

**Abstract (Needs and Uses):** The Request for Registration for Political Risk Insurance is the screening document used by OPIC to review investor and project eligibility for political risk insurance.

Dated: May 22, 2018.

**Nichole Skoyles,**

*Administrative Counsel, Department of Legal Affairs.*

[FR Doc. 2018-11350 Filed 5-25-18; 8:45 am]

**BILLING CODE 3210-01-P**

## OFFICE OF PERSONNEL MANAGEMENT

### President's Commission on White House Fellowships Advisory Committee: Closed Meeting

**AGENCY:** President's Commission on White House Fellowships, Office of Personnel Management.

**ACTION:** Notice of meeting.

**SUMMARY:** The President's Commission on White House Fellowships (PCWHF) was established by an Executive Order in 1964. The PCWHF is an advisory committee composed of Special Government Employees appointed by the President. The Advisory Committee meets in June to interview potential candidates for recommendation to become a White House Fellow.

The meeting is closed.

**Name of Committee:** President's Commission on White House Fellowships Selection Weekend.

**Date:** June 7–10, 2018.

**Time:** 8:00am–5:30pm.

**Place:** St. Regis Hotel, 16th and K Street, Washington, DC 20006.

**Agenda:** The Commission will interview 30 National Finalists for the selection of the new class of White House Fellows.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth D. Pinkerton, 712 Jackson Place NW, Washington, DC 20503, Phone: 202-395-4522.

President's Commission on White House Fellowships.

**Elizabeth D. Pinkerton,**  
*Director.*

[FR Doc. 2018-11394 Filed 5-25-18; 8:45 am]

**BILLING CODE 6325-44-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83303; File No. SR-CHX-2018-004]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, in Connection With a Proposed Transaction Involving CHX Holdings, Inc. and the Intercontinental Exchange, Inc.

May 22, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 8, 2018, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On May 17, 2018, the Exchange filed Amendment No. 1 to the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

CHX proposes a rule change in connection with a transaction ("Transaction") whereby a wholly-owned subsidiary of NYSE Group, Inc. ("NYSE Group") would merge with and into the Exchange's parent, CHX Holdings, Inc. ("CHX Holdings"), with CHX Holdings continuing as the surviving corporation ("Merger"). Pursuant to the Transaction, the Exchange and CHX Holdings would become indirect subsidiaries of Intercontinental Exchange, Inc. ("ICE").

In connection with the proposed Transaction, the Exchange proposes to (a) amend the governing documents of the Exchange and CHX Holdings; (b) adopt organizational documents of NYSE Group, NYSE Holdings LLC ("NYSE Holdings"), Intercontinental Exchange Holdings, Inc. ("ICE Holdings"), and ICE as rules of the Exchange; and (c) amend Article 2, Article 19 and Article 22 of the CHX Rules.

- The text of the proposed Amended and Restated Certificate of Incorporation of the Chicago Stock Exchange, Inc. ("CHX Certificate") and proposed Amended and Restated Bylaws of the

Chicago Stock Exchange, Inc. ("CHX Bylaws") is attached as Exhibits 5A and 5B, respectively. The text of the proposed Second Amended and Restated Certificate of Incorporation of CHX Holdings, Inc. ("CHX Holdings Certificate") and proposed Second Amended and Restated Bylaws of CHX Holdings, Inc. ("CHX Holdings Bylaws") is attached as Exhibits 5C and 5D, respectively.

- The text of the Seventh Amended and Restated Certificate of Incorporation of NYSE Group, Inc. ("NYSE Group Certificate") and Fourth Amended and Restated Bylaws of NYSE Group, Inc. ("NYSE Group Bylaws") is attached as Exhibits 5E and 5F, respectively. The text of the Ninth Amended and Restated Limited Liability Company Agreement of NYSE Holdings LLC ("NYSE Holdings Operating Agreement") is attached as Exhibit 5G. The text of the Ninth Amended and Restated Certificate of Incorporation of Intercontinental Exchange Holdings, Inc. ("ICE Holdings Certificate") and Sixth Amended and Restated Bylaws of Intercontinental Exchange Holdings, Inc. ("ICE Holdings Bylaws") are attached as Exhibits 5H and 5I, respectively. The text of the Fourth Amended and Restated Certificate of Incorporation of Intercontinental Exchange, Inc. ("ICE Certificate"), Eighth Amended and Restated Bylaws of Intercontinental Exchange, Inc. ("ICE Bylaws") and Independence Policy of the Board of Directors of Intercontinental Exchange, Inc. ("ICE Independence Policy") is attached as Exhibits 5J, 5K, and 5L, respectively.

- The proposed changes to CHX Article 2, Rules 2 (Executive Committee), 3 (Finance Committee), 4 (Regulatory Oversight Committee), and 11 (Nominating and Governance Committee) and CHX Article 19, Rule 2 (Routing Brokers), as well as proposed new CHX Article 22, Rule 28 (Additional Requirements for Listed Securities Issued by Intercontinental Exchange, Inc. or its Affiliates), are attached as Exhibit 5M, and the text of resolutions of the Board of Directors of CHX Holdings dated April 25, 2018 to waive certain ownership and voting limitations to permit the Transaction ("Resolutions") is attached as Exhibit 5N.

As discussed below, the Exchange proposes that the above rule changes would become operative simultaneously with the Merger that effectuates the Transaction ("Closing"), with the exception that the proposed addition of new Section XII to the CHX Holdings Bylaws would become operative immediately before the Closing.

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

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

The text of this proposed rule change is available on the Exchange's website at <http://www.chx.com/regulatory-operations/rule-filings/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

#### 1. Purpose

The Exchange proposes a rule change in connection with the Transaction whereby a wholly-owned subsidiary of NYSE Group would merge with and into the Exchange's parent, CHX Holdings, with CHX Holdings continuing as the surviving corporation. Pursuant to the Transaction, the Exchange and CHX Holdings would become indirect subsidiaries of ICE.

Following the Transaction, the Exchange would continue to be registered as a national securities exchange and as a separate self-regulatory organization ("SRO"). As such, the Exchange would continue to have separate rules, membership rosters, and listings that would be distinct from the rules, membership rosters, and listings of the four other registered national securities exchanges and SROs owned by NYSE Group, namely, the New York Stock Exchange LLC ("NYSE"), NYSE American LLC ("NYSE American"), NYSE Arca, Inc. ("NYSE Arca"), and NYSE National, Inc. ("NYSE National") and together with the NYSE, NYSE American and NYSE Arca, the "NYSE Exchanges").

The Exchange notes that the proposed rule change presents no novel issues, as all of the proposed rule text is based on existing rules of the NYSE Exchanges or, in the case of the proposed amendments to the CHX Holdings Bylaws, the Exchange.

## I. Current and Proposed Ownership of the Exchange

Since 2005, CHX has been a wholly-owned subsidiary of CHX Holdings.<sup>3</sup> CHX Holdings is the record and beneficial owner of 1,000 shares of CHX, par value \$.01 per share, which represents all of the issued and outstanding shares of capital stock of CHX.

CHX Holdings is beneficially owned by 197 firms or individuals, including Participants<sup>4</sup> or affiliates of Participants, many of whom were former seat holders on the Exchange prior to its demutualization in 2005. Four firms hold Series A Preferred Stock and seven individuals hold Series B Preferred Stock. No firm, individual, or group of affiliated firms or individuals beneficially owns 10 percent or more of CHX Holdings on an as-converted basis.

CHX Holdings is the sole member of CHXBD, LLC ("CHXBD"), the Exchange's affiliated routing broker. CHXBD is a facility (as defined in Section 3(a)(2) of the Exchange Act)<sup>5</sup> of the Exchange.<sup>6</sup> Pursuant to Article 19, Rule 2 (Routing Broker) of the CHX Rules, CHXBD provides the outbound routing of orders from the Exchange to other trading centers.<sup>7</sup>

NYSE Group is a wholly-owned subsidiary of NYSE Holdings, which is in turn wholly owned by ICE Holdings. ICE Holdings is wholly-owned by ICE.<sup>8</sup>

CHX Holdings, ICE and Kondor Merger Sub, Inc. ("Merger Sub"), entered into a Merger Agreement dated April 4, 2018 ("Merger Agreement"). Merger Sub is a wholly-owned subsidiary of NYSE Group. Pursuant to the Merger Agreement, at the Closing, Merger Sub would merge with and into CHX Holdings, and CHX Holdings would be the entity surviving the Merger. Current holders of the common

<sup>3</sup> CHX became a wholly-owned subsidiary of CHX Holdings pursuant to the Exchange's demutualization as approved by the Commission in February 2005. See Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR-CHX-2004-26) ("Demutualization Release"). The Exchange and CHX Holdings are Delaware corporations.

<sup>4</sup> A "Participant" is considered a "member" of the Exchange for purposes of the Exchange Act. See CHX, Article 1, Rule 1(s) (Definitions).

<sup>5</sup> 15 U.S.C. 78c(a)(2).

<sup>6</sup> See CHX, Article 19, Rule 2(a)(1) (Routing Brokers). The Exchange does not propose to amend Article 19, Rule 2 or to alter the obligations Article 19, Rule 2(a) places on the Exchange and CHXBD.

<sup>7</sup> Participants' use of CHXBD to route orders to away trading centers is optional, and any Participant that does not wish to use CHXBD may use other broker-dealers to route orders to other trading centers. See *id.*

<sup>8</sup> ICE is a public company listed on the NYSE. ICE, ICE Holdings, and NYSE Group are Delaware corporations and NYSE Holdings is a Delaware limited liability corporation.

and preferred stock of CHX Holdings would receive cash in exchange for their shares.

Upon Closing, NYSE Group will hold all of the outstanding and issued shares of CHX Holdings, and CHX Holdings will continue to be the record and beneficial owner of all of the issued and outstanding shares of capital stock of CHX and the sole member of CHXBD. Closing is subject to satisfaction of customary conditions for a transaction of this nature, including approval of this proposed rule change by the Securities and Exchange Commission ("Commission").

Moreover, upon the Closing, Archipelago Securities, LLC ("ArcaSec"), a Participant of the Exchange and wholly-owned subsidiary of NYSE Group, will become an affiliate of the Exchange. CHX Article 3, Rule 20 (Non Affiliation between Exchange and any Participant) provides, in pertinent part, that a Participant shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange, in the absence of an effective filing under Section 19(b) of the Exchange Act.<sup>9</sup> The Exchange and Archipelago will each operate in essentially the same manner upon Closing as it operates today. That is, upon the Closing, ArcaSec will not operate as a "facility" of the Exchange, as defined under Section 3(a)(2) of the Exchange Act,<sup>10</sup> and will continue to act, and be regulated by the Exchange, as a Participant on the same terms as any other Participant, apart from CHXBD. Accordingly, the Exchange submits that the proposed affiliation between the Exchange and ArcaSec would not result in unfair discrimination between Participants and is therefore permissible and consistent with the requirements of CHX Article 3, Rule 20 and Section 6(b)(5) of the Exchange Act.<sup>11</sup>

As discussed in further detail below, to effectuate the change in the ownership structure in connection with the proposed Transaction, the Exchange proposes the following:

- The CHX Holdings Certificate includes certain restrictions on the ownership and voting of shares of CHX Holdings (the "Ownership and Voting Limitations").<sup>12</sup> At Closing, NYSE

<sup>9</sup> 15 U.S.C. 78s(b).

<sup>10</sup> 15 U.S.C. 78c(a)(2).

<sup>11</sup> 15 U.S.C. 78ff(b)(5). The Exchange notes that CHXBD is not a member, for purposes of the Exchange Act, of any of the NYSE Exchanges. As discussed below, the Exchange proposes to add a new subsection (b) to Article 19, Rule 2 to address the role of ArcaSec as an inbound router.

<sup>12</sup> See CHX Holdings Certificate, Article FIFTH, Paragraph (b).

Group would acquire all of the shares of CHX Holdings, which would violate the Ownership and Voting Limitations unless such limitations are waived. In order to effectuate the waiver, in accordance with the CHX Holdings Certificate,<sup>13</sup> the CHX Holdings Board (a) approved the Resolutions, and (b) proposes to add a new Article XII, Section 12.1 to the CHX Holdings Bylaws (the “Bylaw Waiver Amendment”). So that the Bylaw Waiver Amendment and Resolutions may effectuate a waiver of the Ownership and Voting Limitations and thereby permit the Transaction, the Bylaw Waiver Amendment would be operative immediately before the Closing.

- The Exchange proposes amendments to the CHX Certificate and CHX Bylaws that would conform the Exchange’s governance provisions regarding the composition, election and terms of the Exchange Board to those of other NYSE Exchanges. These proposed changes would be operative upon Closing.

- The Exchange proposes amendments to the CHX Holdings Certificate and CHX Holdings Bylaws that would make the governing documents of the Exchange’s direct parent, CHX Holdings, consistent with those of NYSE Group, NYSE Holdings, ICE Holdings, and ICE (together, the “ICE Holding Companies”). These proposed changes would be operative upon Closing.

- The Exchange proposes to amend CHX Article 2, Rules 2, 3, 4, and 11, to reflect proposed changes to the CHX Bylaws and CHX Certificate. These proposed changes would be operative upon Closing.

## II. Proposed Rule Changes to Waive the Ownership and Voting Limitations

Article FIFTH of the CHX Holdings Certificate provides that that no Person,<sup>14</sup> either alone or together with its Related Persons,<sup>15</sup> may, directly or indirectly:

<sup>13</sup> See CHX Holdings Certificate, Article FIFTH, Paragraphs (b)(iii)(B) and (b)(iv).

<sup>14</sup> CHX Holdings Certificate, Article FIFTH, Paragraph (a)(i) defines “Person” as “an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof”.

<sup>15</sup> CHX Holdings Certificate, Article FIFTH, Paragraph (a)(ii) defines “Related Persons” as “(A) with respect to any Person, all ‘affiliates’ and ‘associates’ of such Person (as such terms are defined in Rule 12b-2 under the . . . Act . . . ); (B) with respect to any Person that holds a permit issued by the . . . Exchange . . . to trade securities on the . . . Exchange (a ‘Participant’), any broker or dealer with which a Participant is associated;

1. Own shares of stock of CHX Holdings representing more than 40 percent of the then outstanding votes entitled to be cast on any matter.

2. If it is a Participant, own shares of stock of CHX Holdings representing more than 20 percent of the then outstanding votes entitled to be cast on any matter.

3. Pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of shares of the stock of CHX Holdings or give any consent or proxy with respect to shares representing more than 20 percent of the voting power of the then issued and outstanding capital stock of CHX Holdings; or enter into any agreement, plan or other arrangement (“Arrangement”) with any other Person, either alone or together with its Related Persons, under circumstances that would result in the subject shares of CHX Holdings not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such Arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of CHX Holdings which would represent more than 20 percent of said voting power.<sup>16</sup>

Because NYSE Group’s acquisition of all the shares of CHX Holdings at Closing would violate these Ownership and Voting Limitations, the CHX Holdings Board (a) approved the Resolutions, and (b) proposes to add the Bylaw Waiver Amendment to the CHX Holdings Bylaws. So that the Bylaw Waiver Amendment and Resolutions may effectuate a waiver of the Ownership and Voting Limitations and thereby permit the Transaction, the Bylaw Waiver Amendment would be operative immediately before the Closing.

## The Resolutions

The CHX Holdings Certificate provides that the first and third Ownership and Voting Limitations set forth above may be waived by the CHX Holdings Board by adopting an amendment to the bylaws, if, in connection with the adoption of such amendment, the Board of Directors also

and (C) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of CHX Holdings.

<sup>16</sup> CHX Holdings Certificate, Article FIFTH, Paragraph (b)(ii). Article FIFTH includes provisions to address violations of the current Ownership and Voting Limitations. See CHX Holdings Certificate, Article FIFTH, Paragraphs (d) and (e).

adopts certain resolutions.<sup>17</sup> In addition, the CHX Holdings Certificate provides that, notwithstanding the first and second Ownership and Voting Limitations, a proposed sale, assignment or transfer of CHX Holdings stock above the percentage limitations shall not become effective until the Board of Directors of CHX Holdings has determined, by resolution, that such purchaser and its Related Persons are not subject to any applicable statutory disqualification.<sup>18</sup>

Accordingly, on April 25, 2018, the CHX Holdings Board adopted the following Resolutions:<sup>19</sup>

1. That the Board has determined that the Bylaw Waiver Amendment, the (direct or indirect, as applicable) acquisition of the Proposed Share Ownership by each of the ICE Holding Companies and the (direct or indirect, as applicable) acquisition or (direct or indirect, as applicable) exercise of the Proposed Voting Rights by each of the ICE Holding Companies (i) will not impair the ability of the Exchange to carry out its functions and responsibilities as an “exchange” under the Exchange Act and the rules thereunder; (ii) are otherwise in the best interests of [CHX Holdings] and its stockholders and the Exchange; and (iii) will not impair the ability of the Commission to enforce the Exchange Act;

2. that the Board has considered the Merger Agreement and the Merger, the Proposed Share Ownership and Proposed Voting Rights of each of the

<sup>17</sup> See Article FIFTH, Paragraph (b)(iii)(B) of the CHX Holdings Certificate, which provides that any such resolution must state that the Board’s determination is that such amendment (a) will not impair the ability of the Exchange to carry out its functions and responsibilities as an “exchange” under the Exchange Act, and the rules under the Exchange Act; (b) is otherwise in the best interests of CHX Holdings and its stockholders and the Exchange; (c) will not impair the ability of the Commission to enforce the Exchange Act, and (d) such amendment shall not be effective until approved by the Commission.

<sup>18</sup> See Article FIFTH, Paragraph (b)(iv) of the CHX Holdings Certificate, which provides that, notwithstanding the first and second Ownership and Voting Limitations, “in any case where a Person, either alone or together with its Related Persons, would own or vote more than the above percentage limitations upon consummation of any proposed sale, assignment or transfer of” CHX Holdings’ stock, “such sale, assignment or transfer shall not become effective until the Board of Directors” of CHX Holdings “shall have determined, by resolution, that such Person and its Related Persons are not subject to any applicable ‘statutory disqualification’ (within the meaning of Section 3(a)(39) of the Exchange Act).

<sup>19</sup> The full text of the Resolutions is set forth in Exhibit 5N. The Exchange notes that the Resolutions use “Corporation” and “Parent” instead of “CHX Holdings” and “ICE,” respectively. To avoid possible confusion, the excerpt of the Resolutions uses the terms defined herein.

ICE Holding Companies that would result therefrom, and after having received, considered and discussed information provided by the Exchange, has determined that neither the ICE Holding Company, nor any of its Related Persons, is subject to “statutory disqualification” within the meaning of Section 3(a)(39) of the Exchange Act;

3. that the Board hereby approves and directs that the Amendments, including the Bylaw Waiver Amendment,<sup>20</sup> be submitted to the Commission for approval in connection with the [present] Rule 19b-4 Filing . . . , that when effective, would waive the Ownership and Voting Limitations solely to permit NYSE Group to possess ownership and voting rights in [CHX Holdings] in excess of the Ownership and Voting Limitations following consummation of the Merger;

4. that the Board hereby determines that the execution and delivery of the Merger Agreement by [ICE] constitutes notice of the ICE Holding Companies’ intention in writing to acquire the Proposed Share Ownership and Proposed Voting Rights, and the Board hereby consents to a period of notice shorter than forty-five (45) days before the proposed ownership of such shares or the proposed exercise of such voting rights.<sup>21</sup>

#### The Proposed Amendment

In addition to the Resolutions, to waive the current Ownership and Voting Limitations, pursuant to Article FIFTH, Paragraph (b)(iii)(B) of the CHX Holdings Certificate, the Exchange proposes the Bylaw Waiver Amendment to the CHX Holdings Bylaws. The Bylaw Waiver Amendment would be added to the CHX Holdings Bylaws for the sole purpose of allowing the Transaction to Close. It would provide as follows:<sup>22</sup>

(a) For the sole purpose of permitting the merger contemplated by an Agreement and Plan of Merger, dated April 4, 2018, among [CHX Holdings], Kondor Merger Sub, Inc. and Intercontinental Exchange, Inc., under which [CHX Holdings] will become a wholly-owned subsidiary of the NYSE Group, Inc. and will become an indirect subsidiary of NYSE Holdings LLC, Intercontinental Exchange Holdings, Inc. and Intercontinental Exchange, Inc. (for the purposes of this Article XII,

<sup>20</sup> “Amendments” includes any amendments related to the Merger and other transactions contemplated by the Merger Agreement.

<sup>21</sup> For the notice requirement, see CHX Holdings Certificate, Article FIFTH, Paragraph (b)(v).

<sup>22</sup> The Exchange notes that the CHX Holdings Bylaws use “the Corporation” instead of “CHX Holdings.” To avoid possible confusion, the above text uses “CHX Holdings.”

Section 12.1, NYSE Group, Inc., NYSE Holdings LLC, Intercontinental Exchange Holdings, Inc. and Intercontinental Exchange, Inc. are collectively referred to herein as the “ICE Holding Companies” and individually referred to herein as the “ICE Holding Company”), the Board of Directors hereby waives pursuant to Article FIFTH, paragraph (b)(iii)(B) of the certificate of incorporation of [CHX Holdings] dated July 27, 2006, as amended (“2006 Certificate”), with respect to each of the ICE Holding Companies: (i) the restrictions on ownership of capital stock of [CHX Holdings] described in Article FIFTH, paragraph (b)(ii)(A) of the 2006 Certificate (“Ownership Limits”) to permit the ICE Holding Company to possess ownership in [CHX Holdings] in excess of the Ownership Limits (“Proposed Share Ownership”); and (ii) the restrictions on voting rights with respect to the capital stock of [CHX Holdings] as described in Article FIFTH, paragraph (b)(ii)(C) of the 2006 Certificate (“Voting Limits”) to permit the ICE Holding Company to possess voting rights in excess of the Voting Limits (“Proposed Voting Rights”).

(b) In so waiving the applicable Ownership Limits and Voting Limits, the Board of Directors has determined, with respect to each of the ICE Holding Companies, that: (i) The acquisition of the Proposed Share Ownership by the ICE Holding Company will not impair the ability of the CHX to carry out its functions and responsibilities as an “exchange” under the Exchange Act and the rules and regulations promulgated thereunder, is otherwise in the best interests of [CHX Holdings], its stockholders and the CHX, and will not impair the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; (ii) the acquisition or exercise of the Proposed Voting Rights by the ICE Holding Company will not impair the ability of the CHX to carry out its functions and responsibilities as an “exchange” under the Exchange Act and the rules and regulations promulgated thereunder, that it is otherwise in the best interests of [CHX Holdings], its stockholders and the CHX, and that it will not impair the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; and (iii) neither the ICE Holding Company, nor any of its Related Persons, is subject to “statutory disqualification” within the meaning of Section 3(a)(39) of the Exchange Act.<sup>23</sup>

<sup>23</sup> 15 U.S.C. 78c(a)(39).

#### III. Amendments to the CHX Bylaws and CHX Certificate

In connection with the Transaction, the Exchange proposes to retain most of the current provisions of the CHX Certificate and CHX Bylaws, except that the Exchange proposes to make certain revisions to the provisions regarding the composition, election and terms of the Exchange Board.

Following consummation of the Transaction, the Exchange would become part of a corporate family including five separate registered national securities exchanges. The Exchange believes that it is important for each of such exchanges to have a consistent approach to corporate governance in certain matters. Therefore, to simplify complexity and create greater consistency with the organizational documents and governance practices of the NYSE Exchanges, the Exchange proposes to revise the provisions of the CHX Certificate and CHX Bylaws as described below.

The Exchange believes that the proposed changes to the CHX Certificate and CHX Bylaws are consistent with the requirements of the Exchange Act.

#### CHX Bylaws

The Exchange proposes to restructure and amend Article II, Sections 2 and 3 of the Bylaws governing the powers, composition, nomination and election of its Board to more closely align the Bylaws with the relevant provisions of the other NYSE Exchanges.<sup>24</sup> In addition, the Exchange proposes to amend other sections of the Bylaws to make conforming changes and to correct a non-substantive typographical error.

To effect these changes, the Exchange proposes the following:

#### Title

The Exchange proposes to add “Amended and Restated” to the start of the title of the CHX Bylaws.

<sup>24</sup> Because NYSE National and NYSE Arca are the most similar to the Exchange in corporate organization and in their use of “permit holders,” as opposed to “members,” the Exchange has primarily based proposed changes to the CHX Bylaws on the NYSE National and NYSE Arca Bylaws. A similar approach was taken with the National Stock Exchange (“NSX”) governing documents when it was acquired in 2017. See Securities Exchange Act Release Nos. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16) (order approving proposed rule change in connection with a proposed acquisition of NSX by NYSE Group) (“NYSE National Approval”), and 79684 (December 23, 2016), 81 FR 96552 (December 30, 2016) (SR-NSX-2016-16) (notice of filing of proposed rule change in connection with the proposed acquisition of NSX by NYSE Group, Inc.) (“NYSE National Notice”).

## Article I, Section 2 (Other Offices)

The first sentence of Article I, Section 2 makes a reference to the “Board of Governors.” The Exchange believes that the reference should be to the Board of Directors, as it has not had a Board of Governors since its demutualization.<sup>25</sup> Accordingly, it proposes to replace “Governors” with “Directors.”

## Article II, Section 2 (Number, Term of Office and Qualifications)

The Exchange proposes to make the number, composition, term of office and qualifications of the Board consistent with the make-up of the boards of directors of the NYSE Exchanges.<sup>26</sup>

Accordingly, the Exchange proposes to replace Article II, Section 2(a)–(c) with new subsections (a)–(f), and to move the text in subsection (d) to become the final sentence of new subsection (e). The proposed new Article II, Section 2 would be substantially similar to provisions in the NYSE Arca Bylaws and NYSE National Bylaws.<sup>27</sup>

**Section 2(a)–(b):** Article II, Section 2(a) of the current CHX Bylaws governs the number of directors, providing that the Board is composed of between 10 and 16 directors, the exact number of which is determined by the Board, and that the number may be changed by a majority of the Board.

Article II, Section 2(b) of the current CHX Bylaws sets forth the composition of the Board, providing that the Board shall consist of the Chief Executive Officer of the Exchange, “Public Directors” and “Participant Directors.” Section 2(b) specifies that the Public Directors make up one-half of the directors, and that a director who is neither the Chief Executive Officer nor a Public Director shall be a Participant Director. Section 2(b) defines “Public Director” as a director who (i) is not a Participant, or an officer, managing member, partner or employee of an entity that is a Participant, (ii) is not an employee of the Exchange or any of its affiliates, (iii) is not broker or dealer or an officer or employee of a broker or

dealer, or (iv) does not have any other material business relationship with (x) CHX Holdings, the Exchange or any of their affiliates or (y) any broker or dealer. It defines “Participant Director” as a director who is a Participant or an officer, managing member or partner of an entity that is a Participant, and that the “Participant” shall mean any individual, corporation, partnership or other entity that holds a trading permit issued by Exchange. Finally, current Section 2(b) provides that a director shall qualify as a Public Director or Participant Director only so long as such director meets the requirements for that position.

The Exchange proposes to replace Section 2(a) and (b) with a new proposed Section 2(a). Such subsection would provide that the number of directors would be determined from time to time by the stockholders, provided that the Board must meet the composition requirements in the Bylaws. This change would be consistent with the NYSE National Bylaws and NYSE Arca Bylaws, which provide that the shareholders and holding member, respectively, set the number of directors, as well as the NYSE and NYSE American Operating Agreements, which both provide that the number of directors is determined by the member, in each case provided that the boards of directors meet the composition requirements.<sup>28</sup>

Specifically, new subsection (a) would require that the Board be made up as follows:

- At least 50 percent of the directors would be persons from the public and would not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates (“Public Directors”); and
- at least 20 percent of the directors would consist of individuals nominated by the trading permit holders who are permitted to trade on the Exchange’s facilities for the trading of equities that are securities as covered by the Exchange Act (collectively, “Permit Holders”) (such directors, the “STP Participant Directors”).<sup>29</sup>

Although the NYSE National and NYSE Arca Bylaws use the term “Non-Affiliated Directors” rather than “STP Participant Directors,” the Exchange proposes to use “STP Participant

Directors” consistent with its current terminology.

In addition, proposed subsection (a) would provide that, for purposes of calculation of the minimum number of STP Participant Directors, if 20 percent of the Directors is not a whole number, such number of Directors to be nominated and selected by the Permit Holders would be rounded up to the next whole number. Proposed subsection (a), like current subsection (a), would provide that the term of office of a director shall not be affected by any decrease in the authorized number of directors.

Proposed new subsection (b) would provide that nominees for a director position shall provide the Secretary of the Exchange such information as is reasonably necessary to serve as the basis for a determination of the nominee’s qualifications as a director, and that the Secretary shall make such determination concerning the nominee’s qualifications.<sup>30</sup>

**Section 2(c):** Current Article II, Section 2(c) sets forth the structure of the board. Specifically, it provides that the Board shall be divided into three classes serving three-year terms, with the term of office of one class expiring each year, and that directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of early resignation, removal or disqualification.

The Exchange proposes to replace Section 2(c) with new subsections (c) through (e). New subsection (c) would provide that at the each annual meeting of the stockholders, except as otherwise provided by the Bylaws, the stockholders would elect directors to serve until the next annual meeting or until their successors are elected and qualified. Proposed new subsection (d) would provide that the Exchange Board shall appoint the Chairman of the Board by majority vote. Proposed new subsection (e) would provide that each director shall hold office for a term that expires at the annual meeting of the stockholders next following his or her election, provided that if he or she is not re-elected and his or her successor is not elected and qualified at the meeting and there remains a vacancy on the Board, he or she shall continue to serve until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Finally, current Section 2(d), which provides

<sup>25</sup> See Demutualization Release, *supra* note 3, at 7534.

<sup>26</sup> See Amended and Restated NYSE Arca, Inc. Bylaws (“NYSE Arca Bylaws”), Section 3.02(a), Fourth Amended and Restated By-laws of NYSE National (“NYSE National Bylaws”), Section 3.2(a), and NYSE National Notice, *supra* note 24, at 96554. See also Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC (“NYSE Operating Agreement”), Article II, Section 2.03(a) and (l), and Eleventh Amended and Restated Operating Agreement of NYSE American LLC (“NYSE American Operating Agreement”), Article II, Section 2.03(a) and (l).

<sup>27</sup> See NYSE Arca Bylaws Section 3.02 and NYSE National Bylaws, Article III, Sections 3.2(a)–(c) and 3.3.

<sup>28</sup> See NYSE National Bylaws, Article III, Section 3.2(a); NYSE Arca Bylaws Section 3.02(a); NYSE Operating Agreement, Article II, Section 2.03(a); and NYSE American Operating Agreement, Article II, Section 2.03(a).

<sup>29</sup> Consistent with its use elsewhere in the CHX Bylaws, “Exchange Act” would be defined in proposed Article II, Section 2(a).

<sup>30</sup> This provision would be consistent with the NYSE National Bylaws and NYSE Arca Bylaws. See NYSE National Bylaws, Article III, Section 3.2(b) and NYSE Arca Bylaws, Section 3.02(b).

that a director may serve for any number of terms, consecutive or otherwise, would be the final sentence in proposed subsection (e).

The proposed change from a three-class board with staggered terms to a board with one class of directors elected annually would make the organization of the Board consistent with those of all of the NYSE Exchanges.<sup>31</sup>

*Section 2(f):* Finally, a new subsection (f) would provide that, except as otherwise provided in the CHX Bylaws or the rules, the shareholder shall nominate directors for election at the annual meeting of the shareholder, which nominations shall comply with the Exchange's rules and the CHX Bylaws.<sup>32</sup>

#### Article II, Section 3 (Nomination and Election)

Article II, Section 3 sets forth the process for the nomination and election of the Board. The Exchange proposes to revise Article II, Section 3(a), replace Section 3(b)–(e) with a new Section 3(b), replace Section 3(f)–(g) with a new Section 3(c), and add a new Section 3(d).

The proposed new Article II, Section 3 would be substantially similar to provisions in the NYSE Arca Bylaws and NYSE National Bylaws,<sup>33</sup> and so would be consistent with the nomination and election process of the board of directors of such NYSE Exchanges, subject to the use of terms specific to the Exchange.<sup>34</sup> The proposed provision would be consistent with the proposed change from a three-class board with staggered terms to a board with one class of directors elected annually.

*Section 3(a):* Article II, Section 3(a) provides that candidates for election as director shall be nominated by a Nominating and Governance Committee (“NGC”), which shall consist of two Public Directors and two Original STP

<sup>31</sup> See NYSE National Bylaws, Article III, Section 3.3; NYSE Arca Bylaws Section 3.02(e); NYSE Operating Agreement Article II, Section 2.03(a) and (l); and NYSE American Operating Agreement, Article II, Section 2.03(a) and (l).

<sup>32</sup> This provision would be consistent with the NYSE National Bylaws and NYSE Arca Bylaws. See NYSE National Bylaws, Article III, Section 3.2(d) and NYSE Arca Bylaws Section 3.02(f).

<sup>33</sup> See NYSE Arca Rule 3.2(b)(3)(B) and (C) and NYSE National Bylaws Article III, Section 3.4 and Article V, Section 5.2.

<sup>34</sup> For example, proposed Article III, Section 3 would use “STP Participant Director” instead of “Non-Affiliated Director”; “Permit Holder” instead of “ETP Holder” or “OTP Holder”; and “Participant” instead of “ETP Holders or Persons Associated with an ETP Holder (in any combination)” or “ETP Holders or Allied Persons or Associated Persons of an OTP Firm or ETP Holder or Allied Person or Associated Persons of an ETP Holder.”

Participant Directors, as defined below, one of whom must not be a representative of a firm that is a holder of Series A Preferred Stock of CHX Holdings. The NGC shall be appointed by the CHX Board.

The Exchange proposes to rename the NGC the “Nominating Committee” consistent with NYSE National and NYSE Arca, which both have nominating committees that fill substantially the same role that the Exchange proposes the CHX Nominating Committee play.<sup>35</sup> Accordingly, proposed Article II, Section 3(a) would provide that the candidates for the election as director shall be nominated by a Nominating Committee.

The Exchange proposes that, like the NYSE National nominating committee, the Nominating Committee be composed solely of STP Participant Directors and/or Permit Holder representatives. Consistent with the NYSE National definition of “ETP Holder Representative,” “Permit Holder representative” would mean an officer, director, employee or agent of a Permit Holder.<sup>36</sup>

*Section 3(b)–(e):* Current Section 3(b) requires that, each year, the NGC shall nominate directors for each open director position, and shall only nominate as Participant Directors those persons whose names have been presented to, and approved by, the Participants pursuant to the procedures set forth in Section 3. Current Article II, Section 3(c) provides that the Board shall identify one Participant Director position in each class which shall be subject to the petition process (an “Original STP Participant Director”), and similarly provides that the NGC shall only nominate as Original STP Participant Directors those persons whose names have been presented to, and approved by, the Participants pursuant to the procedures set forth in current Section 3. Current Article II, Section 3(d) sets forth procedures for the NGC to receive candidate recommendations for the Original STP Participant Director positions. Finally, current Article II, Section 3(e) sets forth the procedure for nominating the Original STP Participant Directors, including the possibility for petition candidates nominated by Participant firms.

Proposed Article II, Section 3(b) would replace current Article II, Section

3(b)–(e).<sup>37</sup> Proposed Section 3(b) would provide that the Nominating Committee shall publish the name(s) of one or more Participants as its nominee(s) for STP Participant Directors of the Board of Directors of the Exchange. The definition of “Participant” in present Section 2(b) would be moved to proposed Section 3(b). Proposed Section 3(b) would further provide that the Nominating Committee would name sufficient nominees so that at least 20 percent of the directors consist of STP Participant Directors. The proposed provision would further provide that the names of the nominees shall be published on a date in each year sufficient to accommodate the process described. The date would be known as the “Announcement Date.”

Further, proposed Section 3(b) would provide that, after the name of proposed nominee(s) is published, Permit Holders in good standing may submit a petition to the Exchange in writing to nominate additional eligible candidate(s) to fill STP Participant Director position(s) during the next term. If a written petition of at least 10 percent of Permit Holders in good standing were submitted to the Nominating Committee within two weeks after the Announcement Date, such person(s) would also be nominated by the Nominating Committee, provided, however, that no Permit Holder, either alone or together with other Permit Holders that are deemed its affiliates, may account for more than 50 percent of the signatories to the petition endorsing a particular petition nominee for the STP Participant Director position(s) on the Board. Proposed Section 3(b) would stipulate that each petition for a petition candidate must include a completed questionnaire used to gather information concerning director candidates, with the form of the questionnaire provided by the Exchange upon the request of any Permit Holder. Finally, proposed Section 3(b) would provide that, notwithstanding anything to the contrary, the Nominating Committee shall determine whether any petition candidate is eligible to serve on the Board (including whether such person is free of any Statutory Disqualification), and such determination shall be final and conclusive.

*Section 3(f) and (g):* Current Article II, Section 3(f) sets forth the process for elections of Original STP Participant Directors if one or more valid petitions

<sup>35</sup> See NYSE Arca Rule 3.2(b)(3)(B) and (C) and NYSE National Bylaws Article III, Section 3.4.

<sup>36</sup> See NYSE National Bylaws Article I, Section 1.1(E)(2) (“ETP Holder Representative”), and Article V, Section 5.7.

<sup>37</sup> This provision would be consistent with the NYSE National Bylaws and NYSE Arca Rules. See NYSE Arca Rule 3.2(b)(3)(C)(ii) and NYSE National Bylaws Article III, Section 3.4(b).

are received. Pursuant to current Section 3(g), if no valid petitions from the Participants are received by 35 days prior to the annual meeting of stockholders, the NGC's initial nominees shall be the persons approved by the Participants as the Original STP Participant Director nominees.

Proposed Article II, Section 3(c) would replace current Article II, Section 3(f)–(g).<sup>38</sup> Proposed Section 3(c) would set forth the petition election process, providing that, in the event that the number of nominees exceeds the number of available seats, the Nominating Committee shall submit the contested nomination to the Permit Holders for selection. Permit Holders would be afforded a confidential voting procedure and be given no less than 20 calendar days to submit their votes. Under the proposed Section, each Permit Holder in good standing may select one nominee for the contested seat on the Board; provided, however that no Permit Holder, either alone or together with other Permit Holders who are deemed its affiliates, may account for more than 20 percent of the votes cast for a particular nominee for the STP Participant Director position(s) on the Board. With respect to the contested position, the proposed Section would provide that the nominee for the Board receiving the most votes of Permit Holders shall be submitted by the Nominating Committee to the Board and that the Nominating Committee shall also submit uncontested nominees to the Board. Under the proposed provision, tie votes shall be decided by the Board at its first meeting following the election.

Finally, proposed Section 3(d) would provide that the Board of Directors shall appoint the Nominating Committee, consistent with the final sentence of current Section 3(a), which provides that the Board of Directors shall appoint the NGC.

#### Article II, Section 6 (Vacancies)

In accordance with its proposed change from a three-class board with staggered terms to a board with one class of directors elected annually as set forth in proposed Article II, Section 2, the Exchange proposes to amend the penultimate sentence in Article II, Section 6. Currently, such sentence provides as follows.

A director chosen to fill a vacancy or newly-created directorship by the directors then in office shall hold office

<sup>38</sup> This provision would be consistent with the NYSE National Bylaws and NYSE Arca Rules. See NYSE Arca Rule 3.2(b)(3)(C)(iii) and NYSE National Bylaws Article III, Section 3.4(c).

until the end of the next annual meeting of stockholders, at which time a director shall be elected by vote of the stockholders to fill any remaining portion of the term of the class to which such director belongs.

As there would no longer be different classes of director, the Exchange proposes to delete “, at which time a director shall be elected by vote of the stockholders to fill any remaining portion of the term of the class to which such director belongs.”

#### Conforming Changes

In accordance with its proposed change to the NGC, the Exchange proposes to delete “and Governance” from “Nominating and Governance Committee” in the following provisions: Article II, Section 5(b) (Vice Chairman); Article IV, Section 1 (Number of Committees) and Section 2 (Appointment of Committees); and Article V, Section 5 (Officers Appointed by Chief Executive Officer).

In accordance with its proposed use of “STP Participant Director” and amendments to the composition of the Board set forth in proposed Article II, Section 2(a), the Exchange proposes to add “STP” before “Participant Director” in Article II, Section 6 and Section 7 (Participation in Meeting, Action or Proceeding).

In accordance with proposed Article II, Section 3(d), the Exchange proposes to update the cross reference in the first sentence of Article IV, Section 2 from Article II, Section 3(a) to Article II, Section 3(d).

#### CHX Certificate

The Exchange proposes to restructure and amend Article FIFTH of the CHX Certificate governing the composition, nomination and election of its Board to more closely align with the proposed amended CHX Bylaws and the relevant provisions of the other NYSE Exchanges.<sup>39</sup> In addition, the Exchange proposes to make certain administrative and conforming changes.

To effect these changes, the Exchange proposes the following amendments.

#### Title and Signature Line

The Exchange proposes to add “Amended and Restated” to the start of the title of the CHX Certificate and to add a signature line at the end of the CHX Certificate.

<sup>39</sup> See NYSE Arca Bylaws, Section 3.02(a), NYSE National Bylaws, Article III, Section 3.2(a), and NYSE National Notice, *supra* note 24, at 96554. See also NYSE Operating Agreement, Article II, Section 2.03(a) and (l), and NYSE American Operating Agreement, Article II, Section 2.03(a) and (l).

#### Introductory Paragraph

The Exchange proposes to adopt an introductory sentence providing that the proposed CHX Certificate has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of Delaware.

#### Article First

The Exchange proposes to add a second sentence to current Article FIRST stating that the original Certificate of Incorporation of CHX was filed with the Secretary of State of the State of Delaware on March 15, 1972, and the name under which the Corporation filed the Original Certificate of Incorporation was Midwest Stock Exchange Incorporated.

#### Article Second

The Exchange proposes to amend the address and name of its registered office and registered agent in the State of Delaware set forth in Article SECOND, to update them to the information for the registered office and registered agent that it will use following the Transaction.<sup>40</sup>

#### Article Fifth

Current Article FIFTH sets forth provisions regarding the number, composition, term, election, and removal of Directors, as well as vacancies on the Board. The Exchange proposes to revise Article FIFTH, Paragraphs (b)–(g) to conform to proposed Article II, Section 2 of the CHX Bylaws.<sup>41</sup>

*Article FIFTH, Paragraph (b)–(c):* Consistent with Article II, Section 2(a) of the current CHX Bylaws, current Article FIFTH, Paragraph (b) provides that the Board will consist of between 10 and 16 directors, the exact number to be fixed by the Board from time to time. Current Article FIFTH, Paragraph (c) sets forth the requirements for the composition of the Board, consistent with current Article II, Section 2(b) of the CHX Bylaws.

The Exchange proposes to replace Article FIFTH, Paragraphs (b) and (c) with a provision substantially similar to proposed Article II, Section 2(a) of the CHX Bylaws.<sup>42</sup> Such subsection would provide that the number of directors

<sup>40</sup> See Securities Exchange Act Release Nos. 82925 (March 22, 2018), 83 FR 13165 (March 27, 2018) (SR-NYSENAT-2018-04), and 82635 (February 6, 2018), 83 FR 6057 (February 12, 2018) (SR-NYSENAT-2018-03).

<sup>41</sup> See text accompanying notes 26 through 31, *supra*. The Exchange does not propose to amend Article FIFTH, Paragraph (a).

<sup>42</sup> As it is not previously defined therein, “Exchange Act” would be defined in proposed Article FIFTH, Paragraph (b).

would be determined from time to time by the stockholders, provided that the Board must meet the same composition requirements in the proposed Bylaws. Proposed Article FIFTH, Paragraph (b) would require that at least 50 percent of the directors be Public Directors and at least 20 percent of the directors be STP Participant Directors. In addition, it would provide that, for purposes of calculation of the minimum number of STP Participant Directors, if 20 percent of the Directors is not a whole number, the number of directors to be nominated and selected by the Permit Holders will be rounded up to the next whole number; and that the term of office of a director shall not be affected by any decrease in the authorized number of directors.

The Exchange proposes to add a new Article FIFTH, Paragraph (c) with the same provision as proposed Article II, Section 2(b) of the CHX Bylaws, with the exception that the cross reference to Section 2(a) of the CHX Bylaws would be to Article FIFTH, Paragraph (b).

*Article FIFTH, Paragraph (d):* Consistent with Article II, Section 2(c) of the current CHX Bylaws, Article FIFTH, Paragraph (d) sets forth the structure of the board. It provides that the Board shall be divided into three classes serving staggered three-year terms, with the term of office of one class expiring each year, and sets forth how the three-year terms shall be commenced. Finally, it provides that directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of early resignation, removal or disqualification.

The Exchange proposes to replace the current Article FIFTH, Paragraph (d) with the same provision as proposed Article II, Section 2(e) of the CHX Bylaws, which sets forth the proposed terms of the directors.

*Article FIFTH, Paragraph (e):* Consistent with current Article III, Section 9 (Quorum and Vote Required for Action) of the CHX Bylaws, current Article FIFTH, Paragraph (e) provides that at each annual meeting of stockholders at which a quorum is present, the persons receiving a plurality of the votes cast shall be directors, and no director need be a stockholder.

The Exchange proposes to replace the current Article FIFTH, Paragraph (e) with the same provision as proposed Article II, Section 2(c) of the CHX Bylaws, which states that at each annual meeting of stockholders, except as otherwise provided by the CHX Bylaws the stockholders shall elect directors to serve until the next annual meeting or

until their successors are elected and qualified.

*Article FIFTH, Paragraph (f):* In accordance with its proposed change to remove the different classes of directors, the Exchange proposes to delete “or class of directors” from the first sentence of Article FIFTH, Paragraph (f).

*Article FIFTH, Paragraph (g):* In accordance with its proposed change to remove the different classes of directors, the Exchange proposes to delete “, at which time a director shall be elected by vote of the stockholders to fill any remaining portion of the term of the class to which such director belongs” from the penultimate sentence of Article FIFTH, Paragraph (g). In addition, it proposes to add “STP” before “Participant Director” in the parenthetical in the second sentence of the provision.

#### IV. Amendments to the CHX Holdings Bylaws and CHX Holdings Certificate

Following the consummation of the Transaction, CHX Holdings will be one of a series of holding companies of the Exchange. The Exchange believes that it is important for each of its five holding companies to have a consistent approach to certain matters.<sup>43</sup>

Upon Closing, CHX Holdings’ governing documents would be as set forth in the CHX Holdings Bylaws and CHX Holdings Certificate (together, the “CHX Holdings Governing Documents”). To limit complexity and create greater consistency with the organizational documents of the ICE Holding Companies, as proposed, the CHX Holdings Governing Documents would be substantially similar to the NYSE Group Bylaws and NYSE Group Certificate, with the limited differences described below. To effect the changes, upon Closing:

- The proposed changes to the CHX Holdings Certificate set forth in Exhibit 5C, which would replace the current text of the CHX Holdings Certificate in its entirety except for the title, would become operative.

- The proposed changes to the CHX Holdings Bylaws set forth in Exhibit 5D, which would replace the current text of the CHX Holdings Bylaws in its entirety except for the title, would become

<sup>43</sup> See Securities Exchange Act Release Nos. 80752 (May 24, 2017), 82 FR 25018 (May 31, 2017) (SR-NYSE-2017-13; SR-NYSEArca-2017-29; SR-NYSEMKT-2017-17; and SR-NYSENAT-2017-01) (order approving proposed rule changes to amend the certificate and bylaws of ICE), and 82084 (November 15, 2017), 82 FR 55460 (SR-NYSENAT-2017-05) (notice of filing and immediate effectiveness of proposed rule change to amend the governing documents of its intermediate parent companies to make them more consistent with the governing documents of their ultimate parent, ICE).

operative, with the exception of the Bylaw Waiver Amendment, which would have become operative immediately before the Closing.<sup>44</sup>

#### Differences From the NYSE Group Certificate and Bylaws

##### CHX Holdings Bylaws

Article I, Section 1.1 of the CHX Holdings Bylaws would reference CHX Holdings instead of NYSE Group, and the title would be “Second Amended and Restated Bylaws of CHX Holdings, Inc.”

Because CHX Holdings, unlike NYSE Group, does not have preferred stock, the text “Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances,” would not be included in Article III, Section 3.1 (General Powers) of the proposed CHX Holdings Bylaws. For the same reason, the text “Subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock,” would not be included in Article III, Section 3.5 (Removal) of the proposed CHX Holdings Bylaws.

##### CHX Holdings Certificate

Some of the differences between the proposed CHX Holdings Certificate and the NYSE Group Certificate would reflect the differences in their name, ownership, and history.

- The introductory paragraph, recitals, Article XIV and the signature line of the NYSE Group Certificate would not be included.<sup>45</sup>

- Article I (Name of Corporation) of the proposed CHX Holdings Certificate would reference CHX Holdings instead of NYSE Group, and the title would be “Second Amended and Restated Certificate of Incorporation of CHX Holdings, Inc.”

- Article IV, Section 4 (Transfers of Stock of the Corporation) of the NYSE

<sup>44</sup> When operative, the Bylaw Waiver Amendment would add an Article XII to the current CHX Holdings Bylaws. However, upon Closing, when the proposed changes to the CHX Holdings Bylaws become effective, there would be a gap in the numbering between Article VII and Article XII. Accordingly, to ensure that the numbering of the Articles in the CHX Holdings Bylaws remains sequential, the Exchange proposes to add new Articles VIII–XI, which would be marked “Reserved.”

<sup>45</sup> Pursuant to the Merger Agreement, the entity surviving the Merger will be CHX Holdings, but its governing documents will be those of Merger Sub. Prior to the Closing, Merger Sub would amend and restate its certificate of incorporation and bylaws so that they are the same as the proposed CHX Holdings Bylaws and CHX Holdings Certificate, subject to the difference in name. In that manner, when CHX Holdings and Merger Sub merge, the proposed CHX Holdings Bylaws and CHX Holdings Certificate will become the governing documents of the merged entity, CHX Holdings, subject to an update in the name.

Group Certificate would be adopted as Article IV, Section 2 of the proposed CHX Certificate, provided that, in the first sentence of Section 2(a), ‘‘NYSE Holdings LLC, a Delaware limited liability company (‘‘NYSE Holdings’’’ would be adopted as ‘‘NYSE Group, Inc., a Delaware corporation (‘‘NYSE Group’’).’’<sup>46</sup> In addition, subsections (a) and (b) would refer to NYSE Group instead of NYSE Holding.

CHX Holdings has 100 shares of common stock, and, unlike NYSE Group, does not have preferred stock or options. Accordingly, the proposed CHX Holdings Certificate would have differences from the NYSE Group Certificate reflecting the entities’ distinct stock structures.

- Proposed Article IV, Section 1 (Authorized Stock) would be as follows: ‘‘The total number of shares of all classes of stock which the Corporation shall have authority to issue is one hundred (100), all of which shall be shares of Common Stock, par value \$0.01 per share.’’

- Article IV, Section 2 (Preferred Stock) and Section 3 (Options, Warrants and Other Rights) as well as Article V, Section 7 (Directors Selected by Holders of Preferred Stock) of the NYSE Group Certificate would not be adopted.<sup>47</sup>

- In proposed Article V, Section 3 (Number of Directors), the phrase ‘‘Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances,’’ would not be adopted from Article V, Section 3 of the NYSE Group Certificate. Similarly, in proposed Article V, Section 5 (Removal of Directors) the phrase ‘‘Subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, and’’ would

<sup>46</sup> Consistent with the change, cross references in the NYSE Group Certificate to Section 4 of Article IV and its subsections would be adopted as cross references to Section 2 of Article IV and its subsections. *See* proposed Article IV, Sections 2(b), 2(b)(1)(A)–(D), 2(b)(2)(A), (C)–(E), and 2(b)(3)–(4); and Article VIII, Section 2. Also, the definition ‘‘board of directors of the Corporation (the ‘‘Board’’’ would be in the second paragraph of proposed Article IV, Section (2)(b)(1)(A), instead of in Section 2, as it is in the NYSE Group Certificate.

<sup>47</sup> Consistent with the change, Article V, Section 8 (Considerations of the Board) of the NYSE Group Certificate would be adopted as Article V, Section 7 of the proposed CHX Holdings Certificate, and references to ‘‘this Section 8 of Article V’’ therein would be adopted as ‘‘this Section 7 of Article V.’’ Likewise, the cross reference to Section 8 of Article V in Article XI, Section 2 of the NYSE Group Bylaws would be adopted as a cross reference to Section 7 of Article V in proposed Article XI, Section 2 of the proposed CHX Holdings Certificate. The definition of ‘‘Person’’ would be in proposed Article IV, Section 2(b)(1)(G), instead of in Article IV, Section 3(1), as it is in the NYSE Group Certificate.

not be adopted from Article V, Section 5 of the NYSE Group Certificate.

- In proposed Article VII, Section 2 (Quorum), the second sentence would not be adopted from Article VII, Section 2 of the NYSE Group Certificate.<sup>48</sup>

#### Provisions of the Proposed CHX Holdings Governing Documents

As set forth below, the proposed CHX Holdings Governing Documents include various provisions addressing CHX Holdings’ role as the holding company of a national securities exchange registered under Section 6 of the Exchange Act (each such national securities exchange so controlled, a ‘‘U.S. Exchange’’),<sup>49</sup> including provisions regarding matters related to the preservation of the independence of the self-regulatory function of each U.S. Exchange.

#### Transfers of Stock

Article IV, Section 2(a) of the Proposed Certificate would ensure that any change in ownership of CHX Holdings would be subject to Commission approval, by providing that CHX Holdings may not transfer or assign any stock unless such transfer or assignment is filed with and approved by the Commission under Section 19 of the Exchange Act.<sup>50</sup>

#### Restrictions on Voting and Ownership

Article IV, Section 2(b) of the proposed CHX Holdings Certificate would set forth voting and ownership concentration limitations. The proposed provision would be substantially similar to the limitations in the governing documents of all the ICE Holding Companies, which apply so long as the relevant ICE Holding Company owns

<sup>48</sup> Such sentence reads as follows: ‘‘For purposes of the foregoing, where a separate vote by class or classes is required for any matter, the holders of a majority of the voting power of the outstanding shares of such class or classes entitled to vote, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter.’’

<sup>49</sup> As defined, ‘‘U.S. Exchange’’ includes both the Exchange and any other national securities exchange that CHX Holdings may control. *See* proposed Article VII, Section 7.9(b) of the CHX Holdings Bylaws and proposed Article IV, Section 2(b)(1)(A) of the CHX Holdings Certificate. The Exchange Act definition of ‘‘exchange’’ states that ‘‘exchange’’ ‘‘includes the market place and the market facilities maintained by such exchange.’’ 15 U.S.C. 78c(a)(1). Accordingly, all market places and market facilities maintained by a U.S. Exchange would fall within the definition of U.S. Exchange. *See* 82 FR 25018, 25019, *supra* note 43. The Exchange notes that the proposed CHX Holdings Governing Documents use the term ‘‘Exchange’’ instead of ‘‘U.S. Exchange.’’ However, because in the present document ‘‘Exchange’’ means the Chicago Stock Exchange, Inc., ‘‘U.S. Exchange’’ is used herein.

<sup>50</sup> 15 U.S.C. 78s(b)(1).

any U.S. Exchange.<sup>51</sup> Proposed Article IV, Section 2(b) would provide that:

- No person (alone or together with its related persons) shall be entitled to vote or cause the voting of stock of CHX Holdings representing in the aggregate more than 10 percent of the then outstanding votes entitled to be cast on such matter, and no person (either alone or together with its related persons) may acquire the ability to vote more than 10 percent of the aggregate number of votes being cast on any matter by virtue of agreements entered into with other persons not to vote shares of CHX Holdings’ outstanding capital stock. CHX Holdings will disregard any such votes purported to be cast in excess of these limitations.<sup>52</sup>

- In addition, no person (alone or together with its related persons) may at any time beneficially own stock of CHX Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.<sup>53</sup>

- In the event that a person (alone or together with its related persons) beneficially owns stock of CHX Holdings in excess of the 20 percent ownership threshold, such person and its related persons will be obligated to sell, and CHX Holdings will be obligated to purchase (to the extent that funds are legally available) the number of shares necessary to reduce the ownership level of such person and its related persons to below the permitted threshold, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.<sup>54</sup>

Proposed Article IV, Section 2(b)(4) would provide that the CHX Holdings Board shall have the right to require any person (and its related persons) to provide information regarding its share ownership to CHX Holdings if the Board reasonably believes such person (and its related persons) is subject to the voting and ownership limits or owns beneficially an aggregate of 5 percent or more of the then outstanding shares of CHX Holdings.

The provisions regarding voting and ownership limits may be waived if the CHX Holdings Board resolves to expressly permit it, and if such resolutions have been filed with, and

<sup>51</sup> *See* ICE Certificate, Article V, Sections A and B; ICE Holdings Certificate, Article V, Sections A and B; NYSE Holdings Operating Agreement, Article IX, Sections 9.1(a) and (b); and NYSE Group Certificate, Article IV, Section 4(b)(1) and (2).

<sup>52</sup> *See* proposed CHX Holdings Certificate, Article IV, Section 2(b)(1)(A).

<sup>53</sup> *See* proposed CHX Holdings Certificate, Article IV, Section 2(b)(2)(A).

<sup>54</sup> *See* proposed CHX Holdings Certificate, Article IV, Section 2(b)(2)(D).

approved by, the Commission under Section 19 of the Exchange Act.<sup>55</sup> The CHX Holdings Board shall not adopt the resolutions unless it has made certain determinations, including that:

- The proposed act will not impair the ability of CHX Holdings or any U.S. Exchange to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder and is otherwise in the best interests of CHX Holdings, its stockholders and each U.S. Exchange.<sup>56</sup>
- The proposed act would not impair the Commission's ability to enforce the Exchange Act.<sup>57</sup>

• The person seeking to exceed the voting thresholds or ownership limit is not subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act<sup>58</sup> (“Statutory Disqualification”) and, for so long as CHX Holdings directly or indirectly controls a U.S. Exchange, neither such person nor its related persons is a Member of a U.S. Exchange.<sup>59</sup>

#### Considerations of the Board

Article V, Section 7 of the proposed CHX Holdings Certificate would set forth considerations each director must take into account in discharging his or her responsibilities, including consideration of the effect that CHX Holdings' actions would have on the ability of the U.S. Exchanges to carry out their responsibilities under the Exchange Act. In addition, Article V, Section 7 would require that each director, officer or employee of CHX Holdings comply with the federal securities laws and the rules and regulations thereunder, cooperate with the Commission and cooperate with each U.S. Exchange pursuant to and to the extent of its regulatory authority.

#### Statutory Disqualification

Article VI of the proposed CHX Holdings Certificate would provide that no person that is subject to any Statutory Disqualification may be a director or officer of CHX Holdings.

<sup>55</sup> 15 U.S.C. 78s(b)(1). See proposed CHX Holdings Certificate, Article IV, Sections 2(b)(1)(A) and 2(b)(2)(B).

<sup>56</sup> See proposed CHX Holdings Certificate, Article IV, Sections 2(b)(1)(A)(w) and 2(b)(2)(C)(i).

<sup>57</sup> See proposed CHX Holdings Certificate, Article IV, Sections 2(b)(1)(A)(x) and 2(b)(2)(C)(ii).

<sup>58</sup> 15 U.S.C. 78c(a)(39).

<sup>59</sup> See proposed CHX Holdings Certificate, Article IV, Sections 2(b)(1)(A)(y) and (z) and 2(b)(2)(C)(iii) and (iv). “Member” shall mean a Person that is a “member” of a U.S. Exchange within the meaning of Section 3(a)(3)(A) of the Exchange Act. A “Participant” is considered a “member” of the Exchange.

#### Jurisdiction

Article IX of the proposed CHX Holdings Certificate would provide that CHX Holdings, its directors and officers, and its employees whose principal place of business and residence is outside of the United States, submit to the jurisdiction of the federal courts and the Commission, and waive claims that it or they are not personally subject to the jurisdiction of the Commission and of inconvenient forum, improper venue, or lack of subject matter jurisdiction.

#### Confidential Information; Books and Records

Article X of the proposed CHX Holdings Certificate would address the books and records of the U.S. Exchanges. Specifically, it would provide that confidential information pertaining to the self-regulatory function of any U.S. Exchange contained in books and records in the possession of the Corporation shall only be made available to officers, directors, employees and agents of CHX Holdings (“CHX Holdings Personnel”) with a reasonable need to know the contents thereof; shall be retained in confidence by CHX Holdings and CHX Holdings Personnel; and shall not be used for any commercial purposes.

Article X of the proposed CHX Holdings Certificate would provide that nothing in the proposed CHX Holdings Certificate shall be interpreted to limit or impede the rights of the Commission or any U.S. Exchange to access and examine such U.S. Exchange's confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any CHX Holdings Personnel to disclose such confidential information to the Commission or a U.S. Exchange. In addition, proposed Article X would provide that CHX Holdings' books and records shall be subject at all times to inspection and copying by the Commission and the relevant U.S. Exchange.

Finally, proposed Article X would provide that, for so long as CHX Holdings directly or indirectly controls any U.S. Exchange, the books, records, premises, officers, directors and employees of CHX Holdings shall be deemed to be of such Exchange for purposes of and subject to oversight pursuant to the Exchange Act.

#### Compliance With Securities Laws

Article XI, Section 1 of the proposed CHX Holdings Certificate would provide that CHX Holdings shall comply with the federal securities laws and the rules and regulations thereunder and shall

cooperate with the Commission and the U.S. Exchanges pursuant to and to the extent of their respective regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate, with the Commission and, where applicable, a U.S. Exchange pursuant to their regulatory authority.

Article XI, Section 2 of the proposed CHX Holdings Certificate would provide that CHX Holdings shall take reasonable steps necessary to cause its officers, directors and employees, prior to accepting their position, to consent to the applicability of proposed Section 7 of Article V, Article IX, Article X and Section 3 of Article XI of the proposed CHX Holdings Certificate with respect to their activities related to any U.S. Exchange.

Article XI, Section 3 of the proposed CHX Holdings Certificate would provide that CHX Holdings, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of each U.S. Exchange and to obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of a U.S. Exchange relating to their regulatory functions (including disciplinary matters) or that would interfere with the ability of the U.S. Exchange to carry out its responsibilities under the Exchange Act.

#### Amendments

Article XII of the proposed CHX Holdings Certificate and Article VII, Section 7.9(b) of the proposed CHX Holdings Bylaws would provide that, for so long as CHX Holdings controls any U.S. Exchange, before any amendment or repeal of any provision of the relevant CHX Holdings Governing Document shall be effective, it shall either (a) be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder<sup>60</sup>; or (b) be submitted to the boards of directors of each U.S. Exchange. If one or more of the boards of directors determine that the amendment or repeal must be filed with, or filed with and approved by, the Commission before it may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be.

<sup>60</sup> 15 U.S.C. 78s(b)(1).

## V. Adoption of Organizational Documents of the ICE Holding Companies

Following the Transaction, the Exchange and CHX Holdings will both have direct and indirect parent companies. The Exchange accordingly proposes to adopt the NYSE Group Certificate, NYSE Group Bylaws, NYSE Holdings Operating Agreement, ICE Holdings Certificate, ICE Holdings Bylaws, ICE Certificate and ICE Bylaws as rules of the Exchange. Such documents include provisions addressing each ICE Holding Company's role as a holding company of U.S. Exchanges, including as described below.

### Transfers of Stock

NYSE Group, NYSE Holdings, and ICE Holdings are subject to provisions requiring that any transfer of assignment of the respective entity's stock would be subject to Commission approval.<sup>61</sup>

### Restrictions on Voting and Ownership

Each of the ICE Holding Companies is subject to voting and ownership concentration limitations, which apply so long as the relevant ICE Holding Company owns any U.S. Exchange.<sup>62</sup> The voting and ownership limits may be waived only if certain requirements are met.

### Considerations of the Board

Each of the ICE Holding Companies is subject to provisions setting forth considerations directors must take into account in discharging their responsibilities, including consideration of the effect that the relevant ICE Holding Company's actions would have on the ability of the U.S. Exchanges to carry out their responsibilities under the Exchange Act.<sup>63</sup> In addition, such provisions require that each director, officer or employee of the relevant ICE Holding Company comply with the federal securities laws and cooperate with the Commission and each U.S. Exchange pursuant to and to the extent of its regulatory authority.

<sup>61</sup> See NYSE Group Certificate Article IV, Section 4(a); NYSE Holdings Operating Agreement, Article VII, Section 7.2; and ICE Holdings Certificate, Article IV, Section C.

<sup>62</sup> See NYSE Group Certificate, Article IV, Section 4(b)(1) and (2); NYSE Holdings Operating Agreement, Article IX, Sections 9.1(a) and (b); ICE Holdings Certificate, Article V, Sections A and B; and ICE Certificate, Article V, Sections A and B.

<sup>63</sup> See NYSE Group Certificate, Article V, Section 8; NYSE Holdings Operating Agreement, Article III, Section 3.12(b) and (c); ICE Holdings Bylaws, Article III, Section 3.14(a) and (b); and ICE Bylaws, Article III, Section 3.14(a) and (b).

## Statutory Disqualification

No person that is subject to any Statutory Disqualification may be a director or officer of the NYSE Group or NYSE Holdings.<sup>64</sup>

## Jurisdiction

Each of the ICE Holding Companies is subject to provisions submitting to the jurisdiction of the federal courts and the Commission.<sup>65</sup>

## Confidential Information; Books and Records

Each of the ICE Holding Companies is subject to provisions regarding the books and records of the U.S. Exchanges. Such provisions provide, among other things, that:

- Confidential information that relates to the self-regulatory function of any U.S. Exchange shall only be made available to officers, directors, employees and agents with a reasonable need to know the contents thereof.<sup>66</sup>
- Nothing in the relevant document shall be interpreted to limit or impede the rights of the Commission or any U.S. Exchange to access and examine such U.S. Exchange's confidential information pursuant to relevant law.<sup>67</sup>
- The U.S. Exchanges' books and records shall be subject at all times to inspection and copying by the Commission and the relevant U.S. Exchange.<sup>68</sup>

- The books, records, premises, officers, directors and employees of the U.S. Exchanges shall be deemed to be of such U.S. Exchange for purposes of and subject to oversight pursuant to the Exchange Act.<sup>69</sup>

## Compliance With Securities Laws

Each of the ICE Holding Companies is required to comply with the federal securities laws and the rules and regulations thereunder. The relevant

<sup>64</sup> See NYSE Group Certificate, Article VI; and NYSE Holdings Operating Agreement Article IV, Section 4.1.

<sup>65</sup> See NYSE Group Certificate, Article IX; NYSE Holdings Operating Agreement Article XIII; ICE Holdings Bylaws, Article VII; and ICE Bylaws, Article VII.

<sup>66</sup> See NYSE Group Certificate, Article X, NYSE Holdings Operating Agreement Article XII, Section 12.1; ICE Holdings Bylaws, Article VIII, Section 8.1; and ICE Bylaws, Article VIII, Section 8.1.

<sup>67</sup> See NYSE Group Certificate, Article X; NYSE Holdings Operating Agreement Article XII, Section 12.2; ICE Holdings Bylaws, Article VIII, Section 8.2; and ICE Bylaws, Article VIII, Section 8.2.

<sup>68</sup> See NYSE Group Certificate, Article X; NYSE Holdings Operating Agreement Article XII, Section 12.3; ICE Holdings Bylaws, Article VIII, Section 8.3; and ICE Bylaws, Article VIII, Section 8.3.

<sup>69</sup> See NYSE Group Certificate, Article X; NYSE Holdings Operating Agreement Article XII, Section 12.4; ICE Holdings Bylaws, Article VIII, Section 8.3; and ICE Bylaws, Article VIII, Section 8.4.

provisions require, among other things, the relevant ICE Holding Company to:

- Cooperate with the Commission and the U.S. Exchanges pursuant to and to the extent of their respective regulatory authority.<sup>70</sup>
- Take reasonable steps to cause officers, directors and employees to consent to the applicability of provisions regarding their activities related to any U.S. Exchange.<sup>71</sup>
- Along with its directors, officers and employees, give due regard to the preservation of the independence of the self-regulatory function of each U.S. Exchange and to obligations to investors and the general public and to not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of a U.S. Exchange relating to their regulatory functions or that would interfere with the ability of the U.S. Exchange to carry out its responsibilities under the Exchange Act.<sup>72</sup>

## Amendments

Finally, each of the ICE Holding Companies is subject to limitations on their ability to amend or repeal their governing documents without the proposed amendment or repeal being filed with, or filed with and approved by, the Commission.<sup>73</sup>

## ICE Independence Policy

The Exchange proposes that, in connection with the Transaction, the Commission approve the ICE Independence Policy, which is to be amended concurrently with the Transaction to reflect ownership of the Exchange. The ICE Independence Policy would be amended to provide similar protections to the Exchange as are currently provided to the NYSE Exchanges by the policy.

More specifically, the ICE Director Independence Policy would be amended to add the Exchange to the section describing "Independence Qualifications." In particular, the

<sup>70</sup> See NYSE Group Certificate, Article XI, Section 1; NYSE Holdings Operating Agreement Article XIV, Section 14.1; ICE Holdings Bylaws, Article IX, Section 9.1; and ICE Bylaws, Article IX, Section 9.1.

<sup>71</sup> See NYSE Group Certificate, Article XI, Section 2; NYSE Holdings Operating Agreement Article XIV, Section 14.2; ICE Holdings Bylaws, Article IX, Section 9.2; and ICE Bylaws, Article IX, Section 9.2.

<sup>72</sup> See NYSE Group Certificate, Article XI, Section 3; NYSE Holdings Operating Agreement Article XIV, Section 14.3; ICE Holdings Bylaws, Article IX, Section 9.3; and ICE Bylaws, Article IX, Section 9.3.

<sup>73</sup> NYSE Group Certificate, Article XII; NYSE Group Bylaws, Article VII, Section 7.9; NYSE Holdings Operating Agreement, Article XVI, Section 16.1; ICE Holdings Certificate, Article X; ICE Holdings Bylaws, Article XI, Section 11.3; ICE Certificate, Article X; and ICE Bylaws, Article XI, Section 11.3.

Exchange would be added to categories (1)(b) and (c) that refer to “members,” as defined in section 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Exchange Act.<sup>74</sup> The Exchange would also be added to subsections (4) and (5) of the “Independence Qualifications” section.

The NYSE no longer has allied members.<sup>75</sup> Accordingly, the Exchange proposes to delete the text “as defined in paragraph (c) of Rule 2 of the New York Stock Exchange LLC and” from category 1(b) of “Independence Qualifications.”

In addition, references to NYSE MKT LLC under “Independence Qualifications” and “Member Organizations” would be updated to reflect its name change to NYSE American LLC.<sup>76</sup> Finally, NYSE Arca Equities, Inc. merged with NYSE Arca, Inc., and therefore no longer exists.<sup>77</sup> Accordingly, under “Independence Qualifications,” the text “and Rule 1.1(c) of NYSE Arca Equities, Inc.” in category 1(b) and references to NYSE Arca Equities, Inc. in categories 2 and 5 would be deleted.

Conforming changes would also be made to delete and replace connectors.

## VI. Amendments to the Rules of the Exchange

The Exchange proposes to amend CHX Article 2, Rules 2, 3, 4, and 11, consistent with the proposed changes to the provisions in the CHX Bylaws and CHX Certificate regarding the composition of the Exchange Board. In addition, the Exchange proposes to amend CHX Article 19, Rule 2(b), to address the role of ArcaSec as an inbound router. The Exchange also proposes to add new Rule 28 to CHX Article 22, which rule would set forth requirements for the Exchange relating to trading securities issued by ICE or its affiliates.

<sup>74</sup> See 15 U.S.C. 78c(a)(3)(a). As CHX does not have terms equivalent to “allied members” or “approved persons,” the Exchange does not propose to add references to CHX to the clause following (“Members”) in category (1)(b) or to category 2.

<sup>75</sup> See Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR-NYSE-2008-80) (notice of filing and immediate effectiveness of proposed rule change and Amendment No. 1 thereto conforming certain NYSE rules to changes to NYSE incorporated rules recently filed by the Financial Industry Regulatory Authority, Inc.).

<sup>76</sup> See Securities Exchange Act Release Nos. 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017) (SR-NYSEMKT-2017-14).

<sup>77</sup> See Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40).

## Exchange Board

As proposed, Section 2(a) of the CHX Bylaws would provide that the number of directors would be determined from time to time by the stockholders, provided that the Board must meet the composition requirements in the Bylaws.<sup>78</sup> There would no longer be a minimum of number of directors. Accordingly, the Exchange proposes to reduce the minimum size of the Executive, Finance and Regulatory Oversight Committees set forth in CHX Article 2, Rules 2, 3 and 4. The proposed change would set the minimum number of committee members at three, conforming the committee size to the governing documents of the NYSE Exchanges, all of which provide that their respective regulatory oversight committees consist of three directors.<sup>79</sup>

The proposed changes are as follows.

- The first sentence of CHX Article 2, Rule 2, provides that the Executive Committee “shall have not less than five members, all of whom shall be directors, plus the Chairman of the Board.” The Exchange proposes to replace “five” with “two,” so the Executive Committee would have no less than three members, one of whom shall be the Chairman of the Board.

• The first sentence of CHX Article 2, Rule 3, provides that the Finance Committee “shall have not less than five members, in addition to the Chairman of the Board, all of whom shall be Directors.” The Exchange proposes to replace “five” with “two,” so the Finance Committee would have no less than three members, one of whom shall be the Chairman of the Board.

• The first sentence of CHX Article 2, Rule 4, provides that the Regulatory Oversight Committee “shall consist of at least five Public Directors. The Exchange proposes to replace “five” with “three.” As a result, the Regulatory Oversight Committee would have no less than three members, all of whom would be Public Directors.<sup>80</sup> In the second sentence, the Exchange proposes

<sup>78</sup> The proposed change would be consistent with the governing documents of the NYSE Exchanges. See NYSE National Bylaws, Article III, Section 3.2(a); NYSE Arca Bylaws Section 3.02(a); NYSE Operating Agreement, Article II, Section 2.03(a); and NYSE American Operating Agreement, Article II, Section 2.03(a).

<sup>79</sup> See NYSE National Bylaws, Article V, Section 5.6(b); NYSE Arca Rule 3.3(a)(1)(B); NYSE Operating Agreement Article II, Section 2.03(h)(ii); and NYSE American Operating Agreement Article II, Section 2.03(h)(ii). The NYSE Exchanges do not have Executive or Finance Committees.

<sup>80</sup> The membership requirements of the Exchange Regulatory Oversight Committee would be consistent with the NYSE Exchanges’ regulatory oversight committees, which are made up of public directors. *Id.*

to add “STP” before “Participant Directors,” consistent with the defined term in Article II, Section 2(a) of the proposed CHX Bylaws. In addition, sentence three of CHX Article 2, Rule 4, provides that the “Chairman of the Board, if he is not also serving as the Chief Executive Officer, shall be one of the Public Directors on the committee.” The Exchange proposes to replace “shall” with “may,” to reflect the fact that the Chairman of the Board is not required to be a Public Director under proposed Section 2(a) of the CHX Bylaws.

CHX Article 2, Rule 11 sets forth the responsibilities of the Nominating and Governance Committee. Consistent with the changes to the name and role of the committee set forth in proposed Article II, Section 3(a) of the CHX Bylaws, in the first sentence of Rule 11 the Exchange proposes to delete “and Governance” from the first sentence, add “and responsibilities” prior to “set out,” and to delete the second sentence of the Rule. The amended text would read as follows:

There shall be a Nominating Committee which shall have the composition and responsibilities set out in the Exchange’s Bylaws.

The proposed name and responsibilities for the committee would be consistent with NYSE National and NYSE Arca, which both have nominating committees that fill substantially the same role that the Exchange proposes the CHX Nominating Committee play.<sup>81</sup>

## Inbound Router

ArcaSec is a Participant of the Exchange, and may route approved types of orders from any of the NYSE Exchanges to the Exchange. Once the Transaction closes, ArcaSec will also be an affiliate of the Exchange. Accordingly, the Exchange proposes to add a new subparagraph (b) to CHX Article 19, Rule 2 to provide that ArcaSec may act as an inbound router. Proposed CHX Article 19, Rule 2(b) would be substantially similar to rules of the NYSE Exchanges.<sup>82</sup>

More specifically, proposed Rule 2(b)(1) would provide that, for so long as the Exchange is affiliated with the NYSE Exchanges and ArcaSec, in its capacity as a facility of the NYSE Exchanges, is utilized for the routing of any approved types of orders from those

<sup>81</sup> See NYSE Arca Rule 3.2(b)(3)(B) and (C) and NYSE National Bylaws, Article III, Section 3.4.

<sup>82</sup> See NYSE Arca Rule 7.45-E(c), NYSE Rule 17(c)(2), and NYSE American Rule 7.45E(c); Securities Exchange Act Release No. 38235 (June 23, 2011), 76 FR 38235 [sic] (June 29, 2011) (SR-NYSEArca-2011-38).

exchanges to the Exchange (such function of ArcaSec is referred to as the “Inbound Router”), each of the Exchange and Arca Sec shall undertake as follows:

- The Exchange shall maintain an agreement pursuant to Rule 17d-2 under the Exchange Act (“Rule 17d-2 Plan”) with a non-affiliated SRO to relieve the Exchange of regulatory responsibilities for ArcaSec with respect to rules that are common rules between the Exchange and the non-affiliated SRO.
- The Exchange shall maintain a regulatory services agreement (“RSA”) with a non-affiliated SRO to perform regulatory responsibilities for ArcaSec for unique Exchange rules.<sup>83</sup>
- The RSA shall require the Exchange and the non-affiliated SRO to monitor ArcaSec for compliance with the Exchange’s trading rules, and collect and maintain, in an easily accessible manner, all alerts, complaints, investigations and enforcement actions (collectively “Exceptions”) in which ArcaSec (in routing orders to the Exchange) is identified as a participant that has potentially violated applicable Exchange or Commission rules. The RSA shall require that the non-affiliated SRO provide a report, at least quarterly, to the Chief Regulatory Officer of the Exchange quantifying all Exceptions.
- The Exchange, on behalf of the holding company owning both the Exchange and ArcaSec, shall establish and maintain procedures and internal controls reasonably designed to prevent ArcaSec from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Participants of the Exchange in connection with the provision of inbound order routing to the Exchange.
- The Exchange may furnish to ArcaSec the same information on the same terms that the Exchange makes available in the normal course of business to any other Participant.

Proposed Rule 2(b)(2) would state that, provided the above conditions are complied with, ArcaSec may provide inbound routing services to the Exchange from the NYSE Exchanges.<sup>84</sup>

<sup>83</sup> “Common rules” would be defined in the Rule 17d-2 Plan.

<sup>84</sup> The Exchange will ensure a Rule 17d-2 Plan is in place and comply with the other listed conditions prior to ArcaSec acting as an Inbound Router of the Exchange.

#### Affiliate Securities Traded on the Exchange

The Exchange proposes to add a new Rule 28 to CHX Article 22 to set forth requirements for the Exchange relating to trading securities issued by ICE or its affiliates. Proposed Rule 28 is based in part on NYSE Rule 497 and NYSE American Rule 497—Equities. After the Closing, the Exchange would be a wholly-owned subsidiary of ICE, as would be stated in proposed Rule 28(a)(3). Proposed Rule 28.1(a)(1) [sic] would define the term “ICE Affiliate” to mean ICE and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with ICE, where “control” means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity. This proposed rule is based on NYSE Rule 497(a)(1) and NYSE American Rule 497(a)(1)—Equities without any substantive differences. Proposed Rule 28.1(a)(2) [sic] would define the term “Affiliate Security” to mean any security issued by an ICE Affiliate or any Exchange-listed option on any such security. This proposed rule is based on NYSE American Rule 497(a)(2)—Equities without any differences.

Because the Exchange is not a primary listing venue, the Exchange proposes a difference from both NYSE Rule 497 and NYSE American Rule 497—Equities to provide in proposed Rule 28.1(b) [sic] that “No Affiliate Security will be listed on the Exchange.” Because no Affiliate Security will be listed on the Exchange, the Exchange does not propose rule text based on NYSE Rule 497(c)(1)(a), (c)(2), or (c)(3). Proposed Rule 28.1(c) [sic] would instead provide that throughout the trading of the Affiliate Security on the Exchange, the Exchange would prepare a quarterly report on the Affiliate Security for the Exchange’s Regulatory Oversight Committee that describes Exchange regulatory staff’s monitoring of the trading of the Affiliate Security including summaries of all related surveillance alerts, complaints, regulatory referrals, adjusted trades, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security’s compliance with the Exchange’s trading rules.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

Section 6(b) of the Exchange Act,<sup>85</sup> in general, and furthers the objectives of Section 6(b)(1)<sup>86</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. Following the Transaction, the Commission will continue to have the same plenary regulatory authority over the Exchange that it currently has. The Exchange will continue to be registered as a national securities exchange and as a separate SRO. As such, the Exchange would continue to have separate rules, membership rosters, and listings that would be distinct from the rules, membership rosters, and listings of the four other registered national securities exchanges and SROs owned by NYSE Group. The proposed rule change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to the Exchange and its directors, officers, employees and agents to the extent they are involved in its activities.

In addition, the proposed CHX Holdings Governing Documents and governing documents of the ICE Holding Companies contain provisions intended to protect and maintain the independence and integrity of the self-regulatory functions of the Exchange upon Closing. Such provisions include submitting such entities to the jurisdiction of the federal courts and the Commission; obligating them to comply with the federal securities laws and the rules and regulations thereunder; requiring directors to take into consideration the effect that the relevant entity’s actions would have on the ability of the U.S. Exchanges, including the Exchange, to carry out their responsibilities under the Exchange Act; setting ownership and voting concentration limits on prospective owners; and imposing requirements regarding confidential information and books and records. In particular, the Exchange believes that the ownership and voting concentration limits preclude undue influence over or interference with the Exchange’s self-regulatory functions and fulfillment of its regulatory duties under the Exchange

<sup>85</sup> 15 U.S.C. 78f(b).

<sup>86</sup> 15 U.S.C. 78f(b)(1).

Act. Accordingly, the Exchange believes that the proposed rule change is consistent with and will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to the upstream governance of the Exchange.

The Exchange believes that the proposed change would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because the proposed Bylaw Waiver

Amendment, amendments to the governing documents of the Exchange and CHX Holdings, adoption of governing documents of the ICE Holding Companies as rules of the Exchange, and rule changes would effectuate the changes to the Exchange rules necessary to close the Transaction and provide for an efficient transition into a new organizational structure as soon as practicable after approval by the Commission of the proposed rule change. At the same time, because the Exchange is not proposing any significant changes to its existing operational and trading structure in connection with the change in ownership, the Exchange will operate in essentially the same manner upon Closing as it operates today. The Exchange believes this will provide consistency, predictability and clarity in its rules during the post-Closing transition, which would be beneficial to both investors and the public interest.

The Exchange believes that amending the CHX Bylaw and CHX Certificate provisions and CHX Article 2 governing the powers, composition and election of its Board would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because the proposed changes would establish an organizational structure designed to ensure that the Exchange will be able to continue to discharge its obligations as an SRO pursuant to the Exchange Act. For the same reason, the Exchange believes that, by putting mechanisms in place such as the Rule 17d-2 Plan, RSA,

exception reporting requirements, procedures and internal controls, the proposed changes to CHX Article 19, Rule 2(b) would protect the independence of the Exchange's self-regulatory function and are designed to prevent ArcaSec from acting on non-public information regarding planned changes to Exchange systems obtained as a result of its affiliation with the Exchange, thereby enabling the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. Similarly, the Exchange believes that the reporting requirements set forth in proposed CHX Article 22, Rule 28 would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, by ensuring ROC oversight of the trading of Affiliate Securities, through quarterly reports regarding the Exchange regulatory staff's monitoring of such trading. At the same time, all other provisions regarding the SRO function of the Exchange would remain substantively unchanged and in full force and effect prior to, during and after the Closing. The Exchange believes that would provide continuity in Exchange governance so as to facilitate the transition to the post-Closing governance structure, protecting and maintaining the independence of the self-regulatory functions of the Exchange and allowing it to continue to discharge its obligations as an SRO throughout any post-Closing transition.

The Exchange believes that the proposed amendments to Article II, Sections 2 and 3 of the CHX Bylaws and Article FIFTH of the CHX Certificate would be consistent with Section 6(b)(3) of the Exchange Act,<sup>87</sup> which is intended to give members a voice in the selection of an exchange's directors and the administration of its affairs. The proposed changes would require that at least 50 percent of the Board members be Public Directors, and at least 20 percent of the Board members be STP Participant Directors nominated by the Permit Holders. The proposed changes would provide that all Permit Holders

have the same rights to participate in the Nominating Committee and the nomination of STP Participant Directors and, in the case of a contested nomination, the same voting rights. The Exchange believes that having a Nominating Committee made up of STP Participant Directors and/or Permit Holder representatives would increase Permit Holders' participation in the nomination process compared to the current NGC, which consists only of Board members.<sup>88</sup> The proposed nominating and voting process would be consistent with the process for nominating non-affiliated directors of NYSE National and NYSE Arca.<sup>89</sup> The requirement that the STP Participant Directors make up at least 20% of the Board members would be consistent with the requirements for the boards of directors of the NYSE Exchanges, as would the proposal to allow NYSE Group to determine the size of the Board.<sup>90</sup> For these reasons, the Exchange believes that the proposed change would provide for the fair representation of members in the administration of the affairs of the Exchange, including the rulemaking and the disciplinary process, through representation on the Board and its committees.

The Exchange also believes that the filing furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>91</sup> in that it would 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,

<sup>88</sup> See CHX Bylaws, Article II, Section 3(a).

<sup>89</sup> See NYSE National Approval, *supra* note 24, and Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40).

<sup>90</sup> See NYSE National Approval, *supra* note 24; Securities Exchange Act Release Nos. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40); 59683 (April 1, 2007), 74 FR 15799 (April 7, 2009) (SR-NYSE-2009-12); and 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62). See also Securities Exchange Act Release No. 69869 (June 27, 2013), 78 FR 40252 (SR-NYSE-2013-32); 59683 (April 1, 2009). The rules of other SROs allow their member or shareholders, as applicable, to determine the size of their boards of directors. See Second Amended Limited Liability Company Agreement of The NASDAQ Stock Market LLC, Section 9(a); Amended and Restated By-laws of Miami International Securities Exchange, LLC, Article II, Section 2.2(a).

<sup>91</sup> 15 U.S.C. 78f(b)(4) and (5).

because the Exchange believes that the proposed amendments to the CHX Bylaws, CHX Certificate, and CHX Article 2 will promote consistency among the various governance documents of the NYSE Exchanges. The proposed amendments will make the framework and processes relating to the Exchange Board more similar to those of the NYSE Exchanges' boards of directors, in particular NYSE National and NYSE Arca, which have been well-established as fair and designed to protect investors and the public interest.<sup>92</sup>

In addition, by clearly stating that the stockholders determine the size of the Board; presenting the Board composition requirements, including how the minimum number of Non-Affiliated directors shall be calculated; and setting forth how the Board shall be elected, the proposed amendments to Article II, Sections 2 and 3 of the CHX Bylaws, Article FIFTH of the CHX Certificate and CHX Article 2 would contribute to the orderly operation of the Exchange by adding clarity, transparency and consistency to its rules.

The Exchange further believes that making non-substantive technical and conforming changes throughout the CHX Certificate, CHX Bylaws and CHX Article 2 to reflect the Exchange's proposed new ownership, including updating corporate names, defined terms, and cross references and removing an obsolete reference to the Board of Governors, removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having these references in the governing documents following the Transaction. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand its governing documents. The Exchange further believes that the proposed changes would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such obsolete references will also further the goal of transparency and add clarity to the Exchange's rules.

<sup>92</sup> See NYSE National Approval, *supra* note 24, and Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40).

The Exchange believes that adopting proposed CHX Holdings Governing Documents that are based on the documents of the ICE Holding Companies generally, and NYSE Group specifically, and adopting governing documents of the ICE Holding Companies as rules of the Exchange, would 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, because it would create more equivalent governing standards among all of the Exchange's direct and indirect parents, creating consistency, predictability and clarity in its rules, which is beneficial to both investors and the public interest. The proposed amendments will make the framework of the Exchange's direct parent substantially similar to the relevant framework and processes of the ICE Holding Companies, which have been well-established as fair and designed to protect investors and the public interest.<sup>93</sup>

In addition, the Exchange believes that amending the ICE Independence Policy to reflect the change in ownership of the Exchange and to remove outdated or obsolete references will 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 by removing confusion that may result from having these references in the ICE Independence Policy, allowing persons subject to the Exchange's jurisdiction, regulators, and investors to more easily navigate and understand the policy.

The Exchange believes that adopting proposed CHX Holdings Governing Documents that are based on the documents of the ICE Holding Companies generally, and NYSE Group specifically, will promote consistency among the various governance documents of the Exchange's holding companies and facilitate the ability of the Commission to provide oversight regarding the upstream governance of the Exchange. The proposed CHX Holdings Governing Documents contain provisions intended to protect and maintain the independence and

integrity of the self-regulatory functions of the Exchange upon Closing. As such, these provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Exchange Act to promote just and equitable principles of trade and to protect investors and the public interest.

Moreover, the Exchange believes that the proposed affiliation between the Exchange and Archipelago will not result in unfair discrimination between Participants as Archipelago will not operate as a "facility" of the Exchange, as defined under Section 3(a)(2) of the Exchange Act,<sup>94</sup> and will continue to act, and be regulated by the Exchange, as a Participant on the same terms as any other Participant, apart from CHXBD. Accordingly, the Exchange submits that the proposed affiliation between the Exchange and Archipelago is consistent with the requirements of Section 6(b)(5) of the Exchange Act.<sup>95</sup>

Finally, the Exchange believes that, the proposed changes to CHX Article 19, Rule 2(b) and new CHX Article 22, Rule 28 would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, as after the Closing CHX Article 19, Rule 2(b)[it] will allow the routing of orders from affiliated exchanges to the Exchange. At the same time, by putting mechanisms in place such as the Rule 17d-2 Plan, RSA, Exception reporting requirements, procedures and internal controls, the Exchange believes that the proposed changes would protect the independence of the Exchange's self-regulatory function and are designed to prevent ArcaSec from acting on non-public information regarding planned changes to Exchange systems obtained as a result of its affiliation with the Exchange. Similarly, the Exchange believes that proposed CHX Article 22, Rule 28 would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because the reporting requirements set forth in Rule 28 would ensure ROC oversight of the trading of Affiliate Securities through quarterly reports regarding the Exchange regulatory staff's monitoring of such trading. The Exchange believes that the differences between proposed CHX Article 22, Rule 28 and the rules of NYSE and NYSE American would promote just and equitable principles of trade because the Exchange will not be a primary listing venue and has

<sup>93</sup> See *supra* note 43.

<sup>94</sup> 15 U.S.C. 78c(b)(2).

<sup>95</sup> 15 U.S.C. 78f(b)(5).

represented in proposed CHX Article 22, Rule 28 that no Affiliate Security will be listed on the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Exchange Act.

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

In accordance with Section 6(b)(8) of the Exchange Act,<sup>96</sup> the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The rule change is being proposed in connection with the Transaction that would, upon completion, change the ownership structure of CHX Holdings.

Indeed, the Exchange believes that the proposed rule change will enhance competition among trading venues, as the Exchange believes that the Transaction will result in various synergies and efficiencies. For example, the Transaction will allow CHX to utilize Pillar, which is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the NYSE Exchanges.<sup>97</sup> The potential use of a single technology platform may also reduce investors' costs of connecting to and using the CHX and the NYSE Exchanges, including through the combination of data centers and market data services. The Exchange expects that the synergies and efficiencies will benefit it by reducing CHX's and the NYSE Exchanges' combined costs, creating the opportunity to further reduce costs to their respective members and other constituents.

The Exchange notes that the Exchange and the NYSE Exchanges generally operate with different business models and target different customer bases, limiting any concern that the Transaction could burden competition. Therefore, the Exchange expects that the Transaction will benefit investors, issuers, shareholders and the market as a whole. The Exchange will continue to conduct regulated activities (including operating and regulating its market and members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its members. These efficiencies will pass through to the benefit of investors and issuers, promoting further efficiencies, competition and capital

formation, placing no burden on competition not necessary or appropriate in furtherance of the Exchange Act.

Furthermore, the Exchange notes that the proposed rule change presents no novel issues, as all of the proposed rule text is derived from existing rules of the NYSE Exchanges or, in the case of the Bylaw Waiver Amendment, the Exchange. The Exchange's conclusion that the proposed rule change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act is consistent with the Commission's prior conclusions about similar combinations involving multiple exchanges in a single corporate family.<sup>98</sup>

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

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

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

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

- A. By order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>96</sup> See, e.g., NYSE National Approval, *supra* note 24; Securities Exchange Act Release Nos. 79585 (December 16, 2016), 81 FR 93988 (December 22, 2016) (SR-BatsBZX-2016-68; SR-BatsBYX-2016-29; SR-BatsEDGA-2016-24; SR-BatsEDGX-2016-60) (order granting approval of proposed rule change in connection with the proposed corporate transaction involving Bats Global Markets, Inc. and CBOE Holdings, Inc.); 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039) (order granting approval of proposed rule change in connection with the proposed business combination involving BATS Global Markets, Inc. and Direct Edge Holdings LLC); 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (order granting approval of proposed rule change in connection with the proposed acquisition of Boston Stock Exchange, Incorporated by the NASDAQ OMX Group, Inc.); and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order granting approval of proposed rule change relating to the NYSE's business combination with Archipelago Holdings, Inc.).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2018-004 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-CHX-2018-004. 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-CHX-2018-004, and should be submitted on or before June 19, 2018.

<sup>96</sup> 15 U.S.C. 78f(b)(8).

<sup>97</sup> See, e.g., Securities Exchange Act Release No. 82819 (March 7, 2018), 83 FR 11098 (March 13, 2018) (SR-NYSENAT-2018-02).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>99</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2018-11395 Filed 5-25-18; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83309; File No. SR-BOX-2018-19]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility To Amend Drop Copy Port Fees

May 23, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 16, 2018, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule t [sic] on the BOX Market LLC ("BOX") options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxexchange.com>.

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

In its filing with the Commission, the Exchange included statements

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

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

###### 1. Purpose

The Exchange proposes to amend Section VI.B.3 (Drop Copy) of the BOX Fee Schedule. Specifically, the Exchange proposes to add language that states that drop copy fees will be capped at \$2,000 per month. The Exchange notes that BOX will continue to assess Drop Copy Port Fees of \$500 per port per month for each month a Participant is credentialed to use a Drop Copy Port, subject to the \$2,000 cap.<sup>5</sup>

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed drop copy fee cap is reasonable, equitable and not unfairly discriminatory. The Exchange recently established Port Fees for Participants.<sup>7</sup> BOX Participants are currently charged \$500 per port per month for each month a Participant is credentialed to use a Drop Copy Port. After further review, the Exchange now proposes to cap Drop Copy Port Fees at \$2,000 per month. The purpose of this change is due to the different technology architecture used by various BOX Participants.<sup>8</sup> Further, BOX believes that the proposed change is reasonable as other options exchanges

<sup>5</sup> BOX Participants connected to a port as of the last trading day of each calendar month will be charged the applicable port fee for that month.

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> See Securities Exchange Act Release No. 83197 (May 9, 2018), 83 FR 22567 (May 15, 2018)(SR-BOX-2018-15).

<sup>8</sup> The Exchange notes that some Participants are impacted differently by the current Drop Copy Port Fee because of the number of legacy connections to the Drop Copy Port. As such, the Exchange is proposing the fee cap in order to avoid significant fees for certain Participants due to these connections.

have similar fee caps.<sup>9</sup> Lastly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because the fee cap will apply to all BOX Participants, regardless of account type.

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

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. Instead the proposed change will allow the Exchange to not impose significant costs for Participants with legacy drop copy connections. Further, the Exchange does not believe that capping the Drop Copy Port Fees will impose an undue burden on intra-market competition because all Participants are eligible for the fee cap.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder,<sup>11</sup> because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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:

<sup>9</sup> See Nasdaq BX, Inc. ("BX") Fee Schedule. BX charges \$500 per port, per month for their FIX Drop Port, but caps their monthly fees in the aggregate for their Ports (including FIX Port, CTI Port, FIX DROP Port, BX Depth Port and BX TOP Port) at \$7,500 per month.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>99</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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