SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Sixth Amended and Restated Bylaws of Cboe 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,2 the Securities and Exchange Commission ("SEC" or "Commission") is publishing this notice to solicit comments on the proposed rule change and discussed any comments it received 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 Exchange, Inc. (the "Exchange" or "Cboe Options") is filing with the SEC and Exchange 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.

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 3 which requested that the Cboe 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.4 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 Cboe Bylaws and making certain conforming changes to current Sections 2.10 and 2.11 of the Cboe 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.5

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 greater 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 Cboe Bylaws as described further below.

Proposed Section 2.16(a)

The Exchange first proposes to amend the Cboe 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 6 about, any person nominated for election (the “Stockholder Nominee”) to the Board by a stockholder or group of stockholders (the “Eligible Stockholder”) 7 that satisfies the requirements set forth in the proxy access provision of Cboe Bylaws.8

Proposed Section 2.16(a) will also make clear that Cboe is able to solicit against any Stockholder Nominee or include in

---

2 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).
3 More than 75% of S&P 500 companies have adopted proxy access bylaw provisions.
5 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.
7 As used throughout the Cboe 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 or at the direction of the Board to the Board or any committee thereof.
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 no earlier than one hundred fifty (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 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 Cboe Bylaws was 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 of the Bylaws whom the Board resolves to reduce the size of the Board in connection with a reduction in the number of directors in office as so reduced 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 measures 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 orderly 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 (the "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 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: 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 any such 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 where such 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) will 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” for 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. 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 or (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 Notice of Proxy Access Nomination is delivered to Choe’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:
  o 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;
  o has not nominated and will not
nominate for election any individual as
a director at the annual meeting, other
than its Stockholder Nominee(s);
  o 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;
  o 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;
  o 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
  o 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
  o 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;
  o 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
  o 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:
  o Will act as a representative of all of
the stockholders of the Corporation
while serving as a director;
  o 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);
  o 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 Commitment12 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
  o will abide by and comply with the
CGM 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

18, which generally require a Nominating
Stockholder to provide notice to the Corporation of
its intent to submit a proxy access nomination on
a Schedule 14N and file that notice, including the
required disclosure, with the Commission on the
date first transmitted to the Corporation.

12 A “Voting Commitment” is defined as any
agreement, arrangement or understanding with any
person or entity as to how the Stockholder
Nominee would vote or act on any issue or question as a
director.
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 an Eligible Stockholder, which are set forth above, the informational requirements for the Stockholder Nominee ensure that both Cboe and its stockholders will have sufficient information about the Stockholder Nominee. Among other things, this information will ensure that Cboe is able to comply with its disclosure and other requirements under applicable law and that Cboe, its Board and its stockholders are able to assess the proxy access nomination adequately.

Proposed Section 2.16(i)

Proposed Section 2.16(i) provides that Cboe 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 Cboe has received proxies in respect of 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 prior to the meeting (or any postponement, adjournment or recess thereof), and such update shall be received by the Secretary at the principal executive offices of the Corporation (A) not later than five (5) 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 any 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 Cboe’s stockholders by requiring an Eligible Stockholder or Stockholder Nominee to give Cboe notice of information previously provided that is materially untrue. Cboe 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 Cboe 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 Cboe has received proxies in respect of 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 prior to the meeting (or any postponement, adjournment or recess thereof), and such update shall be received by the Secretary at the principal executive offices of the Corporation (A) not later than five (5) 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 any 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 Cboe’s stockholders by requiring an Eligible Stockholder or Stockholder Nominee to give Cboe notice of information previously provided that is materially untrue. Cboe 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 Cboe 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 Cboe has received proxies in respect of 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 prior to the meeting (or any postponement, adjournment or recess thereof), and such update shall be received by the Secretary at the principal executive offices of the Corporation (A) not later than five (5) 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 any 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 Cboe’s stockholders by requiring an Eligible Stockholder or Stockholder Nominee to give Cboe notice of information previously provided that is materially untrue. Cboe 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 Cboe 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 Cboe has received proxies in respect of 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 prior to the meeting (or any postponement, adjournment or recess thereof), and such update shall be received by the Secretary at the principal executive offices of the Corporation (A) not later than five (5) 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 any 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 Cboe’s stockholders by requiring an Eligible Stockholder or Stockholder Nominee to give Cboe notice of information previously provided that is materially untrue. Cboe 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 Cboe 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 Cboe has received proxies in respect of 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 prior to the meeting (or any postponement, adjournment or recess thereof), and such update shall be received by the Secretary at the principal executive offices of the Corporation (A) not later than five (5) 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 any 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 Cboe’s stockholders by requiring an Eligible Stockholder or Stockholder Nominee to give Cboe notice of information previously provided that is materially untrue. Cboe 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.
• 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.

Cboe 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, 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. For purposes of this Section 2.16, to be considered a qualified representative of the Eligible Stockholder providing notice, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting and such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, must be provided to the Corporation at least twenty-four (24) hours prior to the meeting.

Proposed Section 2.16(n)
In case there are matters involving a proxy access nomination that are open to interpretation, proposed Section 2.16(n) states that the Board (or any other person or body authorized by the Board) shall have exclusive power and authority to interpret the proxy access provisions of the Bylaws and make all determinations deemed necessary or advisable in connection with proposed Section 2.16 as to any person, facts or circumstances. In addition, all actions, interpretations and determinations of the Board (or any person or body authorized by the Board) with respect to the proxy access provisions shall be final, conclusive and binding on the Corporation, the stockholders and all other parties. While Cboe has attempted to implement a clear, detailed and thorough proxy access provision, there may be matters about future proxy access nominations that are open to interpretation. In these cases, Cboe believes it is reasonable and necessary to designate an arbiter to make final decisions on these points and that the Board is best-suited to act as that arbiter.

Proposed Section 2.16(o)
For the avoidance of doubt, proposed Section 2.16(o) states that the proxy access provisions outlined in proposed Section 2.16 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 stockholders. The Exchange proposes to clarify that Sections 2.11 and 2.16 are the exclusive means for a stockholder to make a director nomination.

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. 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 CGM 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)

• Send an email to rule-comments@sec.gov. Please include File Number SR–CBOE–2021–023 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–CBOE–2021–023. 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
SEcurities And ExChange COMmission

Sunshine Act Meeting: Date Change


PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, May 6, 2021 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, May 6, 2021 at 2:00 p.m., has been changed to Friday, May 7, 2021 at 1:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.


Vanessa A. Countryman, Secretary.

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.