

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84644; File No. SR-NYSENAT-2018-24)

November 21, 2018

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Certificate of Incorporation and Bylaws

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on November 20, 2018, NYSE National, Inc. (“Exchange” or “NYSE National”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its certificate of incorporation and bylaws to (1) harmonize certain provisions thereunder with similar provisions in the governing documents of the Exchange’s national securities exchange affiliates and parent companies; and (2) make clarifying and updating changes. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

(1) Generally [sic]

The Exchange proposes to amend the Amended and Restated Certificate of Incorporation of the Exchange (“Exchange Certificate”) and the Fifth Amended and Restated Bylaws of the Exchange (“Exchange Bylaws”) to (1) harmonize certain provisions thereunder with similar provisions in the governing documents of the Exchange’s national securities exchange affiliates⁴ and parent companies; and (2) make clarifying and updating changes.

The Exchange is owned by NYSE Group, Inc. (“NYSE Group”), which in turn is indirectly wholly owned by NYSE Holdings LLC (“NYSE Holdings”). NYSE Holdings is a wholly owned subsidiary of Intercontinental Holdings, Inc. (“ICE Holdings”), which is in turn wholly owned by the Intercontinental Exchange, Inc. (“ICE”).⁵

⁴ The Exchange has four registered national securities exchange affiliates: NYSE Arca, Inc. (“NYSE Arca”), New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), and Chicago Stock Exchange, Inc. (“CHX” and together with the Exchange, NYSE Arca, NYSE American, and NYSE, the “NYSE Group Exchanges”). CHX has filed to change its name to NYSE Chicago, Inc. See Exchange Act Release No. 84494 (October 26, 2018) (SR-CHX-2018-05) (“NYSE Chicago Release”) (notice of filing and immediate effectiveness of proposal to reflect name changes of the Exchange and its direct parent company and to amend certain corporate governance provisions). The rule changes set forth in the NYSE Chicago Release will become operative upon the Second Amended and Restated Certificate of Incorporation of Chicago Stock Exchange, Inc. (“NYSE Chicago Certificate”) becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

⁵ See Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16) (order approving proposed rule change in connection with proposed

The Exchange operates as a separate self-regulatory organization and has rules and membership rosters distinct from the rules and membership rosters of the other NYSE Group Exchanges. At the same time, however, the Exchange believes it is important for each of the NYSE Group Exchanges to have a consistent approach to corporate governance in certain matters, to simplify complexity and create greater consistency among the NYSE Group Exchanges.⁶

Because the Exchange is a Delaware corporation, most of the proposed changes are based on the governing documents of CHX, which is also a Delaware corporation, and NYSE Arca, which is a Delaware non-stock corporation, as the most comparable NYSE Group Exchanges.⁷ The proposed Exchange Certificate and Exchange Bylaws reflect the expectation that the Exchange will continue to be operated with a governance structure substantially similar to that of other NYSE Group Exchanges, primarily CHX and NYSE Arca.

The other changes described herein would become operative upon the Exchange Certificate becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

The proposed amendments described below are primarily based on the Second Amended and Restated Certificate of Incorporation of Chicago Stock Exchange, Inc. (“NYSE Chicago Certificate”), the Second Amended and Restated By-Laws of NYSE Chicago, Inc. (“NYSE Chicago Bylaws”),⁸ and the Amended and Restated Bylaws of NYSE Arca, Inc. (“NYSE Arca

acquisition of the Exchange by NYSE Group, Inc.).

⁶ See NYSE Chicago Release, supra note 4, at 3.

⁷ The other NYSE Group Exchanges, NYSE and NYSE American, are limited liability companies organized under New York and Delaware limited liability company law, respectively.

⁸ The NYSE Chicago Certificate and NYSE Chicago Bylaws have been filed with the

Bylaws”). In addition, the amendments to the indemnification provisions are based on the Eighth Amended and Restated Bylaws of Intercontinental Exchange, Inc. (“ICE Bylaws”) and the Sixth Amended and Restated Bylaws of Intercontinental Exchange Holdings, Inc. (“ICE Holdings Bylaws”).

Proposed Amendments to the Exchange Certificate

The Exchange proposes to amend the Exchange Certificate as follows.

Introductory Paragraph

In a non-substantive change, the Exchange proposes to delete the sentence stating “[t]he Certificate of Incorporation was restated on June 29, 2006, December 30, 2011, and February 18, 2015.”

Article FIRST

In a non-substantive change, the Exchange proposes to replace “NYSE NATIONAL, INC.” with “NYSE National, Inc.” in Article FIRST, to reflect that the legal name of the Exchange is not entirely in capital letters.

Article SECOND and Certificate of Change of Registered Agent and/or Registered Office

In a non-substantive change, the Exchange proposes to update the address of the registered office and name of the registered agent, as previously filed, and, because such address and office are no longer the initial address and office, delete the word “initial” from the provision. The Exchange also proposes to delete the “Certificate of Change of Registered Agent and/or Registered Office.”⁹

SEC, and will become operative when the NYSE Chicago Certificate becomes effective pursuant to its filing with the Secretary of State of the State of Delaware. See NYSE Chicago Release, supra note 4, at 4.

⁹ See Exchange Act Release No. 82925 (March 22, 2018), 83 FR 13165 (March 27, 2018)

Article FIFTH

Current paragraph (b) of Article FIFTH (Removal of Directors) provides that any director may be removed from office by a vote of the stockholders at any time with or without cause, except that Non-Affiliated Directors, as defined in the Exchange Bylaws, may only be removed for cause. The Exchange proposes to amend the definition of “cause” to provide that the list set forth in the provision is inclusive. The Exchange notes that the revised provision would be consistent with Article FIFTH(b) of the NYSE Chicago Certificate.¹⁰

Article EIGHTH

In a non-substantive change, the Exchange proposes to correct a typographical error in the title of Article EIGHTH, correcting “Liabilitv” with “Liability”.

Article NINTH

In a non-substantive change, the Exchange proposes to amend Article NINTH to replace a reference to “Delaware” with “the State of Delaware.”

Date

The Exchange proposes to update the date in the final paragraph.

Proposed Amendments to the Exchange Bylaws

(SR-NYSENAT-2018-04).

¹⁰ See NYSE Chicago Release, supra note 4, at 14. See also Eighth Amended and Restated Bylaws of Cboe BZX Exchange, Inc. (“Cboe BZX Bylaws”), Section 3.4(c) (providing that “[n]o Representative Director may be removed from office by a vote of the stockholders at any time except for cause, which shall include, but not limited to, (i) a breach of a Representative Director’s duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) transactions from which a Representative Director derived an improper personal benefit, or (iv) a failure of a Representative Director to be free from a statutory disqualification (as defined in Section 3(a)(39) of the Act”) (emphasis added; NYSE Operating Agreement, Article II, Section 2.03(l) (providing that cause “shall include, without limitation, the failure of [a] Director to be free of any statutory disqualification...”); and NYSE American Operating Agreement, Article II, Section 2.03(l) (same).

The Exchange proposes to amend the Exchange Bylaws as follows.

Conforming Changes

In non-substantive changes, the Exchange proposes to delete the cover page and table of contents of the Exchange Bylaws, and amend the title to reflect that the proposed Exchange Bylaws are the “Sixth Amended and Restated Bylaws of NYSE National, Inc.”

Article III (Board of Directors)

Section 3.6 (Vacancies): Section 3.6(a)(i) provides that any vacancy on the Board may be filled by the Chairman of the Board, subject to the approval by a majority of the directors then in office, and that any vacancy will be filled with a person who satisfies the classification associated with the vacant seat.

In an administrative change, the Exchange proposes to add that that the stockholders may also fill any vacancy, and those vacancies resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs. Because, under Section 3.2(a), the stockholders determine the number of directors, a new directorship may be created. Accordingly, the Exchange proposes to add to Section 3.6(a)(i) that any newly created directorship will be filled with a person who satisfies the classification associated with the seat.

The first two sentences of the amended paragraph would be as follows (additions underlined):

Notwithstanding any provision herein to the contrary, any vacancy in the Board, however occurring, including a vacancy resulting from an increase in the number of the directors, may be filled (i) by the Chairman of the Board, subject to the approval by a majority of the directors then in office, or (ii) by action taken by the

stockholders of the Exchange, and those vacancies resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs. Any vacancy or newly-created directorship will be filled with a person who satisfies the classification (e.g., public) associated with the vacant seat.

The change would be consistent with clause (ii) of Article II, Section 5 of the NYSE Chicago Bylaws, which was amended at the time of its acquisition by ICE.¹¹

Section 3.7 (Removal): Section 3.7 provides that any director may be removed from office by a vote of the stockholders at any time with or without cause, except that non-affiliated directors may only be removed for cause. The Exchange proposes to amend the definition of “cause” to provide that the list set forth in the provision is inclusive, by replacing “mean only” with “include.” As a result of the proposed amendment, the definition of “cause” would be substantially similar to the definition in Article FIFTH(b) of the NYSE Chicago Certificate.

In a non-substantive change, the Exchange proposes to amend clause (iii) to replace a reference to “Delaware” with “the State of Delaware.”

Section 3.9 (Regular Meetings): Section 3.9 specifies that regular meetings may be held, with or without notice, at such time or place as the Board may specify in a resolution. The Exchange proposes an administrative change to eliminate the requirement for a Board resolution. The change would be consistent with the governing documents of the other NYSE Group Exchanges, which do not require a board resolution in order to call a meeting.¹²

¹¹ See Exchange Act Release No. 83635 (July 13, 2018), 83 FR 34182 (July 19, 2018) (SR-CHX-2018-004), and Partial Amendment No. 2 to SR-CHX-2018-004 (June 11, 2018).

¹² See NYSE Arca Bylaws, Article III, Section 3.05; NYSE Chicago Bylaws, Article II, Section 8; NYSE Operating Agreement, Article II, Section 2.03(c); and NYSE American Operating Agreement, Article II, Section 2.03(c).

Section 3.10 (Special Meetings): Paragraph (a) of Section 3.10 permits special meetings of the Board to be called on two days' notice to each Director by the Chairman or the Chief Executive Officer, or by the Secretary upon the request of any three Directors. In an administrative change, The Exchange proposes to reduce the minimum notice requirement from two days to one day, consistent with Article II, Section 9(a) of the NYSE Chicago Bylaws.¹³ The Exchange believes that reducing the minimum notice requirement to one day is reasonable as it would facilitate the Board meeting quickly.

Paragraph (b) of Section 3.10 requires the person calling a special meeting to fix the time and place at which the meeting will be held, and deems notice to be given five business days after deposit in the United States mail. In an administrative change, the Exchange proposes to:

- eliminate the requirement that the person calling the special meeting fix the time and place of the meeting, as Article III, Section 3.8 already addresses the place and mode of Board meetings;
- state that notice may be given by written, electronic or telephonic means; and
- reduce the period for deemed notice of mailed notice from five to two business days.

The changes would be consistent with Article II, Section 9(b) of the NYSE Chicago Bylaws.

¹³ See NYSE Chicago Release, supra note 4, at 24. One day of notice would be consistent with the bylaws of other national securities exchanges. See NYSE Operating Agreement, Article II, Section 2.03(c) (requiring 12 or 24 hours of notice, with the exception of mailed notice); NYSE American Operating Agreement, Article II, Section 2.03(c) (requiring 12 or 24 hours of notice, with the exception of mailed notice); Cboe BZX Bylaws, Section 3.11 (requiring 24 hours of notice); Tenth Amended and Restated Bylaws of Cboe Exchange, Inc. ("Cboe Exchange Bylaws"), Section 3.11 (requiring 24 hours of notice); and Bylaws of Nasdaq, Inc., Article IV, Section 4.12 (requiring that notice be sent no later than "the day before the day" of the meeting, with the exception of mailed notice).

Sections 3.11 (Voting; Quorum and Action by the Board) and 3.14 (Action in Lieu of Meeting): Section 3.11 provides that the presence of a majority of the directors then in office shall constitute a quorum for Board meetings. Section 3.14 provides that, unless otherwise restricted by statute, the Exchange Certificate or the Exchange By-Laws, action may be taken without a meeting if certain procedural requirements are met. The Exchange proposes to make the following administrative changes to the provisions:

- In Section 3.11, the Exchange proposes to clarify that the proposed quorum requirement would apply “[e]xcept as otherwise required by law”¹⁴ and to change a reference to “statute” with “law.”
- In Section 3.14, the Exchange proposes to replace “restricted by statute” with “provided by law.”

The change to add an exception to Section 3.11 would allow the written notice to be consistent with both applicable law and the Exchange Bylaws, should applicable law set forth specific requirements that differ from the Bylaw provision. The Exchange proposes to change “statute” to “law,” as the latter is a broader term, which includes non-statutory law, such as common law. The changes would be consistent with the NYSE Chicago Bylaws.¹⁵

Article IV (Stockholders)

Sections 4.1 (Annual Meeting), 4.2 (Special Meetings), and 4.4 (Quorum and Vote Required for Action): Among other provisions, Sections 4.1 and 4.2 set forth the notice requirements for annual and special meetings of stockholders. Section 4.4 sets forth the quorum

¹⁴ See, e.g. DCGL Section 141(b).

¹⁵ See NYSE Chicago Bylaws, Article II, Sections 10 and 13; and NYSE Chicago Release, supra note 4, at 26-27.

and voting requirements. For the reasons set forth above, the Exchange proposes to make the following administrative changes to the provisions:

- The Exchange proposes to add “[e]xcept as otherwise provided by law,” before the sentences in Sections 4.1 and 4.2 that set forth the written notice requirements.¹⁶
- In Section 4.4, the Exchange proposes to replace “statute” with “law” in paragraph (a) and “Statute” with “General Corporation Law of the State of Delaware” in paragraph (b).

The changes would be consistent with the NYSE Chicago Bylaws.¹⁷

Section 4.3 (List of Stockholders): Section 4.3 provides that the Secretary or a designated person shall have charge of the stock ledger of the Exchange and, before every stockholder meeting, shall prepare a list of stockholders entitled to vote. In an administrative change, the Exchange proposes to amend the provision such that, as permitted by Section 219(a) of the DGCL, the “Exchange” keeps the ledger and prepares the list of stockholders.¹⁸ The change would be consistent with Article III, Section 4 of the NYSE Chicago Bylaws.¹⁹

Section 4.6 (Action in Lieu of Meeting): Section 4.6 permits stockholder action to be taken by written consent and provides certain requirements related to such written consent. In an administrative change, the Exchange proposes to amend the provisions to permit stockholder action to be taken by written consent and to the extent provided by the DGCL, but only if the matter to be voted upon were approved by the Board and the Board had directed that the matter

¹⁶ See Del. Code tit. 8, §222.

¹⁷ See NYSE Chicago Bylaws, Article III, Sections 1, 2, and 5(b); and NYSE Chicago Release, *supra* note 4, at 29-31.

¹⁸ Del. Code tit. 8, §219(a).

¹⁹ See NYSE Chicago Release, *supra* note 4, at 30.

be brought before the stockholders. The amended provision would be substantially similar to Article III, Section 7 of the NYSE Chicago Bylaws.²⁰

Article V (Committees)

Section 5.2 (Appointment; Vacancies; and Removal): Section 5.2(b) provides that any vacancy in a Board committee shall be filled by the Chief Executive Officer with the approval of the Board. Consistent with the DGCL and Article IV, Section 2(b) of the NYSE Chicago Bylaws,²¹ the Exchange proposes to provide that only the Board can fill a vacancy in a Board committee.

Section 5.6 (Regulatory Oversight Committee): Section 5.6 establishes the powers and responsibilities of the Regulatory Oversight Committee, and is substantially the same as the related provisions in the governing documents of the other NYSE Group Exchanges.²² Among other things, the provision states that “[t]he Board may, on affirmative vote of a majority of directors, at any time remove a member of the ROC for cause.” The Exchange proposes to add language clarifying that the majority affirmative vote requirement is based on the “directors then in office,” as opposed to total number of seats on the Board. The change would be consistent with Article IV, Section 6 of the NYSE Chicago Bylaws.²³

Article VII (Indemnification)

Current Article VII includes provisions related to indemnification by the Exchange. As a

²⁰ See id., at 31-32.

²¹ See Del. Code tit. 8, §141(c)(1).

²² See NYSE Arca Rule 3.3; NYSE Operating Agreement, Article II, Section 2.03(h)(ii); NYSE American Operating Agreement, Article II, Section 2.03(h)(ii); NYSE Chicago Bylaws, Article IV, Section 6.

²³ See NYSE Chicago Release, supra note 4, at 35. The Exchange understands that NYSE, NYSE American, and NYSE Arca propose to file similar changes to their respective ROC provisions.

wholly-owned subsidiary of ICE, the Exchange believes it appropriate to harmonize the Exchange's indemnification provisions with those of ICE and the Exchange's intermediate holding company, ICE Holdings.²⁴ The same change was made to Article VI of the NYSE Chicago Bylaws.²⁵

Accordingly, the Exchange proposes to delete the text of Section 7.1 (Indemnification) in its entirety and replace it with proposed text that is substantially similar to the CHX, ICE and ICE Holdings provisions, with the exception of changes to be consistent with the Exchange Bylaws' terminology.²⁶ The proposed text follows:

(a) The Exchange shall, to the fullest extent permitted by law, as those laws may be amended and supplemented from time to time, indemnify any director or officer made, or threatened to be made, a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director or officer of the Exchange or a predecessor corporation or, at the Exchange's request, a director, officer, partner, member, employee or agent of another corporation or other entity; provided, however, that the Exchange shall indemnify any director or officer in connection with a proceeding initiated by such person only if such proceeding was authorized in advance by the Board of Directors of the Exchange. The indemnification provided for in this Section 7.1 shall: (i) not be deemed exclusive of any other rights to which those indemnified

²⁴ See ICE Bylaws, Article X, Section 10.6, and ICE Holdings Bylaws, Article X, Section 10.6.

²⁵ See NYSE Chicago Release, *supra* note 4, at 41. The Exchange understands that NYSE, NYSE American, and NYSE Arca propose to file similar changes to their respective indemnification provisions.

²⁶ For example, proposed Section 7.1 uses "officer" instead of "Senior Officers," "Exchange" instead of "Corporation," and "Section 7.1" instead of "Section 10.6."

may be entitled under any bylaw, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office; (ii) continue as to a person who has ceased to be a director or officer; and (iii) inure to the benefit of the heirs, executors and administrators of an indemnified person.

(b) Expenses incurred by any such person in defending a civil or criminal action, suit or proceeding by reason of the fact that he is or was a director or officer of the Exchange (or was serving at the Exchange's request as a director, officer, partner, member, employee or agent of another corporation or other entity) shall be paid by the Exchange in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Exchange as authorized by law. Notwithstanding the foregoing, the Exchange shall not be required to advance such expenses to a person who is a party to an action, suit or proceeding brought by the Exchange and approved by a majority of the Board of Directors of the Exchange that alleges willful misappropriation of corporate assets by such person, disclosure of confidential information in violation of such person's fiduciary or contractual obligations to the Exchange or any other willful and deliberate breach in bad faith of such person's duty to the Exchange or its stockholders.

(c) The foregoing provisions of this Section 7.1 shall be deemed to be a contract between the Exchange and each director or officer who serves in such capacity at any time while this bylaw is in effect, and any repeal or modification

thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts. The rights provided to any person by this bylaw shall be enforceable against the Exchange by such person, who shall be presumed to have relied upon it in serving or continuing to serve as a director or officer or in such other capacity as provided above.

(d) The Board of Directors in its discretion shall have power on behalf of the Exchange to indemnify any person, other than a director or officer, made or threatened to be made a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, or his or her testator or intestate, is or was an officer, employee or agent of the Exchange or, at the Exchange's request, is or was serving as a director, officer, partner, member, employee or agent of another corporation or other entity.

(e) To assure indemnification under this Section 7.1 of all directors, officers, employees and agents who are determined by the Exchange or otherwise to be or to have been "fiduciaries" of any employee benefit plan of the Exchange that may exist from time to time, Section 145 of the Delaware General Corporation Law shall, for the purposes of this Section 7.1, be interpreted as follows: an "other enterprise" shall be deemed to include such an employee benefit plan, including without limitation, any plan of the Exchange that is governed by the Act of Congress entitled "Employee Retirement Income Security Act

of 1974,” as amended from time to time; the Exchange shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the Exchange also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to such Act of Congress shall be deemed “fines.”

Article IX (Certificates of Stock and their Transfer)

Section 9.1 (Form and Execution of Certificates): Section 9.1 provides requirements related to the execution of stockholder certificates. The Exchange proposes to amend the requirements to provide that the certificate may be signed by “any two authorized officers,” instead of listing the specific officers authorized to execute a certificate, which better reflects the requirements of Section 158 of the DGCL.²⁷ The change would be consistent with Article VIII, Section 1 of the NYSE Chicago Bylaws.²⁸

Article XI (General Provisions)

Section 11.2 (Dividends): Section 11.2 permits the Board to declare dividends. The Exchange proposes to replace the phrase “[s]ubject to any provisions of any applicable statute,” which qualifies the Board’s authority to issue dividends, with “[s]ubject to any applicable law” so as to eliminate redundant language and clarify that proposed Section 11.2 would be subject to any non-statutory law, such as common law. The change would be consistent with Article X, Section 2 of the NYSE Chicago Bylaws.²⁹

²⁷ See Del. Code tit. 8, §158.

²⁸ See NYSE Chicago Release, supra note 4, at 47.

²⁹ See id., at 51.

Section 11.4 (Subsidiaries): Section 11.4 authorizes the Board to constitute any officer of the Exchange to vote the stock of any subsidiary corporation on behalf of the Exchange. In an administrative change, the Exchange proposes to add a second sentence stating that “[i]n the absence of specific action by the Board of Directors, the Chief Executive Officer and Secretary of the Exchange shall have authority to represent the Exchange and to vote, on behalf of the Exchange, the securities of other corporations, both domestic and foreign, held by the Exchange.”

The Exchange believes that permitting the Secretary of the Exchange to act on behalf of the Exchange pursuant to proposed Section 4 is appropriate given that the Secretary is frequently tasked to execute the Exchange’s actions, especially as it relates to corporate governance. Under Section 11.4, the Board may constitute any officer of the Exchange, which includes the Secretary, to vote the stock of any subsidiary of the Exchange. The Board has approved the proposed changes to the Bylaws, including the proposed changes to Section 11.4. By approving the proposed changes to Section 11.4, the Board granted the Secretary the authority described therein. Moreover, proposed Section 11.4 would continue to permit the Board to revoke such voting power or constitute another officer with such voting power. The change would be consistent with Article X, Section 4 of the NYSE Chicago Bylaws.³⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,³¹ in general, and furthers the objectives of Section 6(b)(1)³² in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the

³⁰ See *id.*, at 51-52.

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(1).

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. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,³³ in that it 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 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.

The Exchange believes that the proposed amendments to harmonize certain provisions of the Exchange Certificate and Bylaws with similar provisions of the governing documents of other NYSE Group Exchanges, ICE and ICE Holdings would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members. For example, the proposed changes would create greater conformity between the Exchange's provisions relating to stockholders, officers, and stock certificates and those of its affiliates, particularly CHX and NYSE Arca. The Exchange believes that such conformity would streamline the NYSE Group Exchanges' corporate processes, create more equivalent governance processes among them, and also provide clarity to the Exchange's members, which is beneficial to both investors and the public interest. At the same time, the Exchange will continue to operate as a separate self-regulatory organization and to have rules and membership rosters distinct from the rules and membership rosters of the other

³³ 15 U.S.C. 78f(b)(5).

NYSE Group Exchanges.

The Exchange also believes that the greater consistency among the governing documents of the NYSE Group Exchanges, ICE and ICE Holdings would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest. Indeed, the proposed amendments would make the corporate requirements and administrative processes relating to the Board, Board committees, officers, stockholders, and other corporate matters more similar to those of the NYSE Group Exchanges, in particular CHX and NYSE Arca, which have been established as fair and designed to protect investors and the public interest.³⁴

The proposed amendments to clarify the meaning of certain provisions of the Exchange Certificate and the Exchange Bylaws, to better comport certain provisions with the DGCL and to effect non-substantive changes would facilitate the Exchange's continued compliance with the Exchange Certificate and Bylaws and applicable law, which would further 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. Such amendments would also remove impediments to and perfects the mechanism of a free and open market by removing confusion that may result from corporate governance provisions that are either unclear or inconsistent with the governing law.

The Exchange also believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the

³⁴ See NYSE Chicago Release, *supra* note 4, Exchange Act Release Nos. 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR-CHX-2018-004); and 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40).

Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The Exchange further believes that the proposed amendments 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 and clarity, thereby reducing potential confusion.

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 that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the corporate governance and administration of the Exchange.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³⁵ and Rule 19b-4(f)(6) thereunder.³⁶ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission

³⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁶ 17 CFR 240.19b-4(f)(6).

summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2018-24 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSENAT-2018-24. This file number should be included on the subject line if e-mail 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

³⁷ 15 U.S.C. 78s(b)(2)(B).

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-NYSENAT-2018-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Brent J. Fields
Secretary

³⁸ 17 CFR 200.30-3(a)(12).