to the meeting at which its Stockholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Act;
• in the case of a nomination by a group of stockholders that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to receive communications, notices and inquiries from the Corporation and to act on behalf of all members of the group with respect to all matters relating to the nomination under this Section 2.16 (including withdrawal of the nomination);
• in the case of a nomination by an Eligible Stockholder consisting of a group of stockholders in which two or more funds are intended to be treated as one stockholder for purposes of qualifying as an Eligible Stockholder, documentation reasonably satisfactory to the Corporation that demonstrates that the funds are part of the same Qualifying Fund Group; and
• a written representation and agreement by the Stockholder Nominee that such person:
  • Will act as a representative of all of the stockholders of the Corporation while serving as a director;
  • will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects (and shall not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading);
  • is not and will not become a party to (i) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation, (ii) any Voting Commitment that has not been disclosed to the Corporation or (iii) any Voting Commitment 12 that could reasonably be expected to limit or interfere with the Stockholder Nominee’s ability to comply, if elected as a director of the Corporation, with its fiduciary duties under applicable law; and
  • will abide by and comply with the Cboe Bylaws, the Certificate of Incorporation and applicable policies of the Corporation including all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation, as well as the applicable provisions of the rules and regulations of the Securities and Exchange Commission and any stock exchange applicable to the Corporation.

In proposing the informational requirements for the Eligible Stockholder, Choe’s goal is to gather sufficient information about the Eligible Stockholder for both itself and its stockholders. Among other things, this information is designed to help ensure that Choe is able to comply with its disclosure and other requirements under applicable law and that Choe, its Board and its stockholders are able to assess the proxy access nomination adequately.

Proposed Section 2.16(g)

Proposed Section 2.16(g) establishes additional information the Stockholder Nominee must provide. Particularly:
• The Stockholder Nominee(s) must submit all completed and signed questionnaires required of directors and officers of the Corporation;
• the Corporation may require any proposed Stockholder Nominee to furnish any information:
  • That may reasonably be requested by the Corporation to determine whether the Stockholder Nominee would be independent under Section 3.3 and otherwise qualifies as independent under the rules of the principal national securities exchange on which the outstanding capital stock of the Corporation is traded;
  • that could be material to a reasonable stockholder’s understanding of the independence, or lack thereof, of such Stockholder Nominee;
  • that would be required to satisfy the requirements for qualification of directors under applicable foreign regulations; or
  • (that may reasonably be requested by the Corporation to determine the eligibility of such Stockholder Nominee to be included in the Corporation’s proxy materials pursuant to this Section 2.16 or to serve as a director of the Corporation; and
  • the Corporation may require the Eligible Stockholder to furnish any other information that may reasonably be requested by the Corporation to verify the Eligible Stockholder’s continuous Ownership of the Required Shares for the Minimum Holding Period and through the date of the annual meeting.

Like the informational requirements for any Eligible Stockholder, which are set forth above, the informational requirements for the Stockholder
Nominees ensure that both Choe and its stockholders will have sufficient information about the Stockholder Nominee. Among other things, this information will ensure that Choe is able to comply with its disclosure and other requirements under applicable law and that Choe, its Board and its stockholders are able to assess the proxy access nomination adequately.

Proposed Section 2.16(h)

Proposed Section 2.16(h) provides that an Eligible Stockholder may provide, at its option, to the Secretary, at the time the Notice of Proxy Access Nomination is provided, a written statement, not to exceed 500 words, in support of its Stockholder Nominee(s)’ candidacy (a “Supporting Statement”). Only one Supporting Statement may be submitted by an Eligible Stockholder (including any group of stockholders together constituting an Eligible Stockholder) in support of its Stockholder Nominee(s).

Notwithstanding anything to the contrary contained in Section 2.16, the Corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes is untrue in any material respect (or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or would violate any applicable law, rule or regulation. The Exchange notes proposed Section 2.16(h) allows Cboe to comply with Rule 14a–9 under the Act and to protect its stockholders from information that is materially untrue or that violates any law, rule or regulation. Proposed Section 2.16(i)

Pursuant to proposed Section 2.16(i), each Eligible Stockholder or Stockholder Nominee must promptly notify Choe’s Corporate Secretary of any information or communications provided by the Eligible Stockholder or Stockholder Nominee, as the case may be, to Choe or its stockholders that when provided was not, or thereafter ceases to be, true and correct in all material respects or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading and of the information that is required to correct any such defect. An Eligible Stockholder shall also provide immediate notice to the Corporation if the Eligible Stockholder ceases to own any of the Required Shares prior to the date of the annual meeting. In addition, any person providing any information to the Corporation pursuant to Section 2.16(i) shall be required to update or supplement such information, if necessary, so that all such information shall be true and correct as of the (i) as of the record date for determining the stockholders entitled to receive notice of the meeting and (ii) as of the date that is ten (10) business days after the record date for determining the stockholders entitled to receive notice of such meeting (in the case of an update required to be made under clause (i)) and (B) not later than seven (7) business days prior to the date for the meeting, if practicable, or, if not practicable, on the first practicable date prior to the meeting or adjournment, recess or postponement thereof (in the case of an update required to be made pursuant to clause (ii)).

This provision further makes clear that providing any such notification, update or supplement, shall not be deemed to cure any defect in any previously provided information or communications or limit the remedies available to the Corporation relating to such defect (including the right to omit a Stockholder Nominee from its proxy materials). This provision is intended to protect Choe’s stockholders by requiring an Eligible Stockholder or Stockholder Nominee to give Choe notice of information previously provided that is materially untrue. Choe may then decide what action to take with respect to such defect, which may include, as noted above, omitting the relevant Stockholder Nominee from its proxy materials.

Proposed Section 2.16(j)

Proposed Section 2.16(j) provides that Choe shall not be required to include a Stockholder Nominee in its proxy materials for any meeting of stockholders under certain circumstances. In these situations, the proxy access nomination shall be disregarded and no vote on such Stockholder Nominee will occur, even if Choe has received proxies in respect of the vote. These circumstances occur when the Stockholder Nominee:

- Would not be an independent director under Section 3.3, under the rules of the principal national securities exchange on which the outstanding capital stock of the Corporation is traded, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board in determining and disclosing independence of the Corporation’s directors, in each case as determined by the Board in its sole discretion;

- would not meet the audit committee independence requirements under the rules of the principal national securities exchange on which the outstanding capital stock of the Corporation is traded;

- if elected, intended to resign as a director of the Corporation prior to the end of the full term for which he or she is standing for election;

- is or has been subject to any statutory disqualification under Section 3(a)(39) of the Act;

- is or has been subject to disqualification under 17 CFR 1.63;

- if elected, would cause the Corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules of the principal national securities exchange on which the outstanding capital stock of the Corporation is traded, or any applicable law, rule or regulation;

- is or has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914;

- is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past 10 years;

- is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended;

- has provided any information to the Corporation or its stockholders that was untrue in any material respect or that omitted to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading; or

- breaches or fails, or the Eligible Stockholder breaches or fails, to comply with its obligations pursuant to the CGM Bylaws, including, but not limited to, Section 2.16 and any agreement, representation or undertaking required by Section 2.16.

Choe believes these provisions will protect the Corporation and its stockholders by allowing it to exclude certain categories of objectionable
Stockholder Nominees from the proxy statement.

Proposed Section 2.16(k)

Proposed Section 2.16(k) provides that notwithstanding anything to the contrary contained in the CGM Bylaws, if (i) a Stockholder Nominee and/or the applicable Eligible Stockholder breaches any of its agreements or representations or fails to comply with any of its obligations under this Section 2.16 or (ii) a Stockholder Nominee otherwise becomes ineligible for inclusion in the Corporation’s proxy materials pursuant to this Section 2.16, or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the Board or the chairman of the meeting, (1) the Corporation may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the related Supporting Statement from its proxy materials and/or other written communications to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting, (2) the Corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder and (3) the chairman of the meeting shall declare such nomination to be invalid and such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. Cboe proposes that this provision protects the Corporation and its stockholders by providing the Board or the chairman of the stockholder meeting limited authority to disqualify a proxy access nominee when that nominee or the sponsoring stockholder(s) have breached an obligation under the proxy access provision.

Proposed Section 2.16(l)

Proposed Section 2.16(l) states that the following Stockholder Nominees who are included in the Corporation’s proxy materials for a particular annual meeting of stockholders will be ineligible to be a Stockholder Nominee for the next two annual meetings: (i) Stockholder Nominee who withdraws from or becomes ineligible or unavailable for election at the annual meeting; or (ii) Stockholder Nominee who does not receive at least 25% of the votes cast in favor of such Stockholder Nominee’s election. For the avoidance of doubt, Proposed Section 2.16(l) also clarifies that this provision shall not prevent any stockholder from nominating any person to the Board pursuant to Section 2.11 of the CGM Bylaws. Section 2.16(l) will save the Corporation and its stockholders the time and expense of analyzing and addressing subsequent proxy access nominations regarding individuals who were included in the proxy materials for a particular annual meeting but ultimately did not stand for election or receive a substantial amount of votes. After the next two annual meetings, these Stockholder Nominees would again be eligible for nomination through the proxy access provisions of the Bylaws.

Proposed Section 2.16(m)

Proposed Section 2.16(m) provides that notwithstanding the provisions of proposed Section 2.16, if the Eligible Stockholder providing notice (or a qualified representative of the Eligible Stockholder) does not appear in person (including virtually, in the case of a meeting held solely by means of remote communication) at the stockholder meeting to present the nomination of such Stockholder Nominee, such proposed nomination shall not be presented by the Corporation and shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. Cboe proposes to add this provision to Section 2.16 to clarify the exact bylaw provisions relating to stockholder nominees. Next, the Exchange proposes to amend Section 2.11 and proposed Section 2.16 to provide clarifications and make conforming changes to Sections 2.10 and 2.11 to provide clarifications and prevent confusion. First, the Exchange proposes to make a number of changes to Sections 2.10 and 2.11, including, among other things, that compliance with Section 2.11 shall be the exclusive means for stockholders to include nominees in the Corporation’s proxy materials. Stockholders may, of course, continue to propose nominees through other means, but the Board will have final authority to determine whether to include those nominees in the Corporation’s proxy materials.

Revisions to Other Sections of the Bylaws

Cboe also proposes to make conforming changes to Sections 2.10 and 2.11 to provide clarifications and prevent confusion. First, the Exchange proposes to add a reference to Section 2.11 and proposed Section 2.16 to clarify the exact bylaw provisions relating to stockholder nominees. Next, the Exchange proposes to amend Section 2.11. Section 2.11 currently describes the business that may be properly brought before an annual meeting of stockholders and the methods by which nominations of persons for election to the Board may be made at an annual meeting of stockholders. Cboe proposes to add proxy access nominations (i.e., reference to Section 2.16) to the list of methods. Current Section 2.11(a)(i) also states, among other things, that compliance with Section 2.11 shall be the exclusive means for a stockholder to propose business or director nominations before an annual meeting of stockholders. Cboe proposes to amend Sections 2.11 and 2.16 to provide clarifications and make conforming changes to Sections 2.10 and 2.11 to provide clarifications and prevent confusion. First, the Exchange proposes to make a number of changes to Sections 2.10 and 2.11.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section
6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. In light of a shareholder proposal received from a stockholder, Choe is proposing changes to its Bylaws to implement proxy access. The Exchange believes that this filing furthers the objectives of Section 6(b)(5) of the Act because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. Particularly, the Exchange believes that, by permitting an Eligible Stockholder of Cboe that meets the stated requirements to nominate directors and have its nominees included in Cboe’s annual meeting proxy statement, the proposed rule change strengthens the corporate governance of the Exchange’s ultimate parent company, which is beneficial to both investors and the public interest. Additionally, the procedural requirements are designed to help protect investors by stating clearly and explicitly the procedures stockholders must follow in order to submit a proper proxy access nomination. The informational requirements are designed to enhance investor protection by helping to ensure among other things, that the Corporation and its stockholders have full and accurate information about nominating stockholders and their nominees and that such stockholders and nominees comply with applicable laws, regulations and other requirements. Moreover, as noted above, proxy access has become commonplace among companies and the Exchange believes its core provisions are common among companies that have adopted proxy access, including the parent companies of other exchanges that have adopted similar proxy access provisions.

Finally, the remaining changes to existing provisions of the CCM Bylaws are clarifying in nature, and they enhance investor protection and the public interest by preventing confusion with respect to the operation of the Bylaw provisions.

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

Because the proposed rule change relates to the governance of the Corporation and not to the operations of the Exchange, the Exchange 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. The proposed rule change is not designed to address any competitive issue or have any impact on competition; rather, adoption of a proxy access bylaw by the Corporation is intended to enhance corporate governance and accountability to stockholders.

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

The Exchange neither solicited nor received comments on 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 Exchange consents, the Commission shall: (a) By order approve or disapprove such 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
• Send an email to rule-comments@sec.gov. Please include File Number SR–CboeEDGX–2021–021 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–CboeEDGX–2021–021. 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–CboeEDGX–2021–021 and should be submitted on or before May 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.17

J. Matthew DeLesDernier,
Assistant Secretary.

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