

## OMB APPROVAL

OMB Number: 3235-0045  
 Estimated average burden  
 hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 169

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2017 - \* 19

Amendment No. (req. for Amendments \*)

Filing by Bats BYX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial \*



Amendment \*



Withdrawal



Section 19(b)(2) \*



Section 19(b)(3)(A) \*



Section 19(b)(3)(B) \*



Rule

Pilot



Extension of Time Period  
for Commission Action \*



Date Expires \*

☐ 19b-4(f)(1)

☐ 19b-4(f)(2)

☐ 19b-4(f)(3)

☐ 19b-4(f)(4)

☐ 19b-4(f)(5)

☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) \*



Section 806(e)(2) \*



Security-Based Swap Submission pursuant  
to the Securities Exchange Act of 1934

Section 3C(b)(2) \*



Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



## Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed rule change to harmonize the governance framework with that of Chicago Board Options Exchange, Incorporated and C2 Options Exchange Incorporated.

## Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Corrine

Last Name \* Klott

Title \* Senior Counsel

E-mail \* klott@cboe.com

Telephone \* (312) 786-7793

Fax

## Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 08/23/2017

By Corrine Klott

(Name \*)

Senior Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

klott@cboe.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**Item 1.        Text of the Proposed Rule Change**

(a)        Bats BYX Exchange, Inc. (the “Exchange” or “BYX”) proposes to amend and restate its certificate of incorporation and bylaws, as well as amend its Rules. The text of the proposed amendments to the Exchange’s certificate is included in Exhibits 5A and 5B, the text of the proposed amendments to the Exchange’s bylaws is included in Exhibits 5C and 5D, and the text of the proposed amendments to the Exchange’s rules is included in Exhibit 5E.

(b)        Not applicable

(c)        Not applicable.

**Item 2.        Procedures of the Self-Regulatory Organization**

(a)        BYX’s Board of Directors (the “Board”) approved this proposed rule filing at its meeting on August 1, 2017. The Board approved the amendment and restatement of the BYX bylaws and BYX certificate of incorporation set forth in this proposed rule change at its meeting on August 1, 2017.

(b)        Please refer questions and comments on the proposed rule change to Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary (312) 786-7462 or Corinne Klott, (312) 786-7793.

**Item 3.        Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a)        Purpose

BYX submits this rule filing to the Securities and Exchange Commission (the “Commission”) in connection with a corporate transaction (the “Transaction”) involving, among other things, the recent acquisition of BYX, along with Bats BZX Exchange, Inc. (“Bats BZX”), Bats EDGX Exchange, Inc. (“Bats EDGX”), and Bats EDGA Exchange,

Inc. (“Bats EDGA” and, together with Bats BYX, Bats EDGX, and Bats BZX, the “Bats Exchanges”) by CBOE Holdings, Inc. (“CBOE Holdings”). CBOE Holdings is also the parent of Chicago Board Options Exchange, Incorporated (“CBOE”) and C2 Options Exchange, Incorporated (“C2”). This filing proposes to amend and restate the bylaws (and amend the rules, accordingly) and the certificate of incorporation of the Exchange based on the bylaws and certificates of incorporation of CBOE and C2.

Specifically, the Exchange proposes to replace the certificate of incorporation of Bats BYX Exchange, Inc., (the “current Certificate”) in its entirety with the Amended and Restated Certificate of Incorporation of Bats BYX Exchange, Inc. (the “proposed Certificate”). Additionally, the Exchange proposes to replace the Fifth Amended and Restated Bylaws of Bats BYX Exchange, Inc. (the “current Bylaws”) in its entirety with the Sixth Amended and Restated Bylaws of Bats BYX Exchange, Inc. (the “proposed Bylaws”). The Exchange believes that it is important for each of CBOE Holdings’ six U.S. securities exchanges to have a consistent, uniform approach to corporate governance. Therefore, to simplify and unify the governance and corporate practices of these six exchanges, the Exchange proposes to revise the current Certificate and current Bylaws to conform them to the certificates of incorporation and bylaws of the CBOE and C2 exchanges (i.e., the Third Amended and Restated Certificate of Incorporation of Chicago Board Options Exchange, Incorporated and the Fourth Amended and Restated Certificate of C2 Options Exchange, Incorporated (collectively referred to herein as the “CBOE Certificate”) and the Eighth Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated and the Eighth Amended and Restated Bylaws of C2 Options Exchange, Incorporated (collectively referred to herein as the “CBOE Bylaws”).

The proposed Certificate and proposed Bylaws reflect the expectation that the Exchange will be operated with governance structures similar to those of CBOE and C2. Accordingly, the Exchange proposes to adopt corporate documents that set forth a substantially similar corporate governance framework and related processes as those contained in the CBOE Certificate and CBOE Bylaws. The Exchange believes the proposed changes to the current Certificate and current Bylaws are consistent with the requirements of the Securities Exchange Act of 1934, as amended (the “Act”).

(a) Changes to the Certificate

In connection with the Transaction, the Exchange proposes to amend and restate the current Certificate to conform to the certificates of incorporation of CBOE and C2. The proposed Certificate is set forth in Exhibit 5B. Specifically, the Exchange proposes to make the following substantive amendments to the current Certificate.

- Adopt an introductory section.
- Amend Article Third to provide further details as to the nature of the business of the Exchange. Specifically, the proposed Certificate will further specify that the nature of the Exchange is (i) to conduct and carry on the function of an “exchange” within the meaning of that term in the Act and (ii) to provide a securities market place with high standards of honor and integrity among its Exchange Members and other persons holding rights to access the Exchange’s facilities and to promote and maintain just and equitable principles of trade and business.
- Article Fourth of the proposed Certificate specifies that Bats Global Markets Holdings, Inc. will be the sole owner of the Common Stock and that any sale,

transfer or assignment by Bats Global Markets Holdings, Inc. of any shares of Common Stock will be subject to prior approval by the SEC pursuant to a rule filing. The Exchange notes that Article IV, Section 7 of the current Bylaws similarly precludes the stockholder from transferring or assigning, in whole or in part, its ownership interest(s) in the Exchange.

- Article Fifth of the current Certificate regarding the name and address of the sole incorporator is being deleted as it is now outdated.
- Article Fifth of the proposed Certificate is the same as Article Fifth of the CBOE Certificate. Specifically, Article Fifth, subparagraph (a) provides that the governing body of the Exchange shall be its Board. Article Fifth, subparagraph (b) provides that the Board shall consist of not less than five (5) Directors and subparagraph (c) includes language regarding the nomination of directors, which information is substantially similar as is provided in the CBOE Bylaws and the proposed Bylaws.<sup>1</sup> Article Fifth, subparagraph (d) of the proposed Certificate provides that in discharging his or her responsibilities as a member of the Board, each Director shall take into consideration the effect that his or her actions would have on the ability of the Exchange to carry out the Exchange's responsibilities under the Act and on the ability of the Exchange: to engage in conduct that fosters and does not interfere with the Exchange's ability 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

---

<sup>1</sup> See Article III of the CBOE Bylaws and proposed Bylaws.

transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board or as an officer or employee of the Exchange, each such Director, officer or employee shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission, and the Exchange pursuant to its regulatory authority. The Exchange notes that similar language is included in the current Bylaws.<sup>2</sup>

- Article Sixth of the proposed Certificate governs the indemnification of Directors of the Board. The Exchange notes that its indemnification provision is currently contained in Article VIII of the current Bylaws. In order to conform governance documents across all CBOE Holdings' exchanges and conform indemnification practices, the Exchange is eliminating its indemnification in the bylaws and adopting the same indemnification language that is currently contained in Article Sixth of the CBOE Certificate.
- Article Seventh of the proposed Certificate is the same as Article Seventh of the CBOE Certificate and provides that the Exchange reserves the right to amend, change or repeal any provision of the certificate. It also provides that before any amendment or repeal of any provision of the certificate shall be effective, the changes must be submitted to the Board, and if such amendment or repeal must be filed with or filed with and approved by the Commission, it won't be effective until filed with or filed with and approved by the Commission.

---

<sup>2</sup> See Article III, Section 1(d) and Section 1(e) of the current Bylaws.

- Article Eighth of the proposed Certificate is the same as Article Eighth of the CBOE Certificate. Proposed Article Eighth provides that a Director of the Exchange shall not be liable to the Exchange or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation is not permitted under Delaware Corporate law.
- Article Ninth of the proposed Certificate is the same as Article Ninth of the CBOE Certificate. Specifically it provides that unless and except to the extent that the Exchange's bylaws require, election of Directors of the Exchange need not be by written ballot.
- Article Tenth of the proposed Certificate is the same as Article Tenth of the CBOE Certificate and provides that in furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to make, alter and repeal the Exchange's bylaws, which is already provided for in both the current Bylaws and proposed Bylaws.<sup>3</sup>
- Article Eleventh of the proposed Certificate is the same as Article Eleventh of the CBOE Certificate and is similar to Article XI, Section 3 of the current Bylaws. Particularly, Article Eleventh provides that confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) not be made

---

<sup>3</sup> See Article IX, Section 1 of the current Bylaws and Article IX, Section 9.1 of the proposed Bylaws.



available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange; and (iii) not be used for any commercial purposes. Additionally, Article Eleventh of the proposed Certificate further provides that nothing in Article Eleventh shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission.

(b) Substantive Changes to the Bylaws

In connection with the Transaction, the Exchange also proposes to amend and restate the current Bylaws to conform to the Bylaws of CBOE and C2. The proposed Bylaws is set forth in Exhibit 5D. Specifically, the Exchange proposes to make the following substantive amendments to the current Bylaws:

**Definitions**

The Exchange first notes that Section 1.1 of the proposed Bylaws, titled “Definitions,” contains key definitions of terms used in the proposed Bylaws, and are based on the defined terms used in Section 1.1 of the CBOE Bylaws. The Exchange notes that certain differences in terminology in the proposed Bylaws and CBOE Bylaws will exist (e.g., use of the term “Exchange Member” instead of “Trading Permit Holder”). The Exchange proposes to eliminate from the current Bylaws certain definitions that would be obsolete under the proposed Bylaws (e.g., references to “Member

Representative Directors” and “Member Nominating Committee”) and also proposes to move certain defined terms located in the current Bylaws to the BYX Rules (i.e., “Industry member” and “Member Representative member”)<sup>4</sup>. Additionally, the Exchange proposes to define certain terms in the current Bylaws in places other than Section 1.1, so as to match the CBOE Bylaws (e.g., the definition of “Industry Director” is being relocated to Article III, Section 3.1 of the proposed Bylaws and the definition of “Record Date” is being relocated to Article II, Section 2.7 of the proposed Bylaws)<sup>5</sup>.

### **Office and Agent**

The Exchange notes that the information in Article II (Office and Agent) of the current Bylaws is not included in the proposed Bylaws. The Exchange notes that the language contained in Section 2 and 3 of Article II is already located in the current

---

<sup>4</sup> See Proposed BYX Rules, Rule 8.6. The Exchange notes that the definition of a Member Representative member is being revised to eliminate the reference to a Stockholder Exchange Member. Currently, a Stockholder Exchange Member means an Exchange Member that also maintains, directly or indirectly, an ownership interest in the Company. The exchange notes that the sole stockholder of BYX is Bats Global Markets Holdings, Inc., which is a wholly owned subsidiary of CBOE Holdings and is not an Exchange member, and as such, the concept of a Stockholder Exchange Member need not be referenced.

<sup>5</sup> The Exchange notes a few differences between the definitions of Industry Director and Record Date in the current Bylaws and the proposed Bylaws. Specifically, the definition of “Industry Director” in Article I, subparagraph (o) of the current Bylaws contains references to specific percentages in order to determine whether a Director qualifies as an Industry Director, whereas the definition of “Industry Director” in Article III, Section 3.1, of the proposed Bylaws uses the term “material portion” in making those same determinations. The definition of “Record Date” in Article I, subparagraph (z) of the current Bylaws means a date at least thirty-five (35) days before the date of the annual meeting of stockholders, whereas Article II, Section 2.7 of the proposed Bylaws provides that the Record Date shall be at least 10 days before the date of the annual meeting of stockholders and not more than 60 days before the annual meeting.

Certificate and will continue to be located in the proposed Certificate.<sup>6</sup> The Exchange does not believe the information contained in Section 1 of Article II is necessary to include in the proposed Bylaws and notes that the CBOE Bylaws do not contain information relating to the principal business office.

### **Nomination and Election Process**

Article III of the proposed Bylaws, titled “Board of Directors”, mirrors the language in Article III of the CBOE Bylaws and contains key provisions regarding the processes for nominating and electing Representative Directors.

### **General Nomination and Election**

Under the Exchange’s current director nomination and election process, the Nominating Committee (which is not a Board committee, but rather is composed of Exchange member representatives)<sup>7</sup> nominates Directors for each Director position standing for election for that year. Additionally, for Member Representative Director positions<sup>8</sup>, the Nominating Committee must nominate the Directors that have been approved and submitted by the Member Nominating Committee (which is also not a Board committee, but rather is composed of Member Representative members)<sup>9</sup>. Additionally, pursuant to Article III, Section 3(b) of the current Bylaws, the Exchange

---

<sup>6</sup> See Article Second of the current and proposed Certificates.

<sup>7</sup> See Current Bylaws, Article III, Section 4 (“Nomination and Election”) and Article VI, Section 2 (“Nominating Committee”).

<sup>8</sup> See Current Bylaws, Article I, (s), which defines a “Member Representative Director”. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member.

<sup>9</sup> See Current Bylaws Article I, subparagraph (t) (“Member Representative member”). See also, Article III, Section 4 (“Nomination and Election”) and Article VI, Section 3 (“Member Nominating Committee”) of the current Bylaws.

Directors are divided into three classes, designated as Class I, Class II and Class III. Directors other than the Chief Executive Officer of the Exchange (“CEO”) serve staggered three-year terms. The Exchange proposes to adopt a nomination and election process identical to CBOE and C2 as set forth in Article III of the proposed Bylaws. As such, the tiered class system will be eliminated, Directors will serve one-year terms ending on the annual meeting following the meeting at which Directors were elected or at such time as their successors are elected or appointed and the newly established Nominating and Governance Committee will be responsible for nominating each Director.<sup>10</sup>

#### Nomination and Election of Representative Directors

Currently, pursuant to Article III, Section 4(b) of the current Bylaws, for Member Representative Directors, the Member Nominating Committee consults with the Nominating Committee, the Chairman of the Board and the CEO, and also solicits comments from Exchange Members for purposes of approving and submitting the names of candidates for election as a Member Representative Director. The initial nominees for Member Representative Directors must be reported to the Nominating Committee and Secretary no later than sixty (60) days prior to the annual or special stockholders’ meeting, at which point the Secretary will promptly notify Exchange Members. Exchange Members may then identify other candidates by delivering to the Secretary, at least thirty-five (35) days before the annual or special stockholders’ meeting, a written petition, identifying the alternative candidate and signed by Executive Representatives<sup>11</sup> of 10%

---

<sup>10</sup> See Article III, Section 3.1 and Article IV, Section 4.3 of the proposed Bylaws.

<sup>11</sup> The term “Executive Representative” as defined in the current Bylaws, Article I, means the person identified to the Company by an Exchange Member as the

or more of Exchange Members. No Exchange Member, together with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate. If no valid petitions from Exchange Members are received by the Record Date, the initial nominees approved and submitted by the Member Nominating Committee shall be nominated as Member Representative Directors by the Nominating Committee. If one or more valid petitions are received by the Record Date, the Secretary shall include such additional nominees, along with the initial nominees nominated by the Member Nominating Committee, on a list of nominees (the “List of Candidates”) that is sent to all Exchange Members, accompanied by a notice regarding the time and date of an election to be held at least twenty (20) days prior to the annual or special stockholders’ meeting. Each Exchange Member has the right to cast one (1) vote for each available Member Representative Director nomination (the vote must be cast for a person on the List of Candidates and no Exchange Member, together with its affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate). The persons on the List of Candidates who receive the most votes shall be selected as the nominees for the Member Representative Director positions.

For purposes of harmonizing the governance structure and process across all of CBOE Holdings’ U.S. securities exchanges, the Exchange proposes to eliminate the Nominating Committee and Member Nominating Committee and adopt a nomination and election process substantially similar to CBOE and C2 for Member Representative

---

individual authorized to represent, vote, and act on behalf of the Exchange Member. An Executive Representative of an Exchange Member or a substitute shall be a member of senior management of the Exchange Member.

Directors (to be renamed “Representative Directors”)<sup>12</sup>. The Exchange notes that unlike the current Bylaws, the proposed Bylaws will not require Representative Directors to be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member, as neither CBOE nor C2 maintain such a requirement. The new process will provide that the “Representative Director Nominating Body” shall be responsible for nominating Representative Directors. The Representative Director Nominating Body (“Nominating Body”) is either (i) the Industry-Director Subcommittee of the Nominating and Governance Committee if there are at least two (2) Industry Directors on the Nominating and Governance Committee, or (ii) if the Nominating and Governance Committee has less than two (2) Industry Directors, then the Nominating Body shall mean the Exchange Member Subcommittee of the Advisory Board<sup>13</sup>. The Nominating and Governance Committee shall be bound to accept and nominate the Representative Director nominees recommended by the Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Any person nominated by the Nominating Body and any petition candidate must satisfy the compositional requirements determined by the Board, pursuant to a resolution adopted by the Board, designating the number of Representative

---

<sup>12</sup> Article III, Section 3.1. of the proposed Bylaws requires that at all times, at least 20% of Directors serving on the Board shall be Representative Directors, which is the same percentage required under the current Bylaws (see Article III, Section 2(b)(ii) of the current Bylaws). Article III, Section 3.2 of the proposed Bylaws further clarifies that if 20% of the Directors then serving on the Board is not a whole number, the number of required Representative Directors shall be rounded up to the next whole number.

<sup>13</sup> The Exchange notes that if there are less than two (2) Industry Directors on the Nominating and Governance Committee, it would institute an Advisory Board, if not already established.

Directors that are Non-Industry Directors and Industry Directors (if any). Not earlier than December 1 and not later than January 15<sup>th</sup> (or the first business day thereafter if January 15<sup>th</sup> is not a business day), the Nominating Body shall issue a circular to Exchange Members identifying the Representative Director nominees. As is the case under the current Bylaws, Exchange Members may nominate alternative candidates for election to the Representative Director positions to be elected in a given year by submitting a petition signed by individuals representing not less than ten percent (10%) of the Exchange Members at that time. Petitions must be filed with the Secretary no later than 5:00 p.m. (Chicago time) on the 10<sup>th</sup> business day following the issuance of the circular to the Exchange Members identifying the Representative Director nominees (the “Petition Deadline”). The names of all Representative Director nominees recommended by the Nominating Body and those selected pursuant to a valid and timely petition shall, immediately following their selection, be given to the Secretary who shall promptly issue a circular to all of the Exchange Members identifying all such Representative Director candidates.

If one or more valid petitions are received, the Secretary shall issue a circular to all of the Exchange Members identifying those individuals nominated for Representative Director by the Nominating Body and those individuals nominated for Representative Director through the petition process, as well as of the time and date of a run-off election to determine which individuals will be nominated as Representative Director(s) by the Nominating and Governance Committee (the “Run-off Election”). The Run-off Election will be held not more than forty-five (45) days after the Petition Deadline. In any Run-off Election, each Exchange Member shall have one (1) vote for each Representative

Director position to be filled that year; provided, however, that no Exchange Member, either alone or together with its affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate.<sup>14</sup> The Secretary shall issue a circular to all of the Exchange Members setting forth the results of the Run-off Election. The number of individual Representative Director nominees equal to the number of Representative Director positions to be filled that year receiving the largest number of votes in the Run-off Election will be the persons approved by the Exchange Members to be nominated as the Representative Director(s) by the Nominating and Governance Committee for that year. The Exchange believes that, under the proposed Board structure, the Representative Directors serve the same function as the Member Representative Directors in that both directorships give Exchange members a voice in the Exchange's use of self-regulatory authority.

#### Vacancies

Article III, Section 6 of the current Bylaws provides that during a vacancy of any Director other than a Member Representative Director, the Nominating Committee shall nominate an individual Director and the stockholders of BYX shall elect the new

---

<sup>14</sup> Article III, Section 3.2 of the CBOE Bylaws provides that in any Run-off Election, a holder of a Trading Permit shall have one vote with respect to each Trading Permit held by such Trading Permit Holder for each Representative Director position to be filled. The Exchange notes that because no "Trading Permits" or similar concept exist on the Exchange, it is deviating from this practice and providing instead that each Exchange Member shall have one (1) vote for each Representative Director position to be filled, which the Exchange does not believe is a significant change. The Exchange also notes that other Exchanges have similar practices. See e.g., Amended and Restated By-Laws of Miami International Securities Exchange, LLC, Article II, Section 2.4(f).



Director.<sup>15</sup> In the event of a vacancy of a Member Representative Director, the Member Nominating Committee shall either (i) recommend an individual to the stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy. The current Bylaws provide that Directors elected to fill a vacancy are to hold office until the expiration of the remaining term.

The Exchange proposes to adopt the same process to fill vacancies as CBOE and C2. Specifically, Article III, Section 3.5 of the proposed Bylaws, which is substantially similar to Article III, Section 3.5 of the CBOE Bylaws, will provide that a vacancy on the Board may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. Additionally, for vacancies of Representative Directors, the Nominating Body will recommend an individual to be elected, or provide a list of recommended individuals, and the position shall be filled by the vote of a majority of the Directors then in office. Under the proposed Bylaws, Directors elected to fill a vacancy will serve until the next annual meeting of stockholders.

#### Removals and Resignation

Article III, Section 7 of the current Bylaws provides that any Director may be removed with or without cause by a majority vote of stockholders and may be removed by the Board, provided however, that any Member Representative Director may only be removed for cause, which includes such Director being subject to a Statutory Disqualification. Additionally, a Director shall be immediately removed upon a

---

<sup>15</sup> The sole stockholder of BYX is Bats Global Markets Holdings, Inc., a wholly owned subsidiary of CBOE Holdings.

determination by the Board, by a majority vote of remaining Directors that (a) the Director no longer satisfies the classification for which the Director was elected and (b) the Director's continued service would violate the compositional requirements of the Board. Article III, Section 7 of the current Bylaws also provides that any Director may resign at any time upon notice of resignation to the Chairman of the Board, the President or Secretary. Resignation shall take effect at the time specified, or if no time is specified, upon receipt of the notice.

Under Article III, Section 3.4 of the proposed Bylaws, which is the same as Article III, Section 3.4, of the CBOE Bylaws, a Director who fails to maintain the applicable Industry or Non-Industry qualifications required under the proposed Bylaws, of which the Board shall be the sole judge, will cease being a Director. The Exchange notes that while the current Bylaws do not address the requalification of a Director, Section 3.4 of the proposed Bylaws permits a Director that fails to maintain the applicable qualifications to requalify within the later of forty-five (45) days from the date when the Board determines the Director is unqualified or until the next regular Board meeting following the date when the Board makes such determination. The Director shall be deemed not to hold office (i.e., the Director's seat is considered vacant) following the date when the Board determines the Director is unqualified. Further, the Board shall be the sole judge of whether the Director has requalified. If a Director is determined to have requalified, the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such Director to the Board; provided, however, that the Board shall be under no obligation to return such Director to the Board. Similar to the current Bylaws, Section 3.4 of the proposed Bylaws provides

that Representative Directors may only be removed for cause. In addition to specifying that cause includes being subject to a Statutory Disqualification, the proposed Bylaws further lists additional examples of cause in Section 3.4 (e.g., breach of a Representative Director's duty of loyalty to the Exchange or its stockholders and transactions from which a Representative Director derived an improper personal benefit). Lastly, the Exchange notes that under the proposed Bylaws, resignation must be written and must be given to either the Chairman of the Board or the Secretary.

### **Board Composition**

Pursuant to Article III, Section 2 of the current Bylaws, the Board must consist of four (4) or more Directors, and consist at all times of one (1) Director who is the CEO and a sufficient number of Industry, Non-Industry and Member Representative Directors to ensure that the number of Non-Industry Directors, including at least one Independent Director, shall equal or exceed the sum of Industry and Member Representative Directors. Additionally, the number of Member Representative Directors must be at least twenty (20) percent of the Board. The Exchange proposes to replace the Board composition and structure with that of CBOE and C2. As is the case with CBOE and C2, pursuant to Article III, Section 3.1, of the proposed Bylaws, the Board must consist of at least five (5) directors (which is the minimum number of Directors required for the Nominating and Governance Committee), instead of 4 as required by the current Bylaws. Additionally, the following would apply to the new Board structure:

- The number of Non-Industry Directors, Industry Directors and the number of Representative Directors that are Non-Industry Directors and Industry

Directors (if any) will be determined by the Board pursuant to resolution adopted by the Board.<sup>16</sup>

- The proposed Bylaws provide that the number of Non-Industry Directors cannot be less than the number of Industry Directors, whereas the current Bylaws, as noted above, provide that the number of Non-Industry Directors, including at least one Independent Director, shall equal or exceed the sum of Industry and Member Representative Directors.<sup>17</sup> Unlike the current Bylaws, the proposed Bylaws provide that the CEO is excluded from the calculation of Industry Directors, as is the practice under CBOE Bylaws.<sup>18</sup> Additionally, the Exchange notes that the CBOE Bylaws do not contain the term or concept of “Independent Directors” and in order to conform the proposed Bylaws to the CBOE Bylaws, the proposed Bylaws also do not reference “Independent Directors” with respect to composition.
- The Board or the Nominating and Governance Committee will make all materiality determinations regarding who qualifies as an Industry Director and Non-Industry Director.<sup>19</sup>
- Unlike the current Bylaws which provide that the CEO shall be the Chairman of the Board<sup>20</sup>, the proposed Bylaws, provide that the Chairman will be appointed by the Board and further provides that the Board may

---

<sup>16</sup> See Proposed Bylaws and CBOE Bylaws, Article III, Section 3.1.

<sup>17</sup> See Current Bylaws, Article III, Section 2.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> See Current Bylaws, Article III, Section 5.

designate an Acting Chairman in the event the Chairman is absent or fails to act.<sup>21</sup>

- Unlike the current Bylaws which provide that a Lead Director must be designated by the Board among the Board's Independent Directors<sup>22</sup>, the proposed Bylaws provide that the Board may, but does not have to, appoint a Lead Director, who if appointed, must be a Non-Industry Director, which is the same practice under CBOE's Bylaws.<sup>23</sup>
- The number of Representative Directors must be at least twenty (20) percent of the Board<sup>24</sup>, which is the same requirement under the current Bylaws as noted above.

## **Meetings**

### **Annual Meeting of the Stockholders**

Article IV, Section 1 of the current Bylaws provides that the annual meeting of the stockholders shall be held at such place and time as determined by the Board. The Exchange notes that Article II, Section 2.2 of the proposed Bylaws is being amended to conform to Article II, Section 2.2 of the CBOE Bylaws, which provides as a default that if required by applicable law, an annual meeting of stockholders shall be held on the third Tuesday in May of each year or such other date as may be fixed by the Board, at such time as may be designated by the Secretary prior to the giving of notice of the meeting.

---

<sup>21</sup> See Proposed Bylaws and CBOE Bylaws, Article III, Sections 3.6 and 3.8.

<sup>22</sup> See Current Bylaws, Article III, Section 5.

<sup>23</sup> See Proposed Bylaws and CBOE Bylaws, Article III, Section 3.7.

<sup>24</sup> See Proposed Bylaws and CBOE Bylaws, Article III, Section 3.2.

Section 2.2 of the proposed Bylaws also provides that in no event shall the annual meeting be held prior to the completion of the process for the nomination of Representative Directors. The proposed Bylaws also provide in Article II, Section 2.1 that in addition to the Board, the Chairman (or CEO if there is no Chairman) may designate the location of the annual meeting. The Exchange notes that it is not including the information contained in Article IV, Section 3 of the current Bylaws. Specifically, Section 3 provides that the Secretary of the Exchange (or designee), shall prepare at least ten (10) days before every meeting of stockholders, a complete list of stockholder entitled to vote at the meeting. The Exchange does not believe this provision is necessary given that BYX's sole stockholder is Bats Global Markets Holdings, Inc., a wholly owned subsidiary of CBOE Holdings (and also notes that neither CBOE nor C2 follow this practice).

#### Special Meetings of the Stockholders

Article IV, Section 2 of the current Bylaws provides that special meetings of the stockholders may be called by the Chairman, the Board or the President, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Exchange entitled to vote. In order to streamline the rules under which special meetings can be called, the Exchange proposes to adopt the same special meeting provision as Article II, Section 2.3 of the CBOE Bylaws. Particularly, under Article II, Section 2.3 of the proposed Bylaws, special meetings of stockholders may only be called by the Chairman or by a majority of the Board. The CBOE Bylaws do not include the ability of stockholders to request a special meeting. The Exchange does not believe this provision is necessary given that BYX's

sole stockholder is Bats Global Markets Holdings, Inc., a wholly owned subsidiary of CBOE Holdings.

Quorum and Vote Required for Action at a Stockholder Meeting

Article IV, Section 4 of the current Bylaws provides, among other things, that the holders of a majority of the capital stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders. The provision also provides that if there is no quorum at any meeting of the stockholders, the stockholders, present in person or represented by proxy, shall have power to adjourn the meeting until a quorum is present or represented. Additionally, if an adjournment of a meeting of the stockholders is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. Additionally, Article IV, Section 4 provides that when a quorum is present at any meeting, the vote of the holders of a majority of the capital stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question.

The Exchange proposes to adopt Article II, Sections 2.5 and 2.6 of the proposed Bylaws which are the same as Article II, Sections 2.5 and 2.6 of the CBOE Bylaws and similar to Article IV, Section 4 of the current Bylaws. The Exchange notes that unlike the current Bylaws, Article II, Section 2.5 of the proposed Bylaws and CBOE Bylaws do not require notice of an adjourned meeting to be given to each stockholder of record entitled

to vote at the meeting if an adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting. The Exchange does not believe this requirement is necessary given that BZX's sole stockholder is Bats Global Markets Holdings, Inc., a wholly owned subsidiary of CBOE Holdings. Additionally, in order to conform Article II, Section 2.6 of the proposed Bylaws to the CBOE Bylaws, the Exchange also proposes to explicitly provide that a plurality of votes properly cast shall elect the directors, notwithstanding the language in Article II, 2.6 that provides that when a quorum is present, a majority of the votes properly cast will decide any question brought before a meeting unless a different vote is required by express provision of statute or the Certificate of Incorporation.

#### Regular Meetings of the Board

Article III, Sections 8 and 9 of the current Bylaws provide that, with or without notice, a resolution adopted by the Board determines the time and place of the regular meeting and that if no designation as to place is made, then the meeting will be held at the principal business office of the Exchange. Article III, Section 3.10 of the proposed Bylaws, which is the same as Article III, Section 3.10 of the CBOE Bylaws, provides that regular meetings shall be held at such time and place as is determined by the Chairman with notice provided to the full Board.

#### Special Meetings of the Board

Article III, Section 10 of the current Bylaws provides that special meetings of the Board may be called on a minimum of two (2) days' notice to each Director by the Chairman or the President and shall be called by the Secretary upon written request of three (3) Directors. Article III, Section 3.11 of the proposed Bylaws, which is the same as



Article III, Section 3.11 of the CBOE Bylaws, however, provides that special meetings of the Board may be called by the Chairman and shall be called by the Secretary upon written request of any four (4) directors. Additionally, under the proposed Bylaws, the Secretary shall give at least twenty-four (24) hours' notice of such meeting.

#### **Board Quorum**

Article III, Section 12 of the current Bylaws provides that a majority of the number of Directors then in office shall constitute a quorum, whereas Article III, Section 3.9 of the proposed Bylaws, which is the same as Article III, Section 3.9 of the CBOE Bylaws, provides that two-thirds of the Directors then in office shall constitute a quorum. Increasing the quorum requirement from a majority to two-thirds will ensure that more Directors are present at meetings of the Board in order to transact business for the Exchange.

#### **Committees of the Board**

The current bylaws provide for the following standing committees of the Board: a Compensation Committee, an Audit Committee, a Regulatory Oversight Committee, and an Appeals Committee, each to be comprised of at least three (3) members.<sup>25</sup> The current Bylaws also provide that the Exchange may establish an Executive Committee and a Finance Committee.<sup>26</sup> The Exchange proposes to modify the committees of the Board to eliminate the Audit Committee, Appeals Committee, and Compensation Committee, as well as eliminate the provision relating to a Finance Committee. Additionally, the Exchange proposes to require a mandatory Executive Committee and Nominating and

---

<sup>25</sup> See Current Bylaws, Article V, Section 1 and Section 2(a).

<sup>26</sup> See Current Bylaws, Article V, Sections 6(e) and (f), respectively.

Governance Committee, as well as make several amendments to the Regulatory Oversight Committee provision. The Exchange notes that CBOE and C2 have eliminated their Audit and Compensation Committees and do not maintain an Appeals Committee at the Board level. As previously noted, CBOE and C2 do maintain a Board-level Nominating and Governance Committee, which performs the functions of BYX's current Nominating and Member Nominating Committees, which the Exchange proposes to eliminate.

#### Elimination of Compensation Committee

The Exchange seeks to eliminate the Compensation Committee because it believes that the Compensation Committee's functions are duplicative of the functions of the Compensation Committee of its parent company, CBOE Holdings. Specifically, under its committee charter, the CBOE Holdings Compensation Committee has authority to assist the CBOE Holdings Board of Directors in carrying out its overall responsibilities relating to executive compensation and also, among other things, (i) recommending the compensation of the CBOE Holdings' CEO and certain other executive officers and (ii) approving and administering all cash and equity-based incentive compensation plans of CBOE Holdings that affect employees of the CBOE Holdings and its subsidiaries. Similarly, under its committee charter, the BYX Compensation Committee has authority to fix the compensation of BYX's CEO and to consider and recommend compensation policies, programs, and practices to the BYX CEO in connection with the BYX CEO's fixing of the salaries of other officers and agents of the Exchange.<sup>27</sup> As such, other than

---

<sup>27</sup> The Exchange notes that the Regulatory Oversight Committee ("ROC") of the BYX Board recommends to the Board compensation for the Chief Regulatory Officer. The Exchange also notes that currently not all executive officers of BYX

to the extent that the BYX Compensation Committee recommends the compensation of executive officers whose compensation is not already determined by the CBOE Holdings Compensation Committee, its activities are duplicative of the activities of the CBOE Holdings Compensation Committee. Indeed, the Exchange notes that currently the BYX Compensation Committee only fixes the compensation amount of the BYX CEO. The Exchange notes that currently the Exchange's CEO is the CEO (i.e., an executive officer) of CBOE Holdings, and as such, the CBOE Holdings Compensation Committee already performs this function. To the extent that compensation need be determined for any BYX officer who is not also a CBOE Holdings officer in the future, the Board or senior management will perform such action without the use of a compensation committee, as provided for in Article V, Section 5.11 of the proposed Bylaws (which is identical to Article V, Section 5.11 of the CBOE Bylaws). Thus, the responsibilities of the BYX Compensation Committee are duplicated by the responsibilities of the CBOE Holdings Compensation Committee. The Exchange believes that its proposal to eliminate its Compensation Committee is substantially similar to prior actions taken by other securities exchanges with parent company compensation committees to eliminate their exchange-level compensation committees, including CBOE and C2.<sup>28</sup>

#### Elimination of Audit Committee

---

are required to have their compensation determined by the Compensation Committee.

<sup>28</sup> See e.g., Securities Exchange Act Release No. 80523 (April 25, 2017), 82 FR 20399 (May 1, 2017) (SR-CBOE-2017-017) and Securities Exchange Act Release No. 80522 (April 25, 2017), 82 FR 20409 (May 1, 2017) (SR-C2-2017-009). See also Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR-NASDAQ-2009-042) and Securities Exchange Act Release No. 62304 (June 16, 2010), 75 FR 36136 (June 24, 2010) (SR-NYSEArca-2010-31).

The Exchange also proposes to eliminate its Audit Committee because its functions are duplicative of the functions of the Audit Committee of its parent company, CBOE Holdings. Under its committee charter, the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board in fulfilling its oversight responsibilities in assessing controls that mitigate the regulatory and operational risks associated with operating the Exchange and assist the CBOE Holdings Board of Directors in discharging its responsibilities relating to, among other things, (i) the qualifications, engagement, and oversight of CBOE Holdings' independent auditor, (ii) CBOE Holdings' financial statements and disclosure matters, (iii) CBOE Holdings' internal audit function and internal controls, and (iv) CBOE Holdings' oversight and risk management, including compliance with legal and regulatory requirements. Because CBOE Holdings' financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings' subsidiaries, including BYX, the CBOE Holdings Audit Committee's purview necessarily includes BYX. The Exchange notes that unconsolidated financial statements of the Exchange will still be prepared for each fiscal year in accordance with the requirements set forth in its application for registration as a national securities exchange. The CBOE Holdings Audit Committee is composed of at least three (3) CBOE Holdings directors, all of whom must be independent within the meaning given to that term in the CBOE Holdings Bylaws and Corporate Governance Guidelines and Rule 10A-3 under the Act.<sup>29</sup> All CBOE Holdings Audit Committee members must be financially literate (or become financially literate within a reasonable

---

<sup>29</sup> 17 CFR 240.10A-3.

period of time after appointment to the Committee), and at least one (1) member of the Committee must be an “audit committee financial expert” as defined by the Securities and Exchange Commission (“SEC”). By contrast, the BYX Audit Committee has a more limited role, focused on BYX. Under its charter, the primary functions of the BYX Audit Committee are focused on (i) BYX’s financial statements and disclosure matters and (ii) BYX’s oversight and risk management, including compliance with legal and regulatory requirements, in each case, only to the extent required in connection with BYX’s discharge of its obligations as a self-regulatory organization. However, to the extent that the BYX Audit Committee reviews financial statements and disclosure matters, its activities are duplicative of the activities of the CBOE Holdings Audit Committee, which is also charged with review of financial statements and disclosure matters. Similarly, the CBOE Holdings Audit Committee has general responsibility for oversight and risk management, including compliance with legal and regulatory requirements, for CBOE Holdings and all of its subsidiaries, including BYX. Thus, the responsibilities of the BYX Audit Committee are fully duplicated by the responsibilities of the CBOE Holdings Audit Committee. The Exchange believes that its proposal to eliminate its Audit Committee is substantially similar to prior actions by other securities exchanges with parent company audit committees to eliminate their exchange-level audit committees, including CBOE and C2.<sup>30</sup>

#### Elimination of Appeals Committee

---

<sup>30</sup> See, e.g., Securities Exchange Act Release No. 64127 (March 25, 2011), 76 FR 17974 (March 31, 2011) (SR-CBOE-2011-010) and Securities Exchange Act Release No. 64128 (March 25, 2011), 76 FR 17973 (March 31, 2011) (SR-C2-2011-003). See also, Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR- NASDAQ-2009-042).

The Exchange next proposes to eliminate the Appeals Committee. Pursuant to Article V, Section 6(d) of the current Bylaws, the Chairman, with the approval of the Board, shall appoint an Appeals Committee. The Appeals Committee shall consist of one (1) Independent Director, one (1) Industry Director, and one (1) Member Representative Director and presides over all appeals related to disciplinary and adverse action determinations in accordance with the Rules. The Exchange notes that neither CBOE nor C2 maintain a Board-level Appeals Committee. Rather, CBOE and C2 currently maintain an Exchange-level Appeals Committee.<sup>31</sup> The Exchange notes that although it is proposing to eliminate the Appeals Committee as a specified Board-level committee at this time, the Exchange will still have the ability to appoint either a Board-level or exchange-level Appeals Committee pursuant to its powers under Article IV, Section 4.1 of the proposed Bylaws. Although, CBOE and C2 have a standing exchange-level Appeals Committee, the Exchange prefers not to have to maintain and staff a standing Appeals Committee, but rather provide its Board the flexibility to determine whether to establish a Board-level or exchange-level Appeals Committee, as needed or desired. The Exchange also notes that other Exchanges similarly do not require standing Appeals Committees.<sup>32</sup> The elimination of the requirement in the bylaws to maintain a standing Appeals Committee would provide consistency among the Bylaws for all of CBOE

---

<sup>31</sup> See e.g., CBOE Rule 2.1 and C2 Chapter 19, which incorporates by reference CBOE Chapter XIX (Hearings and Review), which references the Appeals Committee.

<sup>32</sup> For example, neither the Bylaws nor Rules of BOX Options Exchange, LLC mandate an Appeals Committee. See Bylaws of Box Options Exchange LLC and Rules of Box Options Exchange, LLC.

Holdings' U.S. securities exchanges, while still providing the Board the authority to appoint an Appeals Committee in the future as needed.

#### Elimination of Finance Committee

Pursuant to Article V, Section 6(f) of the current Bylaws, the Chairman, with the approval of the Board, may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for the Exchange's annual operating and capital budgets. The Exchange notes that it does not currently have a Finance Committee and that, similarly, CBOE and C2 do not have an exchange-level Finance Committee. As the Exchange currently does not maintain, and has no current intention of establishing, an exchange-level Finance Committee, it does not believe it is necessary to maintain this provision. The Exchange notes that should it desire to establish a Finance Committee in the future, it still maintains the authority to do so under Article IV, Section 4.1 of the proposed Bylaws.

#### Changes to the Regulatory Oversight Committee

Article V, Section 6(c) of the current Bylaws relates to the Regulatory Oversight Committee ("ROC"), which oversees the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities. The Exchange proposes to adopt Article IV, Section 4.4, which amends the ROC provision to conform to Article IV, Section 4.4 of the CBOE Bylaws.<sup>33</sup> First, the Exchange proposes to specify that the ROC shall consist of at least three (3) directors, all of whom are Non-Industry Directors who

---

<sup>33</sup> The Exchange does not intend at this time to rename the ROC the "Regulatory Oversight and Compliance Committee" ("ROCC"), which is the name of the equivalent committee of CBOE and C2.

are appointed by the Board on the recommendation of the Non-Industry Directors serving on the Nominating and Governance Committee (including the designation of the Chairman of the ROC). While the current Bylaws also require all ROC members to be Non-Industry Directors, it does not specify a minimum number of directors. The current Bylaws also provide that the Chairman of the Board (instead of a Nominating and Governance Committee), with approval of the Board, appoints the ROC members.

Next, while the current Bylaws explicitly delineate some of the ROC's responsibilities, the Exchange proposes to provide more broadly that the ROC shall have the duties and may exercise such authority as may be prescribed by resolution of the Board, the Bylaws or the Rules of the Exchange. Particularly, Article V, Section 6(c) of the current Bylaws provide that the ROC shall oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities, assess the Exchange's regulatory performance, assist the Board and Board committees in reviewing the regulatory plan and the overall effectiveness of Exchange's regulatory functions and, in consultation with the CEO, establish the goals, assess the performance, and fix the compensation of the Chief Regulatory Officer ("CRO"). The Exchange notes that the ROC will continue to have the foregoing duties and authority, with the exception that the ROC will no longer consult the CEO with respect to establishing the goals, assessing the performance and fixing compensation of the CRO. The proposed change to eliminate the CEO's involvement in establishing the goals, assessing the performance and fixing compensation of the CRO is consistent with the Exchange's desire to maintain the independence of the regulatory functions of the Exchange. The Exchange notes that each of the abovementioned proposed changes provide for the same language and appointment



process used by CBOE and C2 with respect to the ROC, which provides consistency among the CBOE Holdings U.S. securities exchanges.<sup>34</sup>

#### Creation of a Mandatory Executive Committee

Article V, Section 6(e) of the current Bylaws provides that the Chairman, with approval of the Board, may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange between meetings of the Board.<sup>35</sup> The current Bylaws provide that the number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. In addition, the percentage of Independent Directors on the Executive Committee shall be at least as great as the percentage of Independent Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board.

Under the proposed Bylaws, the Exchange proposes to require that the Exchange maintain an Executive Committee and delineates its composition and functions in Article IV, Section 4.2 of the proposed Bylaws. Similar to the current Bylaw provisions relating to the Executive Committee, the proposed Executive Committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange. Unlike the current Executive Committee provisions, however, the proposed Executive Committee shall not have the power and authority of the Board to

---

<sup>34</sup> See CBOE Bylaws Article IV, Section 4.4.

<sup>35</sup> The Exchange does not presently have an Executive Committee.

(i) approve or adopt or recommend to the stockholders any action or matter (other than the election or removal of Directors) expressly required by Delaware law to be submitted to stockholders for approval, including without limitation, amending the certificate of incorporation, adopting an agreement of merger or consolidation, approving a sale, lease or exchange of all or substantially all of the Exchange's property and assets, or approval of a dissolution of the Exchange or revocation of a dissolution, or (ii) adopt, alter, amend or repeal any bylaw of the Exchange. Additionally, Section 4.2 of the proposed Bylaws provides that the Executive Committee shall consist of the Chairman, the CEO (if a Director), the Lead Director, if any, at least one (1) Representative Director and such other number of Directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee (excluding the CEO from the calculation of Industry Directors for this purpose). The Directors (other than the Chairman, CEO and Lead Director, if any) serving on the Executive Committee shall be appointed by the Board on the recommendation of the Nominating and Governance Committee of the Board. Directors serving on the Executive Committee may be removed by the Board in accordance with the bylaws. The Chairman of the Board shall be the Chairman of the Executive Committee. Each member of the Executive Committee shall be a voting member and shall serve for a term of one (1) year expiring at the first regular meeting of Directors following the annual meeting of stockholders each year or until their successors are appointed. The Exchange notes that CBOE and C2 have an Executive Committee and

that the proposed composition requirements and functions are the same as CBOE and C2.<sup>36</sup>

Elimination of Nominating and Member Nominating Committees and Creation of Nominating and Governance Committee

The Exchange also proposes to eliminate the current Nominating and Member Nominating Committees, and to prescribe that their duties be performed by the new Nominating and Governance Committee of the Board (as discussed below). The Nominating Committee is a non-Board committee and is elected on an annual basis by vote of the Exchange's sole stockholder, Bats Global Markets Holdings, Inc.<sup>37</sup> The Nominating Committee is primarily charged with nominating candidates for election to the Board at the annual stockholder meeting and all other vacant or new Director positions on the Board and ensuring, in making such nominations, that candidates meet the compositional requirements set forth in the bylaws. The Member Nominating Committee is also a non-Board committee and elected on an annual basis by vote of the Exchange's sole stockholder, Bats Global Markets Holdings, Inc.<sup>38</sup> Each Member Nominating Committee member must be a Member Representative member (i.e., an officer, director, employee or agent of an Exchange Member that is not a Stockholder

---

<sup>36</sup> See CBOE Bylaws, Article IV, Section 4.2.

<sup>37</sup> See Article VI, Sections 1 and 2. A Nominating Committee member may simultaneously serve on the Nominating Committee and the Board, unless the Nominating Committee is nominating Director candidates for the Director's class. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee.

<sup>38</sup> See Article VI, Sections 1 and 3.

Exchange Member).<sup>39</sup> The Member Nominating Committee is primarily charged with nominating candidates for each Member Representative Director position on the Board.

The Exchange proposes to adopt a Nominating and Governance Committee which would have the same responsibilities currently delegated to the CBOE and C2 Nominating and Governance Committees. Specifically, the Exchange proposes to adopt Article IV, Section 4.3, which is the same as Article IV, Section 4.3 of the CBOE Bylaws, which would provide that the Nominating and Governance Committee shall consist of at least five (5) directors and shall at all times have a majority of Non-Industry Directors. Members of the committee would be recommended by the Nominating and Governance Committee for approval by the Board and shall not be subject to removal except by the Board. The Chairman of the Nominating and Governance Committee shall be recommended by the Nominating and Governance Committee for approval by the Board. The Nominating and Governance Committee would be primarily charged with the authority to nominate individuals for election as Directors of the Exchange. The Nominating and Governance Committee would also have such other duties and may exercise such other authority as may be prescribed by resolution of the Board and the Nominating and Governance Committee charter as adopted by resolution of the Board. If the Nominating and Governance Committee has two (2) or more Industry Directors, there shall be an Industry-Director Subcommittee consisting of all of the Industry Directors then serving on the Nominating and Governance Committee, which shall act as the Representative Director Nominating Body (as previously discussed) if and to the extent required by the proposed Bylaws. The Exchange believes that the duties and functions of

---

<sup>39</sup> See Article VI, Section 3.

the eliminated Nominating and Member Nominating Committees would continue to be performed and covered in the new corporate governance structure under the proposed Bylaws.

#### Creation of an Advisory Board

The Exchange proposes to adopt Article VI, Section 6.1, which provides that the Board may establish an Advisory Board which shall advise the Board and management regarding matters of interest to Exchange Members. The Exchange believes the Advisory Board could provide a vehicle for Exchange management to receive advice from the perspective of Exchange Members and regarding matters that impact Exchange Members. Under Article VI, Section 6.1 of the proposed Bylaws, the Board would determine the number of members of an Advisory Board, if established, including at least two members who are Exchange Members or persons associated with Exchange Members. Additionally, the CEO or his or her designee would serve as the Chairman of an Advisory Board and the Nominating and Governance Committee would recommend the members of an Advisory Board for approval by the Board. There would also be an Exchange Member Subcommittee of the Advisory Board consisting of all members of the Advisory Board who are Exchange Members or persons associated with Exchange Members, which shall act as the Representative Director Nominating Body if and to the extent required by the proposed Bylaws. An Advisory Board would be completely advisory in nature and not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. The Exchange notes that CBOE and C2 currently maintain an Advisory Board, with the same proposed compositional

requirements and functions.<sup>40</sup> The Exchange also notes, however, that while for CBOE and C2 an Advisory Board is mandatory, an Advisory Board for the Exchange would be permissive as the Exchange desires flexibility to determine if an Advisory Board should be established in the future. The Exchange notes that there is no statutory requirement to maintain an Advisory Board or Advisory Committee and indeed, other Exchanges, including BYX itself, do not require the establishment of an Advisory Board.<sup>41</sup>

### **Officers, Agents and Employees**

#### **General**

Article VII, Section 1 of the current Bylaws provides that that an individual may not hold office as both the President and Secretary, whereas the CBOE Bylaws provide an individual may not hold office as both the CEO and President and that the CEO and President may not hold office as either the Secretary or Assistant Secretary.<sup>42</sup> As these requirements are similar, if not more restrictive under the CBOE Bylaws, the Exchange proposes to include the same provisions in CBOE Bylaws in Article V, Section 5.1 of the proposed Bylaws.

#### **Resignation and Removal**

Article VII, Section 3 of the current Bylaws provides that any officer may resign at any time upon notice of resignation to the Chairman and CEO, the President or the Secretary. The Exchange proposes to amend the provision relating to officer resignations to provide that any officer may resign at any time upon delivering written notice to the

---

<sup>40</sup> See Article VI, Section 6.1 of CBOE Bylaws.

<sup>41</sup> For example, BOX Options Exchange, LLC does not require an advisory committee.

<sup>42</sup> See Article V, Section 5.1 of CBOE Bylaws.

Exchange at its principal office, or to the CEO or Secretary.<sup>43</sup> Article VII, Section 3 of the current Bylaws also provides that any officer may be removed, with or without cause, by the Board. The Exchange proposes to provide that, in addition to being removed by the Board, an officer may be removed at any time by the CEO or President (provided that the CEO can only be removed by the Board).<sup>44</sup> Provisions relating to resignation and removal of officers in the proposed Bylaws will be identical to the relevant provisions of the CBOE Bylaws.<sup>45</sup>

#### Compensation

Article VII, Section 4 of the current Bylaws provides that the CEO, after consultation of the Compensation Committee, shall fix the salaries of officers of the Exchange and also states that the CEO's compensation shall be fixed by the Compensation Committee. In order to conform compensation practices to those of CBOE and C2, the Exchange proposes to modify these provisions to provide that in lieu of the CEO, the Board, unless otherwise delegated to a committee of the Board or to members of senior management, may fix the salaries of officers of the Exchange.<sup>46</sup> Additionally, in conjunction with the proposed change to eliminate the BYX Compensation Committee, the Exchange proposes to eliminate language providing that the CEO's compensation is fixed by the Compensation Committee.

#### Chief Executive Officer and President

---

<sup>43</sup> See Proposed Bylaws, Article V, Section 5.9.

<sup>44</sup> See Proposed Bylaws, Article V, Section 5.8.

<sup>45</sup> See Article V, Sections 5.8 and 5.9 of the CBOE Bylaws.

<sup>46</sup> See Proposed Bylaws, Article V, Section 5.11.

Article VII, Section 6 of the current Bylaws pertains to the CEO. The current Bylaws provide that the CEO shall be the Chairman of the Board. CBOE and C2, however, do not require that the CEO be Chairman of the Board. The Exchange desires similar flexibility in appointing its Chairman and, therefore, this requirement is not carried over in the proposed Bylaws.<sup>47</sup> Instead, Article V, Section 5.1 of the proposed Bylaws provides that the CEO shall be appointed by an affirmative vote of the majority of the Board, and may but need not be, the Chairman of the Board. The Exchange notes that to conform the language to the CBOE Bylaws, Article V, Section 5.2 of the proposed Bylaws also states that the CEO shall be the official representative of the Exchange in all public matters and provides that the CEO shall not engage in another business during his incumbency except with approval of the Board. Additionally, the Exchange proposes not to carry over language in the current Bylaws that provides that the CEO shall not participate in executive sessions of the Board, as CBOE Bylaws do not contain a similar restriction.

Article V, Section 5.3 of the proposed Bylaws proposes to provide that the President shall be the chief operating officer of the Exchange. The Exchange notes that the current Bylaws do not address appointing a chief operating officer. Additionally, while Article VII, Section 7 of the current Bylaws provides that the President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board, and shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board, Article V, Section 5.3 of the proposed Bylaws further states that in the event that the

---

<sup>47</sup> The Exchange notes that currently the CEO of BYX is also Chairman of the Board.



CEO does not act, the President shall perform the officer duties of the CEO, which is consistent with the language in the CBOE Bylaws.

#### Other Officers

The Exchange notes the following modifications relating to officer provisions in the proposed Bylaws, which are intended to conform the proposed Bylaws to the CBOE Bylaws:

- Article V, Sections 5.1 and 5.4 of the proposed Bylaws, which is identical to Article V, Sections 5.1 and 5.4 of the CBOE Bylaws, will provide that the Chief Financial Officer (“CFO”) is designated as an officer of the Exchange and that the Board and CEO may assign the CFO powers and duties as they see fit. The Exchange notes that the role of a CFO is not referenced in the current Bylaws.
- The proposed Bylaws eliminate the requirement in the current Bylaws that the Chief Regulatory Officer (“CRO”) is a designated officer of the Exchange.<sup>48</sup> As noted above, the Exchange desires to conform its Bylaws to the Bylaws of CBOE and the CBOE Bylaws do not reference the role of the CRO. The Exchange notes that notwithstanding the proposed elimination of the CRO provision, there is no intention to eliminate the role of the CRO.
- Article VII, Section 10 of the current Bylaws requires the Secretary to keep official records of Board meetings. The Exchange proposes to add to Article V, Section 5.6 of the proposed Bylaws, which is similar to the

---

<sup>48</sup> See Current Bylaws, Article VII, Section 9.

current Bylaws and based on Article V, Section 5.6 of the CBOE Bylaws, which requires that in addition to all meetings of the Board, the Secretary must keep official records of all meetings of stockholders and of Exchange Members at which action is taken.

- Article V, Section 5.7 of the proposed Bylaws, which is based on Article 5.7 of the CBOE Bylaws, would provide that the Treasurer perform such duties and powers as the Board, the CEO or CFO proscribes (whereas Article VII, Section 12 of the current Bylaws provides that such duties and powers may be proscribed by the Board, CEO or President).
- While the current Bylaws contain separate provisions relating to an Assistant Secretary and an Assistant Treasurer, the proposed Bylaws do not, as CBOE Bylaws similarly do not contain such provisions.<sup>49</sup>

### **Amendments**

Article IX, Section 1 of the current Bylaws provides that the bylaws may be altered, amended, or repealed, or new bylaws adopted, (i) by written consent of the stockholders of the Exchange or (ii) at any meeting of the Board by resolution. The proposed Bylaws, however, eliminate the ability of stockholders to act by written consent and instead provides that in order for the stockholders of the Exchange to alter, amend, repeal or adopt new bylaws, there must be an affirmative vote of the stockholders present at any annual meeting at which a quorum is present.<sup>50</sup> Additionally, unlike the current Bylaws, the Exchange proposes to explicitly provide that changes to the bylaws shall not

---

<sup>49</sup> See Article VII, Sections 11 and 13 of the current Bylaws.

<sup>50</sup> See Proposed Bylaws, Article IX, Section 9.2.

become effective until filed with or filed with and approved by the SEC, to avoid confusion as to when proposed amendments to the Bylaws can take effect.<sup>51</sup> The proposed provisions are the same as the corresponding provisions in the CBOE Bylaws.<sup>52</sup>

### **General Provisions**

The Exchange proposes to add Article VIII, Section 8.1 of the proposed Bylaws, which is the same as Article VIII, Section 8.1 of the CBOE Bylaws, that unless otherwise determined by the Board, the fiscal year of the Exchange ends on the close of business December 31 each year, as compared to Article XI, Section 1 of the current Bylaws, which provides that the fiscal year of the Exchange shall be as determined from time to time by the Board. Note that the Exchange's fiscal year currently ends on the close of business December 31 each year.

The Exchange also proposes to add Article VIII, Section 8.2 of the proposed Bylaws, which is the same as Article VIII, Section 8.2 of the CBOE Bylaws, which governs the execution of instruments such as checks, drafts and bills of exchange and contracts and which is similar to Article XI, Section 6 of the current Bylaws.

Next, the Exchange proposes to adopt Article VIII, Section 8.4, which provides that, except as the Board may otherwise designate, the Chairman of the Board, CEO, CFO or Treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for the Exchange (with or without power of substitution) at, any meeting of stockholders or shareholders of any other corporation or organization, the securities of which may be held by the Exchange. The proposed provision is the same as

---

<sup>51</sup> See Proposed Bylaws, Article IX, Section 9.3.

<sup>52</sup> See Article IX, Sections 9.2 and 9.3 of the CBOE Bylaws.

Article VIII, Section 8.4 of the CBOE Bylaws and similar to Article XI, Section 7 of the current Bylaws, which provides generally that the CEO has the power and authority to act on behalf of the Company at any meeting of stockholders, partners or equity holders of any other corporation or organization, the securities of which may be held by the Exchange.

The Exchange proposes to adopt Article VIII, Section 8.7, which governs transactions with interested parties. Proposed Article VIII, Section 8.7 is the same as Article VIII, Section 8.7 of the CBOE Bylaws and substantially similar to language contained in Article III, Section 18 of the current Bylaws. Similarly, the Exchange proposes to adopt Article VIII, Section 8.8 which governs severability and is the same as Article VIII, Section 8.8 of CBOE Bylaws and substantially similar to Article XI, Section 8 of the current Bylaws.

The Exchange proposes to adopt Article VIII, Section 8.10 which provides that the board may authorize any officer or agent of the Corporation to enter into any contract, or execute and deliver any instrument in the name of, or on behalf of the Corporation. The proposed language is the same as the language in Article VIII, Section 8.10 of the CBOE Bylaws and similar to related language in Article XI, Section 6 of the current Bylaws.

The Exchange proposes to adopt Article VIII, Section 8.12, relating to books and records and which is the same as Article VIII, Section 8.12 of CBOE Bylaws and which is similar to language contained in Article XI, Section 3 of the current Bylaws.

#### **New Bylaw Provisions**

The Exchange proposes to add provisions to the proposed Bylaws that are not included in the current Bylaws in order to conform the Exchange's bylaws to those of CBOE and C2 and provide consistency among the CBOE Holdings' U.S. securities exchanges. Specifically, the Exchange proposes to add the following to the proposed Bylaws:

- Article VII, which addresses notice requirements for any notice required to be given by the bylaws or Rules, including Article VII, Section 7.2, which provides whenever any notice to any stockholder is required, such notice may be given by a form of electronic transmission if the stockholder to whom such notice is given has previously consented to the receipt of notice by electronic transmission. The language mirrors the language set forth in Article VII, Section 7.2 of the CBOE Bylaws.
- Article VIII, Section 8.3 which is identical to Article VIII, Section 8.3 of the CBOE Bylaws, which provides that the corporate seal, if any, shall be in such form as approved by the board or officer of the Corporation.
- Article VIII, Section 8.5, which provides that a certificate by the Secretary, or Assistant Secretary, if any, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Exchange shall, as to all persons who rely on the certificate in good faith, be conclusive evidence of such action. This language is identical to the language contained in Article VIII, Section 8.5 of the CBOE Bylaws.
- Article VIII, Section 8.6., which is identical to Article VIII, Section 8.6 of the CBOE Bylaws, which provides all references to the Certificate of Incorporation

shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended, altered or restated and in effect from time to time.

- Article VIII, Section 8.11, which provides that the Exchange may lend money or assist an employee of the Exchange when the loan, guarantee or assistance may reasonably benefit the Exchange. This language is identical to the language contained in Article VIII, Section 8.11 of the CBOE Bylaws.

### **Eliminated Bylaw Provisions**

The Exchange notes that the following provisions in the current Bylaws are not carried over in either the proposed Bylaws or proposed Certificate in order to conform the Exchange's bylaws to those of CBOE and C2 and provide consistency among the CBOE Holdings' U.S. securities exchanges:

- Article III, Sections 13 and 17. Section 13 provides that a director who is present at a Board or Board Committee meeting at which action is taken is conclusively presumed to have assented to action being taken unless his or her dissent or election to abstain is entered into the minutes or filed. Section 17 provides that the Board has the power to interpret the Bylaws and any interpretations made shall be final and conclusive. The Exchange does not wish to include these provisions in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws and the Exchange wishes to have uniformity across the bylaws of the CBOE Holdings' exchanges.
- Article IX, Section 2, which relates to the Board's authority to adopt emergency Bylaws to be operative during any emergency resulting from, among other things, any nuclear or atomic disaster or attack on the United States, any catastrophe, or

other emergency condition, as a result of which a quorum of the Board or a committee cannot readily be convened for action. Similarly, Article IX, Section 3, provides that the Board, or Board's designee, in the event of extraordinary market conditions, has the authority to take certain actions. The Exchange does not wish to include these provisions in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws and the Exchange wishes to have uniformity across the bylaws of the CBOE Holdings' exchanges.

- Article X, Section 2, which relates to disciplinary proceedings and provides that the Board is authorized to establish procedures relating to disciplinary proceedings involving Exchange Members and their associated persons, as well as impose various sanctions applicable to Exchange Members and persons associated with Exchange Members. The Exchange does not wish to include this provision in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws. Additionally, the Exchange notes that Article III, Section 3.3 of the proposed Bylaws grants the Board broad powers to adopt such procedures and/or rules if necessary or desirable.<sup>53</sup>
- Article X, Section 3, which relates to membership qualifications and provides, among other things, that the Board has authority to adopt rules and regulations applicable to Exchange Members and Exchange Member applicants, as well as establish specified and appropriate standards with respect to the training, experience, competence, financial responsibility, operational capability, and other qualifications. The Exchange does not wish to include this provision in the

---

<sup>53</sup>

The Exchange notes that the language in proposed Article III, Section 3.3 is similar to language provided for in Article X, Section 1 of the current Bylaws.

proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws. The Exchange again notes that Article III, Section 3.3 of the proposed Bylaws grants the Board broad powers to adopt such rules and regulations if necessary or desirable.

- Article X, Section 4, which relates to fees, provides that the Board has authority to fix and charge fees, dues, assessments, and other charges to be paid by Exchange Members and issuers and any other persons using any facility or system that the Company operates or controls; provided that such fees, dues, assessments, and other charges shall be equitably allocated among Exchange Members and issuers and any other persons using any facility or system that the Company operates or controls. The Exchange does not wish to include this section of the provision in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws. To the extent the Board wishes to adopt such fees and dues, it has the authority pursuant to Article III, Section 3.3 of the proposed Bylaws. The Exchange notes that with respect to the language in Article X, Section 4 of the current Bylaws relating to the prohibition of using revenues received from fees derived from its regulatory function or penalties for non-regulatory purposes, similar language exists within CBOE Rules, particularly, CBOE Rule 2.51. In order to conform the Bylaws, the Exchange wishes to similarly relocate this language to its rules, instead of maintaining it in its Bylaws. Specifically, the Exchange proposes to adopt new Rule 15.2, which language is based off CBOE Rule 2.51. The Exchange notes that this provision is designed to preclude the Exchange from using its authority to raise regulatory funds for the purpose of



benefitting its Stockholder. Unlike CBOE Rule 2.51 however, proposed Rule 15.2 explicitly provides that regulatory funds may not be distributed to the stockholder. The Exchange notes that this language is currently contained in Article X, section 4 of the current Bylaws. Additionally, while not explicit in CBOE Rule 2.51, the Exchange notes that the rule filing that adopted Rule 2.51 does similarly state that regulatory funds may be not distributed to CBOE's stockholder.<sup>54</sup> Although proposed Rule 15.2 will differ slightly from CBOE Rule 2.51, the Exchange wishes to make this point clear to avoid potential confusion. Lastly, the Exchange notes that unlike Article X, Section 4 of the current Bylaws, proposed Rule 15.2, like CBOE Rule 2.51, will provide that notwithstanding the preclusion to use regulatory revenue for non-regulatory purposes, in the event of liquidation of the Exchange, Bats Global Markets Holdings, Inc. will be entitled to the distribution of the remaining assets of the Exchange.

- Certain sections in Article XI, including Section 2 ("Participation in Board and Committee Meetings"), Section 4 ("Dividends") and Section 5 ("Reserves"). More specifically, Article XI, Section 2 governs who may attend Board and Board committee meetings pertaining to the self-regulatory function of the Exchange and particularly, provides among other things, that Board and Board Committee meetings relating to the self-regulatory function of the Company are closed to all persons other than members of the Boards, officers, staff and counsel or other

---

<sup>54</sup> See Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-088).

advisors whose participation is necessary or appropriate.<sup>55</sup> Article XI, Section 4 provides that dividends may be declared upon the capital stock of the Exchange by the Board. Article XI, Section 5 provides that before any dividends are paid out, there must be set aside funds that the Board determines is proper as a reserves. The Exchange does not wish to include these provisions in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws and the Exchange wishes to have uniformity across the bylaws of the CBOE Holdings' U.S. securities exchanges.

(c) Changes to Rules

The Exchange will also amend its rules in conjunction with the proposed changes to its bylaws. The proposed rule changes are set forth in Exhibit 5E. First, the Exchange proposes to update the reference to the bylaws in Rule 1.1. Next, the Exchange notes that in order to keep the governance documents uniform, it proposes to eliminate the definitions of "Industry member", "Member Representative member" and "Director" from Article I of the current Bylaws. The Exchange notes that Industry members and Member Representative members are still used for Hearing Panels pursuant to Rule 8.6. As such, the Exchange proposes to relocate these definitions to the rules (specifically, Rule 8.6) and proposes to update the reference to the location of the definitions in Rule 8.6 accordingly (i.e., refer to the definition in Rule 8.6 as opposed to the definition in the

---

<sup>55</sup> Article XI, Section 2 also provides that in no event shall members of the Board of Directors of CBOE Holdings, Inc., CBOE V, LLC or Bats Global Markets Holdings, Inc. who are not also members of the Board, or any officers, staff, counsel or advisors of CBOE Holdings, Inc., CBOE V, LLC or Bats Global Markets Holdings, Inc. who are not also officers, staff, counsel or advisors of the Company (or any committees of the Board), be allowed to participate in any meetings of the Board (or any committee of the Board) pertaining to the self-regulatory function of the Company (including disciplinary matters).

bylaws). The Exchange also proposes to eliminate language in Rule 2.10 that, in connection with a reference to “Director”, states “as such term is defined in the Bylaws of the Exchange”. As the definition of Director is being eliminated in the Bylaws, the Exchange is seeking to remove the obsolete language in Rule 2.10.

Lastly, as discussed above, the Exchange proposes to add new Rule 15.2, which will provide that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the Stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or be used to pay restitution and disgorgement of funds intended for customers (except in the event of liquidation of the Exchange, which case Bats Global Markets Holdings, Inc. will be entitled to the distribution of the remaining assets of the Exchange). As more fully discussed above in the “Eliminated Bylaw Provisions” section, the proposed change is similar to Article X, Section 4 of the current Bylaws and based on Rule 2.51 of CBOE Rules.

The Exchange believes that the proposed changes to the current Bylaws and current Certificate would align its governance documents with the governance documents of each of CBOE and C2, which preserves governance continuity across each of CBOE Holdings’ six U.S. securities exchanges. The Exchange also notes that the Exchange will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and to enforce compliance by its Members and persons associated

with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Rules, as required by Section 6(b)(1) of the Act.<sup>56</sup>

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>57</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>58</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>59</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(1) of the Act 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 Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members,

---

<sup>56</sup> 15 U.S.C. 78f(b)(1).

<sup>57</sup> 15 U.S.C. 78f(b).

<sup>58</sup> 15 U.S.C. 78f(b)(5).

<sup>59</sup> Id.

with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange also believes that its proposal to adopt the Board and committee structure and related nomination and election processes set forth in the proposed Bylaws are consistent with the Act, including Section 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. In general, the proposed changes would make the Board and committee composition requirements, and related nomination and election processes, more consistent with those of its affiliates, CBOE and C2. The Exchange therefore believes that the proposed changes 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 Act and comply with the provisions of the Act by its members and persons associated with members. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3)<sup>60</sup> and (b)(5) of the Act in particular, in that it is designed to assure a fair representation of Exchange Members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and is designed to promote just and equitable principles of trade, 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. For example, the number of Non-Industry Directors must not be less than the number of Industry Directors. Additionally, the Exchange believes that the 20%

---

<sup>60</sup> 15 U.S.C. 78f(b)(3).

requirement for Representative Directors and the proposed method for selecting Representative Directors ensures fair representation and allows members to have a voice in the Exchange's use of its self-regulatory authority. For instance, the proposed Bylaws includes a process by which Exchange members can directly petition and vote for representation on the Board.

Additionally, the Exchange believes the proposed Certificate, Bylaws and rules support a corporate governance framework, including the proposed Board and Board Committee structure that preserves the independence of the Exchange's self-regulatory function and insulates the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can continue to carry out its regulatory obligations. Particularly, the proposed governance documents provide that Directors must take into consideration the effect that his or her actions would have on the ability of the Company to carry out its regulatory responsibilities under the Act and the proposed changes to the rules includes the restriction on using revenues derived from the Exchange's regulatory function for non-regulatory purposes, which further underscores the independence of the Exchange's regulatory function. The Exchange also believes that requiring that the number of Non-Industry Directors not be less than the number of Industry Directors and requiring that all Directors serving on the ROC be Non-Industry Directors would help to ensure that no single group of market participants will have the ability to systematically disadvantage other market participants through the exchange governance process, and would foster the integrity of the Exchange by providing unique, unbiased perspectives.

Moreover, the Exchange believes that the new corporate governance framework and related processes being proposed are consistent with Section 6(b)(5) of the Act because they are substantially similar to the framework and processes used by CBOE and C2, which have been well-established as fair and designed to protect investors and the public interest.<sup>61</sup> The Exchange believes that conforming its governance documents based on the documents of the CBOE and C2 exchanges would streamline the CBOE Holdings' U.S. securities exchanges' governance process, create equivalent governing standards among the exchanges and also provide clarity to its members, which is beneficial to both investors and the public interest.

To the extent there are differences between the current CBOE and C2 framework and the proposed Exchange framework, the Exchange believes the differences are reasonable. First, the Exchange believes it's reasonable to provide that in Run-Off Elections, each Exchange Member shall have one (1) vote for each Representative Director position to be filled that year instead of one vote per Trading Permit held, because the Exchange, unlike CBOE and C2, does not have Trading Permits and because other exchanges have similar practices.<sup>62</sup> The Exchange believes it's also reasonable not to require the establishment of an Advisory Board, as the Exchange desires flexibility in maintaining such a Committee, and is not statutorily required to maintain such a

---

<sup>61</sup> See e.g., Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 17974 (May 28, 2010) (SR-CBOE-2008-088); Securities Exchange Act Release No. 64127 (March 25, 2011), 76 FR 17974 (March 31, 2011) (SR-CBOE-2011-010); and Securities Exchange Act Release No. 80523 (April 25, 2017), 82 FR 20399 (May 1, 2017) (SR-CBOE-2017-017).

<sup>62</sup> See e.g., Amended and Restated By-Laws of Miami International Securities Exchange, LLC, Article II, Section 2.4(f).

committee. Additionally, the Exchange notes that it currently does not have an Advisory Board. Lastly, the Exchange notes that it is reasonable to not require a standing exchange-level Appeals Committee because the Board still has the authority to appoint an Appeals Committee in the future as needed pursuant to its powers under Article IV, Section 4.1 of the proposed Bylaws and because an Appeals Committee is not statutorily required.

Finally, the proposed amendments to the rules as discussed above are non-substantive changes meant to merely update the Rules in light of the proposed changes to the current Bylaws and to relocate certain provisions to better conform the Exchange's governance documents to those of CBOE and C2.

**Item 4. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of BYX and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

**Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

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



**Item 6.        Extension of Time Period for Commission Action**

BYX does not consent to an extension of the time period for Securities and Exchange Commission (the “Commission”) action on the proposed rule change specified in Section 19(b)(2) of the Act.<sup>63</sup>

**Item 7.        Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Not applicable.

**Item 8.        Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

As more fully discussed above, the proposed changes are based on the governance documents and Rules of CBOE and C2.

**Item 9.        Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**Item 10.       Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**Item 11.       Exhibits**

Exhibit 1.       Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5A.       Text of the current Certificate.

Exhibit 5B.       Text of the proposed Certificate.

Exhibit 5C.       Text of the current Bylaws.

Exhibit 5D.       Text of the proposed Bylaws.

Exhibit 5E.       Text of proposed changes to Rules.

---

<sup>63</sup> 15 U.S.C. 78s(b)(2).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BatsBYX-2017-19)

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Harmonize the Corporate Governance Framework with that of Chicago Board Options Exchange, Incorporated and C2 Options Exchange Incorporated

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 \_\_\_\_\_, Bats BYX Exchange, Inc. (the “Exchange” or “BYX”) 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 filed a proposal to amend and restate its certificate of incorporation and bylaws, as well as amend its Rules.

The text of the proposed rule change is available at the Exchange’s website at [www.bats.com](http://www.bats.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

---

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

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

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 parts of such statements.

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

1. Purpose

BYX submits this rule filing to the Securities and Exchange Commission (the "Commission") in connection with a corporate transaction (the "Transaction") involving, among other things, the recent acquisition of BYX, along with Bats BZX Exchange, Inc. ("Bats BZX"), Bats EDGX Exchange, Inc. ("Bats EDGX"), and Bats EDGA Exchange, Inc. ("Bats EDGA" and, together with Bats BYX, Bats EDGX, and Bats BZX, the "Bats Exchanges") by CBOE Holdings, Inc. ("CBOE Holdings"). CBOE Holdings is also the parent of Chicago Board Options Exchange, Incorporated ("CBOE") and C2 Options Exchange, Incorporated ("C2"). This filing proposes to amend and restate the bylaws (and amend the rules, accordingly) and the certificate of incorporation of the Exchange based on the bylaws and certificates of incorporation of CBOE and C2.

Specifically, the Exchange proposes to replace the certificate of incorporation of Bats BYX Exchange, Inc., (the "current Certificate") in its entirety with the Amended and Restated Certificate of Incorporation of Bats BYX Exchange, Inc. (the "proposed Certificate"). Additionally, the Exchange proposes to replace the Fifth Amended and Restated Bylaws of Bats BYX Exchange, Inc. (the "current Bylaws") in its entirety with the Sixth Amended and Restated Bylaws of Bats BYX Exchange, Inc. (the "proposed Bylaws"). The Exchange believes that it is important for each of CBOE Holdings' six U.S. securities exchanges to have a consistent, uniform approach to corporate

governance. Therefore, to simplify and unify the governance and corporate practices of these six exchanges, the Exchange proposes to revise the current Certificate and current Bylaws to conform them to the certificates of incorporation and bylaws of the CBOE and C2 exchanges (i.e., the Third Amended and Restated Certificate of Incorporation of Chicago Board Options Exchange, Incorporated and the Fourth Amended and Restated Certificate of C2 Options Exchange, Incorporated (collectively referred to herein as the “CBOE Certificate”) and the Eighth Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated and the Eighth Amended and Restated Bylaws of C2 Options Exchange, Incorporated (collectively referred to herein as the “CBOE Bylaws”). The proposed Certificate and proposed Bylaws reflect the expectation that the Exchange will be operated with governance structures similar to those of CBOE and C2. Accordingly, the Exchange proposes to adopt corporate documents that set forth a substantially similar corporate governance framework and related processes as those contained in the CBOE Certificate and CBOE Bylaws. The Exchange believes the proposed changes to the current Certificate and current Bylaws are consistent with the requirements of the Securities Exchange Act of 1934, as amended (the “Act”).

(a) Changes to the Certificate

In connection with the Transaction, the Exchange proposes to amend and restate the current Certificate to conform to the certificates of incorporation of CBOE and C2. The proposed Certificate is set forth in Exhibit 5B. Specifically, the Exchange proposes to make the following substantive amendments to the current Certificate.

- Adopt an introductory section.

- Amend Article Third to provide further details as to the nature of the business of the Exchange. Specifically, the proposed Certificate will further specify that the nature of the Exchange is (i) to conduct and carry on the function of an “exchange” within the meaning of that term in the Act and (ii) to provide a securities market place with high standards of honor and integrity among its Exchange Members and other persons holding rights to access the Exchange’s facilities and to promote and maintain just and equitable principles of trade and business.
- Article Fourth of the proposed Certificate specifies that Bats Global Markets Holdings, Inc. will be the sole owner of the Common Stock and that any sale, transfer or assignment by Bats Global Markets Holdings, Inc. of any shares of Common Stock will be subject to prior approval by the SEC pursuant to a rule filing. The Exchange notes that Article IV, Section 7 of the current Bylaws similarly precludes the stockholder from transferring or assigning, in whole or in part, its ownership interest(s) in the Exchange.
- Article Fifth of the current Certificate regarding the name and address of the sole incorporator is being deleted as it is now outdated.
- Article Fifth of the proposed Certificate is the same as Article Fifth of the CBOE Certificate. Specifically, Article Fifth, subparagraph (a) provides that the governing body of the Exchange shall be its Board. Article Fifth, subparagraph (b) provides that the Board shall consist of not less than five (5) Directors and subparagraph (c) includes language regarding the nomination of directors, which information is substantially similar as is provided in the CBOE Bylaws and the

proposed Bylaws.<sup>3</sup> Article Fifth, subparagraph (d) of the proposed Certificate provides that in discharging his or her responsibilities as a member of the Board, each Director shall take into consideration the effect that his or her actions would have on the ability of the Exchange to carry out the Exchange's responsibilities under the Act and on the ability of the Exchange: to engage in conduct that fosters and does not interfere with the Exchange's ability 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 mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board or as an officer or employee of the Exchange, each such Director, officer or employee shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission, and the Exchange pursuant to its regulatory authority. The Exchange notes that similar language is included in the current Bylaws.<sup>4</sup>

- Article Sixth of the proposed Certificate governs the indemnification of Directors of the Board. The Exchange notes that its indemnification provision is currently contained in Article VIII of the current Bylaws. In order to conform governance documents across all CBOE Holdings' exchanges and conform indemnification

---

<sup>3</sup> See Article III of the CBOE Bylaws and proposed Bylaws.

<sup>4</sup> See Article III, Section 1(d) and Section 1(e) of the current Bylaws.

practices, the Exchange is eliminating its indemnification in the bylaws and adopting the same indemnification language that is currently contained in Article Sixth of the CBOE Certificate.

- Article Seventh of the proposed Certificate is the same as Article Seventh of the CBOE Certificate and provides that the Exchange reserves the right to amend, change or repeal any provision of the certificate. It also provides that before any amendment or repeal of any provision of the certificate shall be effective, the changes must be submitted to the Board, and if such amendment or repeal must be filed with or filed with and approved by the Commission, it won't be effective until filed with or filed with and approved by the Commission.
- Article Eighth of the proposed Certificate is the same as Article Eighth of the CBOE Certificate. Proposed Article Eighth provides that a Director of the Exchange shall not be liable to the Exchange or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation is not permitted under Delaware Corporate law.
- Article Ninth of the proposed Certificate is the same as Article Ninth of the CBOE Certificate. Specifically it provides that unless and except to the extent that the Exchange's bylaws require, election of Directors of the Exchange need not be by written ballot.
- Article Tenth of the proposed Certificate is the same as Article Tenth of the CBOE Certificate and provides that in furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly

authorized to make, alter and repeal the Exchange's bylaws, which is already provided for in both the current Bylaws and proposed Bylaws.<sup>5</sup>

- Article Eleventh of the proposed Certificate is the same as Article Eleventh of the CBOE Certificate and is similar to Article XI, Section 3 of the current Bylaws. Particularly, Article Eleventh provides that confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange shall: (i) not be made available to any persons other than to those officers, directors, employees and agents of the Exchange that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange; and (iii) not be used for any commercial purposes. Additionally, Article Eleventh of the proposed Certificate further provides that nothing in Article Eleventh shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission.

(b) Substantive Changes to the Bylaws

In connection with the Transaction, the Exchange also proposes to amend and restate the current Bylaws to conform to the Bylaws of CBOE and C2. The proposed

---

<sup>5</sup> See Article IX, Section 1 of the current Bylaws and Article IX, Section 9.1 of the proposed Bylaws.



Bylaws is set forth in Exhibit 5D. Specifically, the Exchange proposes to make the following substantive amendments to the current Bylaws:

### **Definitions**

The Exchange first notes that Section 1.1 of the proposed Bylaws, titled “Definitions,” contains key definitions of terms used in the proposed Bylaws, and are based on the defined terms used in Section 1.1 of the CBOE Bylaws. The Exchange notes that certain differences in terminology in the proposed Bylaws and CBOE Bylaws will exist (e.g., use of the term “Exchange Member” instead of “Trading Permit Holder”). The Exchange proposes to eliminate from the current Bylaws certain definitions that would be obsolete under the proposed Bylaws (e.g., references to “Member Representative Directors” and “Member Nominating Committee”) and also proposes to move certain defined terms located in the current Bylaws to the BYX Rules (i.e., “Industry member” and “Member Representative member”)<sup>6</sup>. Additionally, the Exchange proposes to define certain terms in the current Bylaws in places other than Section 1.1, so as to match the CBOE Bylaws (e.g., the definition of “Industry Director” is being relocated to Article III, Section 3.1 of the proposed Bylaws and the definition of “Record Date” is being relocated to Article II, Section 2.7 of the proposed Bylaws)<sup>7</sup>.

---

<sup>6</sup> See Proposed BYX Rules, Rule 8.6. The Exchange notes that the definition of a Member Representative member is being revised to eliminate the reference to a Stockholder Exchange Member. Currently, a Stockholder Exchange Member means an Exchange Member that also maintains, directly or indirectly, an ownership interest in the Company. The exchange notes that the sole stockholder of BYX is Bats Global Markets Holdings, Inc., which is a wholly owned subsidiary of CBOE Holdings and is not an Exchange member, and as such, the concept of a Stockholder Exchange Member need not be referenced.

<sup>7</sup> The Exchange notes a few differences between the definitions of Industry Director and Record Date in the current Bylaws and the proposed Bylaws.

**Office and Agent**

The Exchange notes that the information in Article II (Office and Agent) of the current Bylaws is not included in the proposed Bylaws. The Exchange notes that the language contained in Section 2 and 3 of Article II is already located in the current Certificate and will continue to be located in the proposed Certificate.<sup>8</sup> The Exchange does not believe the information contained in Section 1 of Article II is necessary to include in the proposed Bylaws and notes that the CBOE Bylaws do not contain information relating to the principal business office.

**Nomination and Election Process**

Article III of the proposed Bylaws, titled “Board of Directors”, mirrors the language in Article III of the CBOE Bylaws and contains key provisions regarding the processes for nominating and electing Representative Directors.

**General Nomination and Election**

Under the Exchange’s current director nomination and election process, the Nominating Committee (which is not a Board committee, but rather is composed of

---

Specifically, the definition of “Industry Director” in Article I, subparagraph (o) of the current Bylaws contains references to specific percentages in order to determine whether a Director qualifies as an Industry Director, whereas the definition of “Industry Director” in Article III, Section 3.1, of the proposed Bylaws uses the term “material portion” in making those same determinations. The definition of “Record Date” in Article I, subparagraph (z) of the current Bylaws means a date at least thirty-five (35) days before the date of the annual meeting of stockholders, whereas Article II, Section 2.7 of the proposed Bylaws provides that the Record Date shall be at least 10 days before the date of the annual meeting of stockholders and not more than 60 days before the annual meeting.

<sup>8</sup> See Article Second of the current and proposed Certificates.

Exchange member representatives)<sup>9</sup> nominates Directors for each Director position standing for election for that year. Additionally, for Member Representative Director positions<sup>10</sup>, the Nominating Committee must nominate the Directors that have been approved and submitted by the Member Nominating Committee (which is also not a Board committee, but rather is composed of Member Representative members)<sup>11</sup>. Additionally, pursuant to Article III, Section 3(b) of the current Bylaws, the Exchange Directors are divided into three classes, designated as Class I, Class II and Class III. Directors other than the Chief Executive Officer of the Exchange (“CEO”) serve staggered three-year terms. The Exchange proposes to adopt a nomination and election process identical to CBOE and C2 as set forth in Article III of the proposed Bylaws. As such, the tiered class system will be eliminated, Directors will serve one-year terms ending on the annual meeting following the meeting at which Directors were elected or at such time as their successors are elected or appointed and the newly established Nominating and Governance Committee will be responsible for nominating each Director.<sup>12</sup>

#### Nomination and Election of Representative Directors

---

<sup>9</sup> See Current Bylaws, Article III, Section 4 (“Nomination and Election”) and Article VI, Section 2 (“Nominating Committee”).

<sup>10</sup> See Current Bylaws, Article I, (s), which defines a “Member Representative Director”. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member.

<sup>11</sup> See Current Bylaws Article I, subparagraph (t) (“Member Representative member”). See also, Article III, Section 4 (“Nomination and Election”) and Article VI, Section 3 (“Member Nominating Committee”) of the current Bylaws.

<sup>12</sup> See Article III, Section 3.1 and Article IV, Section 4.3 of the proposed Bylaws.

Currently, pursuant to Article III, Section 4(b) of the current Bylaws, for Member Representative Directors, the Member Nominating Committee consults with the Nominating Committee, the Chairman of the Board and the CEO, and also solicits comments from Exchange Members for purposes of approving and submitting the names of candidates for election as a Member Representative Director. The initial nominees for Member Representative Directors must be reported to the Nominating Committee and Secretary no later than sixty (60) days prior to the annual or special stockholders' meeting, at which point the Secretary will promptly notify Exchange Members. Exchange Members may then identify other candidates by delivering to the Secretary, at least thirty-five (35) days before the annual or special stockholders' meeting, a written petition, identifying the alternative candidate and signed by Executive Representatives<sup>13</sup> of 10% or more of Exchange Members. No Exchange Member, together with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate. If no valid petitions from Exchange Members are received by the Record Date, the initial nominees approved and submitted by the Member Nominating Committee shall be nominated as Member Representative Directors by the Nominating Committee. If one or more valid petitions are received by the Record Date, the Secretary shall include such additional nominees, along with the initial nominees nominated by the Member Nominating Committee, on a list of nominees (the "List of Candidates") that is sent to all Exchange Members, accompanied by a notice regarding the time and date of an

---

<sup>13</sup> The term "Executive Representative" as defined in the current Bylaws, Article I, means the person identified to the Company by an Exchange Member as the individual authorized to represent, vote, and act on behalf of the Exchange Member. An Executive Representative of an Exchange Member or a substitute shall be a member of senior management of the Exchange Member.

election to be held at least twenty (20) days prior to the annual or special stockholders' meeting. Each Exchange Member has the right to cast one (1) vote for each available Member Representative Director nomination (the vote must be cast for a person on the List of Candidates and no Exchange Member, together with its affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate). The persons on the List of Candidates who receive the most votes shall be selected as the nominees for the Member Representative Director positions.

For purposes of harmonizing the governance structure and process across all of CBOE Holdings' U.S. securities exchanges, the Exchange proposes to eliminate the Nominating Committee and Member Nominating Committee and adopt a nomination and election process substantially similar to CBOE and C2 for Member Representative Directors (to be renamed "Representative Directors")<sup>14</sup>. The Exchange notes that unlike the current Bylaws, the proposed Bylaws will not require Representative Directors to be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member, as neither CBOE nor C2 maintain such a requirement. The new process will provide that the "Representative Director Nominating Body" shall be responsible for nominating Representative Directors. The Representative Director Nominating Body ("Nominating Body") is either (i) the Industry-Director Subcommittee of the Nominating and Governance Committee if there are at least two (2) Industry

---

<sup>14</sup> Article III, Section 3.1. of the proposed Bylaws requires that at all times, at least 20% of Directors serving on the Board shall be Representative Directors, which is the same percentage required under the current Bylaws (see Article III, Section 2(b)(ii) of the current Bylaws). Article III, Section 3.2 of the proposed Bylaws further clarifies that if 20% of the Directors then serving on the Board is not a whole number, the number of required Representative Directors shall be rounded up to the next whole number.

Directors on the Nominating and Governance Committee, or (ii) if the Nominating and Governance Committee has less than two (2) Industry Directors, then the Nominating Body shall mean the Exchange Member Subcommittee of the Advisory Board<sup>15</sup>. The Nominating and Governance Committee shall be bound to accept and nominate the Representative Director nominees recommended by the Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Any person nominated by the Nominating Body and any petition candidate must satisfy the compositional requirements determined by the Board, pursuant to a resolution adopted by the Board, designating the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any). Not earlier than December 1 and not later than January 15<sup>th</sup> (or the first business day thereafter if January 15<sup>th</sup> is not a business day), the Nominating Body shall issue a circular to Exchange Members identifying the Representative Director nominees. As is the case under the current Bylaws, Exchange Members may nominate alternative candidates for election to the Representative Director positions to be elected in a given year by submitting a petition signed by individuals representing not less than ten percent (10%) of the Exchange Members at that time. Petitions must be filed with the Secretary no later than 5:00 p.m. (Chicago time) on the 10th business day following the issuance of the circular to the Exchange Members identifying the Representative Director nominees (the “Petition Deadline”). The names of all Representative Director nominees recommended by the Nominating Body and those selected pursuant to a valid and timely petition shall,

---

<sup>15</sup> The Exchange notes that if there are less than two (2) Industry Directors on the Nominating and Governance Committee, it would institute an Advisory Board, if not already established.

immediately following their selection, be given to the Secretary who shall promptly issue a circular to all of the Exchange Members identifying all such Representative Director candidates.

If one or more valid petitions are received, the Secretary shall issue a circular to all of the Exchange Members identifying those individuals nominated for Representative Director by the Nominating Body and those individuals nominated for Representative Director through the petition process, as well as of the time and date of a run-off election to determine which individuals will be nominated as Representative Director(s) by the Nominating and Governance Committee (the “Run-off Election”). The Run-off Election will be held not more than forty-five (45) days after the Petition Deadline. In any Run-off Election, each Exchange Member shall have one (1) vote for each Representative Director position to be filled that year; provided, however, that no Exchange Member, either alone or together with its affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate.<sup>16</sup> The Secretary shall issue a circular to all of the Exchange Members setting forth the results of the Run-off Election. The number of individual Representative Director nominees equal to the number of Representative Director positions to be filled that year receiving the largest number of votes in the Run-

---

<sup>16</sup> Article III, Section 3.2 of the CBOE Bylaws provides that in any Run-off Election, a holder of a Trading Permit shall have one vote with respect to each Trading Permit held by such Trading Permit Holder for each Representative Director position to be filled. The Exchange notes that because no “Trading Permits” or similar concept exist on the Exchange, it is deviating from this practice and providing instead that each Exchange Member shall have one (1) vote for each Representative Director position to be filled, which the Exchange does not believe is a significant change. The Exchange also notes that other Exchanges have similar practices. See e.g., Amended and Restated By-Laws of Miami International Securities Exchange, LLC, Article II, Section 2.4(f).

off Election will be the persons approved by the Exchange Members to be nominated as the Representative Director(s) by the Nominating and Governance Committee for that year. The Exchange believes that, under the proposed Board structure, the Representative Directors serve the same function as the Member Representative Directors in that both directorships give Exchange members a voice in the Exchange's use of self-regulatory authority.

### Vacancies

Article III, Section 6 of the current Bylaws provides that during a vacancy of any Director other than a Member Representative Director, the Nominating Committee shall nominate an individual Director and the stockholders of BYX shall elect the new Director.<sup>17</sup> In the event of a vacancy of a Member Representative Director, the Member Nominating Committee shall either (i) recommend an individual to the stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy. The current Bylaws provide that Directors elected to fill a vacancy are to hold office until the expiration of the remaining term.

The Exchange proposes to adopt the same process to fill vacancies as CBOE and C2. Specifically, Article III, Section 3.5 of the proposed Bylaws, which is substantially similar to Article III, Section 3.5 of the CBOE Bylaws, will provide that a vacancy on the Board may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position.

---

<sup>17</sup> The sole stockholder of BYX is Bats Global Markets Holdings, Inc., a wholly owned subsidiary of CBOE Holdings.



Additionally, for vacancies of Representative Directors, the Nominating Body will recommend an individual to be elected, or provide a list of recommended individuals, and the position shall be filled by the vote of a majority of the Directors then in office. Under the proposed Bylaws, Directors elected to fill a vacancy will serve until the next annual meeting of stockholders.

#### Removals and Resignation

Article III, Section 7 of the current Bylaws provides that any Director may be removed with or without cause by a majority vote of stockholders and may be removed by the Board, provided however, that any Member Representative Director may only be removed for cause, which includes such Director being subject to a Statutory Disqualification. Additionally, a Director shall be immediately removed upon a determination by the Board, by a majority vote of remaining Directors that (a) the Director no longer satisfies the classification for which the Director was elected and (b) the Director's continued service would violate the compositional requirements of the Board. Article III, Section 7 of the current Bylaws also provides that any Director may resign at any time upon notice of resignation to the Chairman of the Board, the President or Secretary. Resignation shall take effect at the time specified, or if no time is specified, upon receipt of the notice.

Under Article III, Section 3.4 of the proposed Bylaws, which is the same as Article III, Section 3.4, of the CBOE Bylaws, a Director who fails to maintain the applicable Industry or Non-Industry qualifications required under the proposed Bylaws, of which the Board shall be the sole judge, will cease being a Director. The Exchange notes that while the current Bylaws do not address the requalification of a Director,

Section 3.4 of the proposed Bylaws permits a Director that fails to maintain the applicable qualifications to requalify within the later of forty-five (45) days from the date when the Board determines the Director is unqualified or until the next regular Board meeting following the date when the Board makes such determination. The Director shall be deemed not to hold office (i.e., the Director's seat is considered vacant) following the date when the Board determines the Director is unqualified. Further, the Board shall be the sole judge of whether the Director has requalified. If a Director is determined to have requalified, the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such Director to the Board; provided, however, that the Board shall be under no obligation to return such Director to the Board. Similar to the current Bylaws, Section 3.4 of the proposed Bylaws provides that Representative Directors may only be removed for cause. In addition to specifying that cause includes being subject to a Statutory Disqualification, the proposed Bylaws further lists additional examples of cause in Section 3.4 (e.g., breach of a Representative Director's duty of loyalty to the Exchange or its stockholders and transactions from which a Representative Director derived an improper personal benefit). Lastly, the Exchange notes that under the proposed Bylaws, resignation must be written and must be given to either the Chairman of the Board or the Secretary.

### **Board Composition**

Pursuant to Article III, Section 2 of the current Bylaws, the Board must consist of four (4) or more Directors, and consist at all times of one (1) Director who is the CEO and a sufficient number of Industry, Non-Industry and Member Representative Directors to ensure that the number of Non-Industry Directors, including at least one Independent

Director, shall equal or exceed the sum of Industry and Member Representative Directors. Additionally, the number of Member Representative Directors must be at least twenty (20) percent of the Board. The Exchange proposes to replace the Board composition and structure with that of CBOE and C2. As is the case with CBOE and C2, pursuant to Article III, Section 3.1, of the proposed Bylaws, the Board must consist of at least five (5) directors (which is the minimum number of Directors required for the Nominating and Governance Committee), instead of 4 as required by the current Bylaws. Additionally, the following would apply to the new Board structure:

- The number of Non-Industry Directors, Industry Directors and the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any) will be determined by the Board pursuant to resolution adopted by the Board.<sup>18</sup>
- The proposed Bylaws provide that the number of Non-Industry Directors cannot be less than the number of Industry Directors, whereas the current Bylaws, as noted above, provide that the number of Non-Industry Directors, including at least one Independent Director, shall equal or exceed the sum of Industry and Member Representative Directors.<sup>19</sup> Unlike the current Bylaws, the proposed Bylaws provide that the CEO is excluded from the calculation of Industry Directors, as is the practice under CBOE Bylaws.<sup>20</sup> Additionally, the Exchange notes that the CBOE Bylaws do not

---

<sup>18</sup> See Proposed Bylaws and CBOE Bylaws, Article III, Section 3.1.

<sup>19</sup> See Current Bylaws, Article III, Section 2.

<sup>20</sup> Id.

contain the term or concept of “Independent Directors” and in order to conform the proposed Bylaws to the CBOE Bylaws, the proposed Bylaws also do not reference “Independent Directors” with respect to composition.

- The Board or the Nominating and Governance Committee will make all materiality determinations regarding who qualifies as an Industry Director and Non-Industry Director.<sup>21</sup>
- Unlike the current Bylaws which provide that the CEO shall be the Chairman of the Board<sup>22</sup>, the proposed Bylaws, provide that the Chairman will be appointed by the Board and further provides that the Board may designate an Acting Chairman in the event the Chairman is absent or fails to act.<sup>23</sup>
- Unlike the current Bylaws which provide that a Lead Director must be designated by the Board among the Board’s Independent Directors<sup>24</sup>, the proposed Bylaws provide that the Board may, but does not have to, appoint a Lead Director, who if appointed, must be a Non-Industry Director, which is the same practice under CBOE’s Bylaws.<sup>25</sup>

---

<sup>21</sup> Id.

<sup>22</sup> See Current Bylaws, Article III, Section 5.

<sup>23</sup> See Proposed Bylaws and CBOE Bylaws, Article III, Sections 3.6 and 3.8.

<sup>24</sup> See Current Bylaws, Article III, Section 5.

<sup>25</sup> See Proposed Bylaws and CBOE Bylaws, Article III, Section 3.7.

- The number of Representative Directors must be at least twenty (20) percent of the Board<sup>26</sup>, which is the same requirement under the current Bylaws as noted above.

## **Meetings**

### **Annual Meeting of the Stockholders**

Article IV, Section 1 of the current Bylaws provides that the annual meeting of the stockholders shall be held at such place and time as determined by the Board. The Exchange notes that Article II, Section 2.2 of the proposed Bylaws is being amended to conform to Article II, Section 2.2 of the CBOE Bylaws, which provides as a default that if required by applicable law, an annual meeting of stockholders shall be held on the third Tuesday in May of each year or such other date as may be fixed by the Board, at such time as may be designated by the Secretary prior to the giving of notice of the meeting. Section 2.2 of the proposed Bylaws also provides that in no event shall the annual meeting be held prior to the completion of the process for the nomination of Representative Directors. The proposed Bylaws also provide in Article II, Section 2.1 that in addition to the Board, the Chairman (or CEO if there is no Chairman) may designate the location of the annual meeting. The Exchange notes that it is not including the information contained in Article IV, Section 3 of the current Bylaws. Specifically, Section 3 provides that the Secretary of the Exchange (or designee), shall prepare at least ten (10) days before every meeting of stockholders, a complete list of stockholder entitled to vote at the meeting. The Exchange does not believe this provision is necessary given

---

<sup>26</sup> See Proposed Bylaws and CBOE Bylaws, Article III, Section 3.2.

that BYX's sole stockholder is Bats Global Markets Holdings, Inc., a wholly owned subsidiary of CBOE Holdings (and also notes that neither CBOE nor C2 follow this practice).

#### Special Meetings of the Stockholders

Article IV, Section 2 of the current Bylaws provides that special meetings of the stockholders may be called by the Chairman, the Board or the President, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Exchange entitled to vote. In order to streamline the rules under which special meetings can be called, the Exchange proposes to adopt the same special meeting provision as Article II, Section 2.3 of the CBOE Bylaws. Particularly, under Article II, Section 2.3 of the proposed Bylaws, special meetings of stockholders may only be called by the Chairman or by a majority of the Board. The CBOE Bylaws do not include the ability of stockholders to request a special meeting. The Exchange does not believe this provision is necessary given that BYX's sole stockholder is Bats Global Markets Holdings, Inc., a wholly owned subsidiary of CBOE Holdings.

#### Quorum and Vote Required for Action at a Stockholder Meeting

Article IV, Section 4 of the current Bylaws provides, among other things, that the holders of a majority of the capital stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders. The provision also provides that if there is no quorum at any meeting of the stockholders, the stockholders, present in person or represented by proxy, shall have power to adjourn the meeting until a quorum is present or represented. Additionally, if

an adjournment of a meeting of the stockholders is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. Additionally, Article IV, Section 4 provides that when a quorum is present at any meeting, the vote of the holders of a majority of the capital stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question.

The Exchange proposes to adopt Article II, Sections 2.5 and 2.6 of the proposed Bylaws which are the same as Article II, Sections 2.5 and 2.6 of the CBOE Bylaws and similar to Article IV, Section 4 of the current Bylaws. The Exchange notes that unlike the current Bylaws, Article II, Section 2.5 of the proposed Bylaws and CBOE Bylaws do not require notice of an adjourned meeting to be given to each stockholder of record entitled to vote at the meeting if an adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting. The Exchange does not believe this requirement is necessary given that BZX's sole stockholder is Bats Global Markets Holdings, Inc., a wholly owned subsidiary of CBOE Holdings. Additionally, in order to conform Article II, Section 2.6 of the proposed Bylaws to the CBOE Bylaws, the Exchange also proposes to explicitly provide that a plurality of votes properly cast shall elect the directors, notwithstanding the language in Article II, 2.6 that provides that when a quorum is present, a majority of the votes properly cast will decide

any question brought before a meeting unless a different vote is required by express provision of statute or the Certificate of Incorporation.

#### Regular Meetings of the Board

Article III, Sections 8 and 9 of the current Bylaws provide that, with or without notice, a resolution adopted by the Board determines the time and place of the regular meeting and that if no designation as to place is made, then the meeting will be held at the principal business office of the Exchange. Article III, Section 3.10 of the proposed Bylaws, which is the same as Article III, Section 3.10 of the CBOE Bylaws, provides that regular meetings shall be held at such time and place as is determined by the Chairman with notice provided to the full Board.

#### Special Meetings of the Board

Article III, Section 10 of the current Bylaws provides that special meetings of the Board may be called on a minimum of two (2) days' notice to each Director by the Chairman or the President and shall be called by the Secretary upon written request of three (3) Directors. Article III, Section 3.11 of the proposed Bylaws, which is the same as Article III, Section 3.11 of the CBOE Bylaws, however, provides that special meetings of the Board may be called by the Chairman and shall be called by the Secretary upon written request of any four (4) directors. Additionally, under the proposed Bylaws, the Secretary shall give at least twenty-four (24) hours' notice of such meeting.

#### Board Quorum

Article III, Section 12 of the current Bylaws provides that a majority of the number of Directors then in office shall constitute a quorum, whereas Article III, Section 3.9 of the proposed Bylaws, which is the same as Article III, Section 3.9 of the CBOE



Bylaws, provides that two-thirds of the Directors then in office shall constitute a quorum. Increasing the quorum requirement from a majority to two-thirds will ensure that more Directors are present at meetings of the Board in order to transact business for the Exchange.

### **Committees of the Board**

The current bylaws provide for the following standing committees of the Board: a Compensation Committee, an Audit Committee, a Regulatory Oversight Committee, and an Appeals Committee, each to be comprised of at least three (3) members.<sup>27</sup> The current Bylaws also provide that the Exchange may establish an Executive Committee and a Finance Committee.<sup>28</sup> The Exchange proposes to modify the committees of the Board to eliminate the Audit Committee, Appeals Committee, and Compensation Committee, as well as eliminate the provision relating to a Finance Committee. Additionally, the Exchange proposes to require a mandatory Executive Committee and Nominating and Governance Committee, as well as make several amendments to the Regulatory Oversight Committee provision. The Exchange notes that CBOE and C2 have eliminated their Audit and Compensation Committees and do not maintain an Appeals Committee at the Board level. As previously noted, CBOE and C2 do maintain a Board-level Nominating and Governance Committee, which performs the functions of BYX's current Nominating and Member Nominating Committees, which the Exchange proposes to eliminate.

### **Elimination of Compensation Committee**

---

<sup>27</sup> See Current Bylaws, Article V, Section 1 and Section 2(a).

<sup>28</sup> See Current Bylaws, Article V, Sections 6(e) and (f), respectively.

The Exchange seeks to eliminate the Compensation Committee because it believes that the Compensation Committee's functions are duplicative of the functions of the Compensation Committee of its parent company, CBOE Holdings. Specifically, under its committee charter, the CBOE Holdings Compensation Committee has authority to assist the CBOE Holdings Board of Directors in carrying out its overall responsibilities relating to executive compensation and also, among other things, (i) recommending the compensation of the CBOE Holdings' CEO and certain other executive officers and (ii) approving and administering all cash and equity-based incentive compensation plans of CBOE Holdings that affect employees of the CBOE Holdings and its subsidiaries. Similarly, under its committee charter, the BYX Compensation Committee has authority to fix the compensation of BYX's CEO and to consider and recommend compensation policies, programs, and practices to the BYX CEO in connection with the BYX CEO's fixing of the salaries of other officers and agents of the Exchange.<sup>29</sup> As such, other than to the extent that the BYX Compensation Committee recommends the compensation of executive officers whose compensation is not already determined by the CBOE Holdings Compensation Committee, its activities are duplicative of the activities of the CBOE Holdings Compensation Committee. Indeed, the Exchange notes that currently the BYX Compensation Committee only fixes the compensation amount of the BYX CEO. The Exchange notes that currently the Exchange's CEO is the CEO (i.e., an executive officer) of CBOE Holdings, and as such, the CBOE Holdings Compensation Committee already

---

<sup>29</sup> The Exchange notes that the Regulatory Oversight Committee ("ROC") of the BYX Board recommends to the Board compensation for the Chief Regulatory Officer. The Exchange also notes that currently not all executive officers of BYX are required to have their compensation determined by the Compensation Committee.

performs this function. To the extent that compensation need be determined for any BYX officer who is not also a CBOE Holdings officer in the future, the Board or senior management will perform such action without the use of a compensation committee, as provided for in Article V, Section 5.11 of the proposed Bylaws (which is identical to Article V, Section 5.11 of the CBOE Bylaws). Thus, the responsibilities of the BYX Compensation Committee are duplicated by the responsibilities of the CBOE Holdings Compensation Committee. The Exchange believes that its proposal to eliminate its Compensation Committee is substantially similar to prior actions taken by other securities exchanges with parent company compensation committees to eliminate their exchange-level compensation committees, including CBOE and C2.<sup>30</sup>

#### Elimination of Audit Committee

The Exchange also proposes to eliminate its Audit Committee because its functions are duplicative of the functions of the Audit Committee of its parent company, CBOE Holdings. Under its committee charter, the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board in fulfilling its oversight responsibilities in assessing controls that mitigate the regulatory and operational risks associated with operating the Exchange and assist the CBOE Holdings Board of Directors in discharging its responsibilities relating to, among other things, (i) the qualifications, engagement, and oversight of CBOE Holdings' independent auditor, (ii) CBOE

---

<sup>30</sup> See e.g., Securities Exchange Act Release No. 80523 (April 25, 2017), 82 FR 20399 (May 1, 2017) (SR-CBOE-2017-017) and Securities Exchange Act Release No. 80522 (April 25, 2017), 82 FR 20409 (May 1, 2017) (SR-C2-2017-009). See also Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR-NASDAQ-2009-042) and Securities Exchange Act Release No. 62304 (June 16, 2010), 75 FR 36136 (June 24, 2010) (SR-NYSEArca-2010-31).

Holdings' financial statements and disclosure matters, (iii) CBOE Holdings' internal audit function and internal controls, and (iv) CBOE Holdings' oversight and risk management, including compliance with legal and regulatory requirements. Because CBOE Holdings' financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings' subsidiaries, including BYX, the CBOE Holdings Audit Committee's purview necessarily includes BYX. The Exchange notes that unconsolidated financial statements of the Exchange will still be prepared for each fiscal year in accordance with the requirements set forth in its application for registration as a national securities exchange. The CBOE Holdings Audit Committee is composed of at least three (3) CBOE Holdings directors, all of whom must be independent within the meaning given to that term in the CBOE Holdings Bylaws and Corporate Governance Guidelines and Rule 10A-3 under the Act.<sup>31</sup> All CBOE Holdings Audit Committee members must be financially literate (or become financially literate within a reasonable period of time after appointment to the Committee), and at least one (1) member of the Committee must be an "audit committee financial expert" as defined by the Securities and Exchange Commission ("SEC"). By contrast, the BYX Audit Committee has a more limited role, focused on BYX. Under its charter, the primary functions of the BYX Audit Committee are focused on (i) BYX's financial statements and disclosure matters and (ii) BYX's oversight and risk management, including compliance with legal and regulatory requirements, in each case, only to the extent required in connection with BYX's discharge of its obligations as a self-regulatory organization. However, to the extent that

---

<sup>31</sup> 17 CFR 240.10A-3.

the BYX Audit Committee reviews financial statements and disclosure matters, its activities are duplicative of the activities of the CBOE Holdings Audit Committee, which is also charged with review of financial statements and disclosure matters. Similarly, the CBOE Holdings Audit Committee has general responsibility for oversight and risk management, including compliance with legal and regulatory requirements, for CBOE Holdings and all of its subsidiaries, including BYX. Thus, the responsibilities of the BYX Audit Committee are fully duplicated by the responsibilities of the CBOE Holdings Audit Committee. The Exchange believes that its proposal to eliminate its Audit Committee is substantially similar to prior actions by other securities exchanges with parent company audit committees to eliminate their exchange-level audit committees, including CBOE and C2.<sup>32</sup>

#### Elimination of Appeals Committee

The Exchange next proposes to eliminate the Appeals Committee. Pursuant to Article V, Section 6(d) of the current Bylaws, the Chairman, with the approval of the Board, shall appoint an Appeals Committee. The Appeals Committee shall consist of one (1) Independent Director, one (1) Industry Director, and one (1) Member Representative Director and presides over all appeals related to disciplinary and adverse action determinations in accordance with the Rules. The Exchange notes that neither CBOE nor C2 maintain a Board-level Appeals Committee. Rather, CBOE and C2 currently maintain

---

<sup>32</sup> See, e.g., Securities Exchange Act Release No. 64127 (March 25, 2011), 76 FR 17974 (March 31, 2011) (SR-CBOE-2011-010) and Securities Exchange Act Release No. 64128 (March 25, 2011), 76 FR 17973 (March 31, 2011) (SR-C2-2011-003). See also, Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR- NASDAQ-2009-042).

an Exchange-level Appeals Committee.<sup>33</sup> The Exchange notes that although it is proposing to eliminate the Appeals Committee as a specified Board-level committee at this time, the Exchange will still have the ability to appoint either a Board-level or exchange-level Appeals Committee pursuant to its powers under Article IV, Section 4.1 of the proposed Bylaws. Although, CBOE and C2 have a standing exchange-level Appeals Committee, the Exchange prefers not to have to maintain and staff a standing Appeals Committee, but rather provide its Board the flexibility to determine whether to establish a Board-level or exchange-level Appeals Committee, as needed or desired. The Exchange also notes that other Exchanges similarly do not require standing Appeals Committees.<sup>34</sup> The elimination of the requirement in the bylaws to maintain a standing Appeals Committee would provide consistency among the Bylaws for all of CBOE Holdings' U.S. securities exchanges, while still providing the Board the authority to appoint an Appeals Committee in the future as needed.

#### Elimination of Finance Committee

Pursuant to Article V, Section 6(f) of the current Bylaws, the Chairman, with the approval of the Board, may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for the Exchange's annual operating and capital budgets. The Exchange notes that it does not currently have a Finance Committee

---

<sup>33</sup> See e.g., CBOE Rule 2.1 and C2 Chapter 19, which incorporates by reference CBOE Chapter XIX (Hearings and Review), which references the Appeals Committee.

<sup>34</sup> For example, neither the Bylaws nor Rules of BOX Options Exchange, LLC mandate an Appeals Committee. See Bylaws of Box Options Exchange LLC and Rules of Box Options Exchange, LLC.

and that, similarly, CBOE and C2 do not have an exchange-level Finance Committee. As the Exchange currently does not maintain, and has no current intention of establishing, an exchange-level Finance Committee, it does not believe it is necessary to maintain this provision. The Exchange notes that should it desire to establish a Finance Committee in the future, it still maintains the authority to do so under Article IV, Section 4.1 of the proposed Bylaws.

#### Changes to the Regulatory Oversight Committee

Article V, Section 6(c) of the current Bylaws relates to the Regulatory Oversight Committee (“ROC”), which oversees the adequacy and effectiveness of the Exchange’s regulatory and self-regulatory organization responsibilities. The Exchange proposes to adopt Article IV, Section 4.4, which amends the ROC provision to conform to Article IV, Section 4.4 of the CBOE Bylaws.<sup>35</sup> First, the Exchange proposes to specify that the ROC shall consist of at least three (3) directors, all of whom are Non-Industry Directors who are appointed by the Board on the recommendation of the Non-Industry Directors serving on the Nominating and Governance Committee (including the designation of the Chairman of the ROC). While the current Bylaws also require all ROC members to be Non-Industry Directors, it does not specify a minimum number of directors. The current Bylaws also provide that the Chairman of the Board (instead of a Nominating and Governance Committee), with approval of the Board, appoints the ROC members.

Next, while the current Bylaws explicitly delineate some of the ROC’s responsibilities, the Exchange proposes to provide more broadly that the ROC shall have

---

<sup>35</sup> The Exchange does not intend at this time to rename the ROC the “Regulatory Oversight and Compliance Committee” (“ROCC”), which is the name of the equivalent committee of CBOE and C2.

the duties and may exercise such authority as may be prescribed by resolution of the Board, the Bylaws or the Rules of the Exchange. Particularly, Article V, Section 6(c) of the current Bylaws provide that the ROC shall oversee the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities, assess the Exchange's regulatory performance, assist the Board and Board committees in reviewing the regulatory plan and the overall effectiveness of Exchange's regulatory functions and, in consultation with the CEO, establish the goals, assess the performance, and fix the compensation of the Chief Regulatory Officer ("CRO"). The Exchange notes that the ROC will continue to have the foregoing duties and authority, with the exception that the ROC will no longer consult the CEO with respect to establishing the goals, assessing the performance and fixing compensation of the CRO. The proposed change to eliminate the CEO's involvement in establishing the goals, assessing the performance and fixing compensation of the CRO is consistent with the Exchange's desire to maintain the independence of the regulatory functions of the Exchange. The Exchange notes that each of the abovementioned proposed changes provide for the same language and appointment process used by CBOE and C2 with respect to the ROC, which provides consistency among the CBOE Holdings U.S. securities exchanges.<sup>36</sup>

#### Creation of a Mandatory Executive Committee

Article V, Section 6(e) of the current Bylaws provides that the Chairman, with approval of the Board, may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs

---

<sup>36</sup> See CBOE Bylaws Article IV, Section 4.4.



of the Exchange between meetings of the Board.<sup>37</sup> The current Bylaws provide that the number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. In addition, the percentage of Independent Directors on the Executive Committee shall be at least as great as the percentage of Independent Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board.

Under the proposed Bylaws, the Exchange proposes to require that the Exchange maintain an Executive Committee and delineates its composition and functions in Article IV, Section 4.2 of the proposed Bylaws. Similar to the current Bylaw provisions relating to the Executive Committee, the proposed Executive Committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange. Unlike the current Executive Committee provisions, however, the proposed Executive Committee shall not have the power and authority of the Board to (i) approve or adopt or recommend to the stockholders any action or matter (other than the election or removal of Directors) expressly required by Delaware law to be submitted to stockholders for approval, including without limitation, amending the certificate of incorporation, adopting an agreement of merger or consolidation, approving a sale, lease or exchange of all or substantially all of the Exchange's property and assets, or approval of a dissolution of the Exchange or revocation of a dissolution, or (ii) adopt, alter, amend or repeal any bylaw of the Exchange. Additionally, Section 4.2 of the proposed Bylaws provides that the Executive Committee shall consist of the Chairman, the CEO (if a

---

<sup>37</sup> The Exchange does not presently have an Executive Committee.

Director), the Lead Director, if any, at least one (1) Representative Director and such other number of Directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee (excluding the CEO from the calculation of Industry Directors for this purpose). The Directors (other than the Chairman, CEO and Lead Director, if any) serving on the Executive Committee shall be appointed by the Board on the recommendation of the Nominating and Governance Committee of the Board. Directors serving on the Executive Committee may be removed by the Board in accordance with the bylaws. The Chairman of the Board shall be the Chairman of the Executive Committee. Each member of the Executive Committee shall be a voting member and shall serve for a term of one (1) year expiring at the first regular meeting of Directors following the annual meeting of stockholders each year or until their successors are appointed. The Exchange notes that CBOE and C2 have an Executive Committee and that the proposed composition requirements and functions are the same as CBOE and C2.<sup>38</sup>

Elimination of Nominating and Member Nominating Committees and Creation of Nominating and Governance Committee

The Exchange also proposes to eliminate the current Nominating and Member Nominating Committees, and to prescribe that their duties be performed by the new Nominating and Governance Committee of the Board (as discussed below). The Nominating Committee is a non-Board committee and is elected on an annual basis by

---

<sup>38</sup> See CBOE Bylaws, Article IV, Section 4.2.

vote of the Exchange's sole stockholder, Bats Global Markets Holdings, Inc.<sup>39</sup> The Nominating Committee is primarily charged with nominating candidates for election to the Board at the annual stockholder meeting and all other vacant or new Director positions on the Board and ensuring, in making such nominations, that candidates meet the compositional requirements set forth in the bylaws. The Member Nominating Committee is also a non-Board committee and elected on an annual basis by vote of the Exchange's sole stockholder, Bats Global Markets Holdings, Inc.<sup>40</sup> Each Member Nominating Committee member must be a Member Representative member (i.e., an officer, director, employee or agent of an Exchange Member that is not a Stockholder Exchange Member).<sup>41</sup> The Member Nominating Committee is primarily charged with nominating candidates for each Member Representative Director position on the Board.

The Exchange proposes to adopt a Nominating and Governance Committee which would have the same responsibilities currently delegated to the CBOE and C2 Nominating and Governance Committees. Specifically, the Exchange proposes to adopt Article IV, Section 4.3, which is the same as Article IV, Section 4.3 of the CBOE Bylaws, which would provide that the Nominating and Governance Committee shall consist of at least five (5) directors and shall at all times have a majority of Non-Industry Directors. Members of the committee would be recommended by the Nominating and

---

<sup>39</sup> See Article VI, Sections 1 and 2. A Nominating Committee member may simultaneously serve on the Nominating Committee and the Board, unless the Nominating Committee is nominating Director candidates for the Director's class. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee.

<sup>40</sup> See Article VI, Sections 1 and 3.

<sup>41</sup> See Article VI, Section 3.

Governance Committee for approval by the Board and shall not be subject to removal except by the Board. The Chairman of the Nominating and Governance Committee shall be recommended by the Nominating and Governance Committee for approval by the Board. The Nominating and Governance Committee would be primarily charged with the authority to nominate individuals for election as Directors of the Exchange. The Nominating and Governance Committee would also have such other duties and may exercise such other authority as may be prescribed by resolution of the Board and the Nominating and Governance Committee charter as adopted by resolution of the Board. If the Nominating and Governance Committee has two (2) or more Industry Directors, there shall be an Industry-Director Subcommittee consisting of all of the Industry Directors then serving on the Nominating and Governance Committee, which shall act as the Representative Director Nominating Body (as previously discussed) if and to the extent required by the proposed Bylaws. The Exchange believes that the duties and functions of the eliminated Nominating and Member Nominating Committees would continue to be performed and covered in the new corporate governance structure under the proposed Bylaws.

#### Creation of an Advisory Board

The Exchange proposes to adopt Article VI, Section 6.1, which provides that the Board may establish an Advisory Board which shall advise the Board and management regarding matters of interest to Exchange Members. The Exchange believes the Advisory Board could provide a vehicle for Exchange management to receive advice from the perspective of Exchange Members and regarding matters that impact Exchange Members. Under Article VI, Section 6.1 of the proposed Bylaws, the Board would

determine the number of members of an Advisory Board, if established, including at least two members who are Exchange Members or persons associated with Exchange Members. Additionally, the CEO or his or her designee would serve as the Chairman of an Advisory Board and the Nominating and Governance Committee would recommend the members of an Advisory Board for approval by the Board. There would also be an Exchange Member Subcommittee of the Advisory Board consisting of all members of the Advisory Board who are Exchange Members or persons associated with Exchange Members, which shall act as the Representative Director Nominating Body if and to the extent required by the proposed Bylaws. An Advisory Board would be completely advisory in nature and not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. The Exchange notes that CBOE and C2 currently maintain an Advisory Board, with the same proposed compositional requirements and functions.<sup>42</sup> The Exchange also notes, however, that while for CBOE and C2 an Advisory Board is mandatory, an Advisory Board for the Exchange would be permissive as the Exchange desires flexibility to determine if an Advisory Board should be established in the future. The Exchange notes that there is no statutory requirement to maintain an Advisory Board or Advisory Committee and indeed, other Exchanges, including BYX itself, do not require the establishment of an Advisory Board.<sup>43</sup>

### **Officers, Agents and Employees**

#### **General**

---

<sup>42</sup> See Article VI, Section 6.1 of CBOE Bylaws.

<sup>43</sup> For example, BOX Options Exchange, LLC does not require an advisory committee.

Article VII, Section 1 of the current Bylaws provides that that an individual may not hold office as both the President and Secretary, whereas the CBOE Bylaws provide an individual may not hold office as both the CEO and President and that the CEO and President may not hold office as either the Secretary or Assistant Secretary.<sup>44</sup> As these requirements are similar, if not more restrictive under the CBOE Bylaws, the Exchange proposes to include the same provisions in CBOE Bylaws in Article V, Section 5.1 of the proposed Bylaws.

#### Resignation and Removal

Article VII, Section 3 of the current Bylaws provides that any officer may resign at any time upon notice of resignation to the Chairman and CEO, the President or the Secretary. The Exchange proposes to amend the provision relating to officer resignations to provide that any officer may resign at any time upon delivering written notice to the Exchange at its principal office, or to the CEO or Secretary.<sup>45</sup> Article VII, Section 3 of the current Bylaws also provides that any officer may be removed, with or without cause, by the Board. The Exchange proposes to provide that, in addition to being removed by the Board, an officer may be removed at any time by the CEO or President (provided that the CEO can only be removed by the Board).<sup>46</sup> Provisions relating to resignation and removal of officers in the proposed Bylaws will be identical to the relevant provisions of the CBOE Bylaws.<sup>47</sup>

---

<sup>44</sup> See Article V, Section 5.1 of CBOE Bylaws.

<sup>45</sup> See Proposed Bylaws, Article V, Section 5.9.

<sup>46</sup> See Proposed Bylaws, Article V, Section 5.8.

<sup>47</sup> See Article V, Sections 5.8 and 5.9 of the CBOE Bylaws.

### Compensation

Article VII, Section 4 of the current Bylaws provides that the CEO, after consultation of the Compensation Committee, shall fix the salaries of officers of the Exchange and also states that the CEO's compensation shall be fixed by the Compensation Committee. In order to conform compensation practices to those of CBOE and C2, the Exchange proposes to modify these provisions to provide that in lieu of the CEO, the Board, unless otherwise delegated to a committee of the Board or to members of senior management, may fix the salaries of officers of the Exchange.<sup>48</sup> Additionally, in conjunction with the proposed change to eliminate the BYX Compensation Committee, the Exchange proposes to eliminate language providing that the CEO's compensation is fixed by the Compensation Committee.

### Chief Executive Officer and President

Article VII, Section 6 of the current Bylaws pertains to the CEO. The current Bylaws provide that the CEO shall be the Chairman of the Board. CBOE and C2, however, do not require that the CEO be Chairman of the Board. The Exchange desires similar flexibility in appointing its Chairman and, therefore, this requirement is not carried over in the proposed Bylaws.<sup>49</sup> Instead, Article V, Section 5.1 of the proposed Bylaws provides that the CEO shall be appointed by an affirmative vote of the majority of the Board, and may but need not be, the Chairman of the Board. The Exchange notes that to conform the language to the CBOE Bylaws, Article V, Section 5.2 of the proposed

---

<sup>48</sup> See Proposed Bylaws, Article V, Section 5.11.

<sup>49</sup> The Exchange notes that currently the CEO of BYX is also Chairman of the Board.

Bylaws also states that the CEO shall be the official representative of the Exchange in all public matters and provides that the CEO shall not engage in another business during his incumbency except with approval of the Board. Additionally, the Exchange proposes not to carry over language in the current Bylaws that provides that the CEO shall not participate in executive sessions of the Board, as CBOE Bylaws do not contain a similar restriction.

Article V, Section 5.3 of the proposed Bylaws proposes to provide that the President shall be the chief operating officer of the Exchange. The Exchange notes that the current Bylaws do not address appointing a chief operating officer. Additionally, while Article VII, Section 7 of the current Bylaws provides that the President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board, and shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board, Article V, Section 5.3 of the proposed Bylaws further states that in the event that the CEO does not act, the President shall perform the officer duties of the CEO, which is consistent with the language in the CBOE Bylaws.

#### Other Officers

The Exchange notes the following modifications relating to officer provisions in the proposed Bylaws, which are intended to conform the proposed Bylaws to the CBOE Bylaws:

- Article V, Sections 5.1 and 5.4 of the proposed Bylaws, which is identical to Article V, Sections 5.1 and 5.4 of the CBOE Bylaws, will provide that the Chief Financial Officer (“CFO”) is designated as an officer of the



Exchange and that the Board and CEO may assign the CFO powers and duties as they see fit. The Exchange notes that the role of a CFO is not referenced in the current Bylaws.

- The proposed Bylaws eliminate the requirement in the current Bylaws that the Chief Regulatory Officer (“CRO”) is a designated officer of the Exchange.<sup>50</sup> As noted above, the Exchange desires to conform its Bylaws to the Bylaws of CBOE and the CBOE Bylaws do not reference the role of the CRO. The Exchange notes that notwithstanding the proposed elimination of the CRO provision, there is no intention to eliminate the role of the CRO.
- Article VII, Section 10 of the current Bylaws requires the Secretary to keep official records of Board meetings. The Exchange proposes to add to Article V, Section 5.6 of the proposed Bylaws, which is similar to the current Bylaws and based on Article V, Section 5.6 of the CBOE Bylaws, which requires that in addition to all meetings of the Board, the Secretary must keep official records of all meetings of stockholders and of Exchange Members at which action is taken.
- Article V, Section 5.7 of the proposed Bylaws, which is based on Article 5.7 of the CBOE Bylaws, would provide that the Treasurer perform such duties and powers as the Board, the CEO or CFO proscribes (whereas

---

<sup>50</sup> See Current Bylaws, Article VII, Section 9.

Article VII, Section 12 of the current Bylaws provides that such duties and powers may be proscribed by the Board, CEO or President).

- While the current Bylaws contain separate provisions relating to an Assistant Secretary and an Assistant Treasurer, the proposed Bylaws do not, as CBOE Bylaws similarly do not contain such provisions.<sup>51</sup>

### **Amendments**

Article IX, Section 1 of the current Bylaws provides that the bylaws may be altered, amended, or repealed, or new bylaws adopted, (i) by written consent of the stockholders of the Exchange or (ii) at any meeting of the Board by resolution. The proposed Bylaws, however, eliminate the ability of stockholders to act by written consent and instead provides that in order for the stockholders of the Exchange to alter, amend, repeal or adopt new bylaws, there must be an affirmative vote of the stockholders present at any annual meeting at which a quorum is present.<sup>52</sup> Additionally, unlike the current Bylaws, the Exchange proposes to explicitly provide that changes to the bylaws shall not become effective until filed with or filed with and approved by the SEC, to avoid confusion as to when proposed amendments to the Bylaws can take effect.<sup>53</sup> The proposed provisions are the same as the corresponding provisions in the CBOE Bylaws.<sup>54</sup>

### **General Provisions**

---

<sup>51</sup> See Article VII, Sections 11 and 13 of the current Bylaws.

<sup>52</sup> See Proposed Bylaws, Article IX, Section 9.2.

<sup>53</sup> See Proposed Bylaws, Article IX, Section 9.3.

<sup>54</sup> See Article IX, Sections 9.2 and 9.3 of the CBOE Bylaws.

The Exchange proposes to add Article VIII, Section 8.1 of the proposed Bylaws, which is the same as Article VIII, Section 8.1 of the CBOE Bylaws, that unless otherwise determined by the Board, the fiscal year of the Exchange ends on the close of business December 31 each year, as compared to Article XI, Section 1 of the current Bylaws, which provides that the fiscal year of the Exchange shall be as determined from time to time by the Board. Note that the Exchange's fiscal year currently ends on the close of business December 31 each year.

The Exchange also proposes to add Article VIII, Section 8.2 of the proposed Bylaws, which is the same as Article VIII, Section 8.2 of the CBOE Bylaws, which governs the execution of instruments such as checks, drafts and bills of exchange and contracts and which is similar to Article XI, Section 6 of the current Bylaws.

Next, the Exchange proposes to adopt Article VIII, Section 8.4, which provides that, except as the Board may otherwise designate, the Chairman of the Board, CEO, CFO or Treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for the Exchange (with or without power of substitution) at, any meeting of stockholders or shareholders of any other corporation or organization, the securities of which may be held by the Exchange. The proposed provision is the same as Article VIII, Section 8.4 of the CBOE Bylaws and similar to Article XI, Section 7 of the current Bylaws, which provides generally that the CEO has the power and authority to act on behalf of the Company at any meeting of stockholders, partners or equity holders of any other corporation or organization, the securities of which may be held by the Exchange.

The Exchange proposes to adopt Article VIII, Section 8.7, which governs transactions with interested parties. Proposed Article VIII, Section 8.7 is the same as Article VIII, Section 8.7 of the CBOE Bylaws and substantially similar to language contained in Article III, Section 18 of the current Bylaws. Similarly, the Exchange proposes to adopt Article VIII, Section 8.8 which governs severability and is the same as Article VIII, Section 8.8 of CBOE Bylaws and substantially similar to Article XI, Section 8 of the current Bylaws.

The Exchange proposes to adopt Article VIII, Section 8.10 which provides that the board may authorize any officer or agent of the Corporation to enter into any contract, or execute and deliver any instrument in the name of, or on behalf of the Corporation. The proposed language is the same as the language in Article VIII, Section 8.10 of the CBOE Bylaws and similar to related language in Article XI, Section 6 of the current Bylaws.

The Exchange proposes to adopt Article VIII, Section 8.12, relating to books and records and which is the same as Article VIII, Section 8.12 of CBOE Bylaws and which is similar to language contained in Article XI, Section 3 of the current Bylaws.

### **New Bylaw Provisions**

The Exchange proposes to add provisions to the proposed Bylaws that are not included in the current Bylaws in order to conform the Exchange's bylaws to those of CBOE and C2 and provide consistency among the CBOE Holdings' U.S. securities exchanges. Specifically, the Exchange proposes to add the following to the proposed Bylaws:

- Article VII, which addresses notice requirements for any notice required to be given by the bylaws or Rules, including Article VII, Section 7.2, which provides whenever any notice to any stockholder is required, such notice may be given by a form of electronic transmission if the stockholder to whom such notice is given has previously consented to the receipt of notice by electronic transmission. The language mirrors the language set forth in Article VII, Section 7.2 of the CBOE Bylaws.
- Article VIII, Section 8.3 which is identical to Article VIII, Section 8.3 of the CBOE Bylaws, which provides that the corporate seal, if any, shall be in such form as approved by the board or officer of the Corporation.
- Article VIII, Section 8.5, which provides that a certificate by the Secretary, or Assistant Secretary, if any, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Exchange shall, as to all persons who rely on the certificate in good faith, be conclusive evidence of such action. This language is identical to the language contained in Article VIII, Section 8.5 of the CBOE Bylaws.
- Article VIII, Section 8.6., which is identical to Article VIII, Section 8.6 of the CBOE Bylaws, which provides all references to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended, altered or restated and in effect from time to time.
- Article VIII, Section 8.11, which provides that the Exchange may lend money or assist an employee of the Exchange when the loan, guarantee or assistance may

reasonably benefit the Exchange. This language is identical to the language contained in Article VIII, Section 8.11 of the CBOE Bylaws.

### **Eliminated Bylaw Provisions**

The Exchange notes that the following provisions in the current Bylaws are not carried over in either the proposed Bylaws or proposed Certificate in order to conform the Exchange's bylaws to those of CBOE and C2 and provide consistency among the CBOE Holdings' U.S. securities exchanges:

- Article III, Sections 13 and 17. Section 13 provides that a director who is present at a Board or Board Committee meeting at which action is taken is conclusively presumed to have assented to action being taken unless his or her dissent or election to abstain is entered into the minutes or filed. Section 17 provides that the Board has the power to interpret the Bylaws and any interpretations made shall be final and conclusive. The Exchange does not wish to include these provisions in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws and the Exchange wishes to have uniformity across the bylaws of the CBOE Holdings' exchanges.
- Article IX, Section 2, which relates to the Board's authority to adopt emergency Bylaws to be operative during any emergency resulting from, among other things, any nuclear or atomic disaster or attack on the United States, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee cannot readily be convened for action. Similarly, Article IX, Section 3, provides that the Board, or Board's designee, in the event of extraordinary market conditions, has the authority to take certain actions. The Exchange does

not wish to include these provisions in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws and the Exchange wishes to have uniformity across the bylaws of the CBOE Holdings' exchanges.

- Article X, Section 2, which relates to disciplinary proceedings and provides that the Board is authorized to establish procedures relating to disciplinary proceedings involving Exchange Members and their associated persons, as well as impose various sanctions applicable to Exchange Members and persons associated with Exchange Members. The Exchange does not wish to include this provision in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws. Additionally, the Exchange notes that Article III, Section 3.3 of the proposed Bylaws grants the Board broad powers to adopt such procedures and/or rules if necessary or desirable.<sup>55</sup>
- Article X, Section 3, which relates to membership qualifications and provides, among other things, that the Board has authority to adopt rules and regulations applicable to Exchange Members and Exchange Member applicants, as well as establish specified and appropriate standards with respect to the training, experience, competence, financial responsibility, operational capability, and other qualifications. The Exchange does not wish to include this provision in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws. The Exchange again notes that Article III, Section 3.3 of the proposed Bylaws grants

---

<sup>55</sup> The Exchange notes that the language in proposed Article III, Section 3.3 is similar to language provided for in Article X, Section 1 of the current Bylaws.

the Board broad powers to adopt such rules and regulations if necessary or desirable.

- Article X, Section 4, which relates to fees, provides that the Board has authority to fix and charge fees, dues, assessments, and other charges to be paid by Exchange Members and issuers and any other persons using any facility or system that the Company operates or controls; provided that such fees, dues, assessments, and other charges shall be equitably allocated among Exchange Members and issuers and any other persons using any facility or system that the Company operates or controls. The Exchange does not wish to include this section of the provision in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws. To the extent the Board wishes to adopt such fees and dues, it has the authority pursuant to Article III, Section 3.3 of the proposed Bylaws. The Exchange notes that with respect to the language in Article X, Section 4 of the current Bylaws relating to the prohibition of using revenues received from fees derived from its regulatory function or penalties for non-regulatory purposes, similar language exists within CBOE Rules, particularly, CBOE Rule 2.51. In order to conform the Bylaws, the Exchange wishes to similarly relocate this language to its rules, instead of maintaining it in its Bylaws. Specifically, the Exchange proposes to adopt new Rule 15.2, which language is based off CBOE Rule 2.51. The Exchange notes that this provision is designed to preclude the Exchange from using its authority to raise regulatory funds for the purpose of benefitting its Stockholder. Unlike CBOE Rule 2.51 however, proposed Rule 15.2 explicitly provides that regulatory funds may not be distributed to the stockholder.



The Exchange notes that this language is currently contained in Article X, section 4 of the current Bylaws. Additionally, while not explicit in CBOE Rule 2.51, the Exchange notes that the rule filing that adopted Rule 2.51 does similarly state that regulatory funds may be not distributed to CBOE's stockholder.<sup>56</sup> Although proposed Rule 15.2 will differ slightly from CBOE Rule 2.51, the Exchange wishes to make this point clear to avoid potential confusion. Lastly, the Exchange notes that unlike Article X, Section 4 of the current Bylaws, proposed Rule 15.2, like CBOE Rule 2.51, will provide that notwithstanding the preclusion to use regulatory revenue for non-regulatory purposes, in the event of liquidation of the Exchange, Bats Global Markets Holdings, Inc. will be entitled to the distribution of the remaining assets of the Exchange.

- Certain sections in Article XI, including Section 2 ("Participation in Board and Committee Meetings"), Section 4 ("Dividends") and Section 5 ("Reserves"). More specifically, Article XI, Section 2 governs who may attend Board and Board committee meetings pertaining to the self-regulatory function of the Exchange and particularly, provides among other things, that Board and Board Committee meetings relating to the self-regulatory function of the Company are closed to all persons other than members of the Boards, officers, staff and counsel or other advisors whose participation is necessary or appropriate.<sup>57</sup> Article XI, Section 4

---

<sup>56</sup> See Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-088).

<sup>57</sup> Article XI, Section 2 also provides that in no event shall members of the Board of Directors of CBOE Holdings, Inc., CBOE V, LLC or Bats Global Markets Holdings, Inc. who are not also members of the Board, or any officers, staff, counsel or advisors of CBOE Holdings, Inc., CBOE V, LLC or Bats Global

provides that dividends may be declared upon the capital stock of the Exchange by the Board. Article XI, Section 5 provides that before any dividends are paid out, there must be set aside funds that the Board determines is proper as a reserves. The Exchange does not wish to include these provisions in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws and the Exchange wishes to have uniformity across the bylaws of the CBOE Holdings' U.S. securities exchanges.

(c) Changes to Rules

The Exchange will also amend its rules in conjunction with the proposed changes to its bylaws. The proposed rule changes are set forth in Exhibit 5E. First, the Exchange proposes to update the reference to the bylaws in Rule 1.1. Next, the Exchange notes that in order to keep the governance documents uniform, it proposes to eliminate the definitions of "Industry member", "Member Representative member" and "Director" from Article I of the current Bylaws. The Exchange notes that Industry members and Member Representative members are still used for Hearing Panels pursuant to Rule 8.6. As such, the Exchange proposes to relocate these definitions to the rules (specifically, Rule 8.6) and proposes to update the reference to the location of the definitions in Rule 8.6 accordingly (i.e., refer to the definition in Rule 8.6 as opposed to the definition in the bylaws). The Exchange also proposes to eliminate language in Rule 2.10 that, in connection with a reference to "Director", states "as such term is defined in the Bylaws of

---

Markets Holdings, Inc. who are not also officers, staff, counsel or advisors of the Company (or any committees of the Board), be allowed to participate in any meetings of the Board (or any committee of the Board) pertaining to the self-regulatory function of the Company (including disciplinary matters).

the Exchange”. As the definition of Director is being eliminated in the Bylaws, the Exchange is seeking to remove the obsolete language in Rule 2.10.

Lastly, as discussed above, the Exchange proposes to add new Rule 15.2, which will provide that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the Stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or be used to pay restitution and disgorgement of funds intended for customers (except in the event of liquidation of the Exchange, which case Bats Global Markets Holdings, Inc. will be entitled to the distribution of the remaining assets of the Exchange). As more fully discussed above in the “Eliminated Bylaw Provisions” section, the proposed change is similar to Article X, Section 4 of the current Bylaws and based on Rule 2.51 of CBOE Rules.

The Exchange believes that the proposed changes to the current Bylaws and current Certificate would align its governance documents with the governance documents of each of CBOE and C2, which preserves governance continuity across each of CBOE Holdings’ six U.S. securities exchanges. The Exchange also notes that the Exchange will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Rules, as required by Section 6(b)(1) of the Act.<sup>58</sup>

## 2. Statutory Basis

---

<sup>58</sup> 15 U.S.C. 78f(b)(1).

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>59</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>60</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>61</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(1) of the Act 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 Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

---

<sup>59</sup> 15 U.S.C. 78f(b).

<sup>60</sup> 15 U.S.C. 78f(b)(5).

<sup>61</sup> Id.

The Exchange also believes that its proposal to adopt the Board and committee structure and related nomination and election processes set forth in the proposed Bylaws are consistent with the Act, including Section 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. In general, the proposed changes would make the Board and committee composition requirements, and related nomination and election processes, more consistent with those of its affiliates, CBOE and C2. The Exchange therefore believes that the proposed changes 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 Act and comply with the provisions of the Act by its members and persons associated with members. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3)<sup>62</sup> and (b)(5) of the Act in particular, in that it is designed to assure a fair representation of Exchange Members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and is designed to promote just and equitable principles of trade, 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. For example, the number of Non-Industry Directors must not be less than the number of Industry Directors. Additionally, the Exchange believes that the 20% requirement for Representative Directors and the proposed method for selecting Representative Directors ensures fair representation and allows members to have a voice

---

<sup>62</sup> 15 U.S.C. 78f(b)(3).

in the Exchange's use of its self-regulatory authority. For instance, the proposed Bylaws includes a process by which Exchange members can directly petition and vote for representation on the Board.

Additionally, the Exchange believes the proposed Certificate, Bylaws and rules support a corporate governance framework, including the proposed Board and Board Committee structure that preserves the independence of the Exchange's self-regulatory function and insulates the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can continue to carry out its regulatory obligations. Particularly, the proposed governance documents provide that Directors must take into consideration the effect that his or her actions would have on the ability of the Company to carry out its regulatory responsibilities under the Act and the proposed changes to the rules includes the restriction on using revenues derived from the Exchange's regulatory function for non-regulatory purposes, which further underscores the independence of the Exchange's regulatory function. The Exchange also believes that requiring that the number of Non-Industry Directors not be less than the number of Industry Directors and requiring that all Directors serving on the ROC be Non-Industry Directors would help to ensure that no single group of market participants will have the ability to systematically disadvantage other market participants through the exchange governance process, and would foster the integrity of the Exchange by providing unique, unbiased perspectives.

Moreover, the Exchange believes that the new corporate governance framework and related processes being proposed are consistent with Section 6(b)(5) of the Act because they are substantially similar to the framework and processes used by CBOE and

C2, which have been well-established as fair and designed to protect investors and the public interest.<sup>63</sup> The Exchange believes that conforming its governance documents based on the documents of the CBOE and C2 exchanges would streamline the CBOE Holdings' U.S. securities exchanges' governance process, create equivalent governing standards among the exchanges and also provide clarity to its members, which is beneficial to both investors and the public interest.

To the extent there are differences between the current CBOE and C2 framework and the proposed Exchange framework, the Exchange believes the differences are reasonable. First, the Exchange believes it's reasonable to provide that in Run-Off Elections, each Exchange Member shall have one (1) vote for each Representative Director position to be filled that year instead of one vote per Trading Permit held, because the Exchange, unlike CBOE and C2, does not have Trading Permits and because other exchanges have similar practices.<sup>64</sup> The Exchange believes it's also reasonable not to require the establishment of an Advisory Board, as the Exchange desires flexibility in maintaining such a Committee, and is not statutorily required to maintain such a committee. Additionally, the Exchange notes that it currently does not have an Advisory Board. Lastly, the Exchange notes that it is reasonable to not require a standing exchange-level Appeals Committee because the Board still has the authority to appoint an

---

<sup>63</sup> See e.g., Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 17974 (May 28, 2010) (SR-CBOE-2008-088); Securities Exchange Act Release No. 64127 (March 25, 2011), 76 FR 17974 (March 31, 2011) (SR-CBOE-2011-010); and Securities Exchange Act Release No. 80523 (April 25, 2017), 82 FR 20399 (May 1, 2017) (SR-CBOE-2017-017).

<sup>64</sup> See e.g., Amended and Restated By-Laws of Miami International Securities Exchange, LLC, Article II, Section 2.4(f).

Appeals Committee in the future as needed pursuant to its powers under Article IV, Section 4.1 of the proposed Bylaws and because an Appeals Committee is not statutorily required.

Finally, the proposed amendments to the rules as discussed above are non-substantive changes meant to merely update the Rules in light of the proposed changes to the current Bylaws and to relocate certain provisions to better conform the Exchange's governance documents to those of CBOE and C2.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of BYX and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

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

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

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

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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](mailto:rule-comments@sec.gov). Please include File No. SR-BatsBYX-2017-19 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 No. SR-BatsBYX-2017-19. 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 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 am and 3:00 pm. Copies of such filing will also be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BatsBYX-2017-19 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>65</sup>

Robert W. Errett  
Deputy Secretary

---

<sup>65</sup> 17 CFR 200.30-3(a)(12).

EXHIBIT 5A

{ Additions are underlined; deletions are [bracketed]}

**[CERTIFICATE OF INCORPORATION  
OF  
BATS Y-EXCHANGE, INC.]**

**First.** The name of the corporation is BATS Y-Exchange, Inc.

**Second.** The initial registered office of the Corporation in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801, and the name of its initial registered agent at that address is The Corporation Trust Company.

**Third.** The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**Fourth.** The total number of shares of stock which the corporation shall have authority to issue is One Thousand (1,000), \$0.01 par value per share. All such stock shall be classified as Common Stock.

**Fifth.** The name and mailing address of the incorporator is:

<u>Name</u>	<u>Mailing Address</u>
Joe Ratterman	8050 Marshall Drive Suite 120 Lenexa, Kansas 66214

I, THE UNDERSIGNED, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this Certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 30<sup>th</sup> day of July, 2009.

INCORPORATOR:

/s/ Joe Ratterman  
Joe. Ratterman

\* \* \* \* \*

**STATE OF DELAWARE  
CERTIFICATE OF AMENDMENT  
OF CERTIFICATE OF INCORPORATION**

The corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware does hereby certify:

**FIRST:** That at a meeting of the Board of Directors of BATS Y-EXCHANGE, INC. resolutions were duly adopted setting forth a proposed amendment of the Certificate of Incorporation of said corporation, declaring said amendment to be advisable and calling a meeting of the stockholders of said corporation for consideration thereof. The resolution setting forth the proposed amendment is as follows:

**RESOLVED,** that the Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered "First." so that, as amended, said Article shall be and read as follows:

First. The name of the Corporation is Bats BYX Exchange, Inc.

**SECOND:** That thereafter, pursuant to resolution of its Board of Directors, a special meeting of the stockholders of said corporation was duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the amendment.

**THIRD:** That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed this 12th day of February, 2016.

By:     /s/ Brian N. Schell

Title: CFO

Name: Brian N. Schell]

EXHIBIT 5B

{ Additions are underlined; deletions are [bracketed]}

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**of**  
**BATS BYX EXCHANGE, INC.**

The name of the corporation is Bats BYX Exchange, Inc. The corporation filed its original Certificate of Incorporation with the Secretary of State of the State of Delaware on July 30, 2009. This Amended and Restated Certificate of Incorporation of the corporation, which restates and integrates and also further amends the provisions of the corporation's Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the written consent of its sole stockholder in accordance with Section 228 of the General Corporation Law of the State of Delaware. The Amended and Restated Certificate of Incorporation of the corporation is hereby amended, integrated and restated to read in its entirety as follows:

FIRST: The name of the corporation (the "Corporation") is BATS BYX EXCHANGE, INC.

SECOND: The address of the registered office of the Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801-1297. The name of the Corporation's registered agent at such address shall be The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is:

(a) To conduct and carry on the function of an "exchange" within the meaning of that term in the Securities Exchange Act of 1934, as amended (the "Act");

(b) To provide a securities market place with high standards of honor and integrity among its Exchange Members and other persons holding rights to access the Corporation's facilities and to promote and maintain just and equitable principles of trade and business. The term "Exchange Member" shall have the meaning given to that term in Section 1.1 of the Corporation's Bylaws, as the same may be amended from time to time (the "Corporation's Bylaws"); and

(c) To engage in any other lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware ("GCL").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock having a par value of \$0.01 per share (the "Common Stock"). Bats Global Markets Holdings, Inc. will be the sole owner of the Common Stock. Any sale, transfer or assignment by Bats Global Markets Holdings, Inc. of any shares of Common Stock will be subject to prior approval by the Securities and Exchange Commission (the "Commission") pursuant to the rule filing procedure under Section 19 of the Act.

FIFTH: (a) The governing body of the Corporation shall be its Board of Directors. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(b) The Board of Directors of the Corporation shall consist of not less than 5 directors, the exact number to be fixed in accordance with the Corporation's Bylaws.

(c) Only persons who are nominated by the Nominating and Governance Committee shall be eligible for election as directors. The Nominating and Governance Committee shall be bound to accept and nominate (a) the individual(s) recommended by the Representative Director Nominating Body (as defined in the Corporation's Bylaws) for nomination as Representative Director (as defined in the Corporation's Bylaws), provided that the individuals so nominated by the Representative Director Nominating Body are not opposed by a petition candidate or (b) the individual(s) who receive the most votes pursuant to a petition election as set forth in Section 3.2 of the Corporation's Bylaws; provided, however, that any individual(s) recommended by the Representative Director Nominating Body and any individual(s) who are petition candidates pursuant to clause (b) of the preceding sentence shall satisfy the compositional requirements determined by the Board of Directors from time to time pursuant to a resolution adopted by the Board in accordance with Section 3.1 of the Corporation's Bylaws, designating the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any), as such terms are defined in the Corporation's Bylaws; and provided further, that the Board of Directors and/or Nominating and Governance Committee, as applicable, shall make such determinations as to whether a director candidate satisfies applicable qualifications for election as a director pursuant to and in accordance with Section 3.1 of the Corporation's Bylaws.

(d) In discharging his or her responsibilities as a member of the Board of Directors, and to the fullest extent permitted by law, each director shall take into consideration the effect that his or her actions would have on the ability of the Corporation to carry out the Corporation's responsibilities under the Act and on the ability of the Corporation: to engage in conduct that fosters and does not interfere with the Corporation's ability 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 mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board of Directors or as an officer or employee of the Corporation, each such director, officer or employee shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission, and the Corporation pursuant to its regulatory authority.

SIXTH: (a) The Corporation shall, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, indemnify and hold harmless any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she is or was a director, officer or member of a committee of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director or officer, employee or agent of another corporation, partnership, joint venture, trust or other

enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees), judgment, fines and amounts paid in settlement actually and reasonably incurred by such Covered Person in connection with a proceeding. Notwithstanding the preceding sentence, except as otherwise provided in Section (c) of this Article Sixth, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors of the Corporation.

(b) Expenses (including attorneys' fees) incurred by a Covered Person in defending a proceeding, including appeals, shall, to the extent not prohibited by law, be paid by the Corporation in advance of the final disposition of such proceeding; provided, however, that the Corporation shall not be required to advance any expenses to a person against whom the Corporation directly brings an action, suit or proceeding alleging that such person (1) committed an act or omission not in good faith or (2) committed an act of intentional misconduct or a knowing violation of law. Additionally, an advancement of expenses incurred by a Covered Person shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal or otherwise in accordance with Delaware law that such Covered Person is not entitled to be indemnified for such expenses under this Article Sixth.

(c) If a claim for indemnification (following the final disposition of such action, suit or proceeding) or advancement of expenses under this Article Sixth is not paid in full within thirty days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

(d) The provisions of this Article Sixth shall be deemed to be a contract between the Corporation and each Covered Person who serves in any such capacity at any time while this Article Sixth is in effect, and any repeal or modification of any applicable law or of this Article Sixth 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 or threatened based in whole or in part upon any such state of facts.

(e) Persons not expressly covered by the foregoing provisions of this Article Sixth, such as those (x) who are or were employees or agents of the Corporation, or are or were serving at the request of the Corporation as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, or (y) who are or were directors, officers, employees or agents of a constituent corporation absorbed in a consolidation or merger in which the Corporation was the resulting or surviving corporation, or who are or were serving at the request of such constituent corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified or advanced expenses to the extent authorized at any time or from time to time by the Board of Directors.

(f) The rights conferred on any Covered Person by this Article Sixth shall not be deemed exclusive of any other rights to which such Covered Person may be entitled by law or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

(g) The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit entity.

(h) Any repeal or modification of the foregoing provisions of this Article Sixth shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

(i) The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, manager, officer, trustee, employee or agent of the Corporation or another corporation, or of a partnership, limited liability company, joint venture, trust or other enterprise against any expense, liability or loss (as such terms are used in this Article Sixth), whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the GCL.

SEVENTH: The Corporation reserves the right to amend this Certificate of Incorporation, and to change or repeal any provision of this Certificate of Incorporation, in the manner prescribed at the time by statute, and all rights conferred upon stockholders by this Certificate of Incorporation are granted subject to this reservation. Before any amendment to, or repeal of, any provision of this Certificate of Incorporation shall be effective, those changes shall be submitted to the Board of Directors of the Corporation and if such amendment or repeal must be filed with or filed with and approved by the Commission, then the proposed changes to this Certificate of Incorporation shall not become effective until filed with or filed with and approved by the Commission, as the case may be.

EIGHTH: A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the GCL as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

NINTH: Unless and except to the extent that the Corporation's Bylaws shall so require, the election of directors of the Corporation need not be by written ballot.

TENTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the Corporation is expressly authorized to make, alter and repeal the Corporation's Bylaws.

ELEVENTH: To the fullest extent permitted by law, all confidential information pertaining to the self-regulatory function of the Corporation (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records



of the Corporation shall: (i) not be made available to any persons other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Corporation and the officers, directors, employees and agents of the Corporation; and (iii) not be used for any commercial purposes. Nothing in this Article Eleventh shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission.

IN WITNESS WHEREOF, Bats BYX Exchange, Inc. has caused this certificate to be signed as of this \_\_\_\_\_.

BATS BYX EXCHANGE, INC.

By: \_\_\_\_\_

Name: Edward T. Tilly

Its: Chief Executive Officer

EXHIBIT 5C

{ Additions are underlined; deletions are [bracketed] }

**[FIFTH AMENDED AND RESTATED  
BYLAWS OF BATS BYX EXCHANGE, INC.  
(a Delaware corporation)**

**Article I  
Definitions**

When used in these Bylaws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

- (a) “Act” means the Securities Exchange Act of 1934, as amended.
- (b) An “affiliate” of, or person “affiliated” with a specific person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
- (c) “Board” or “Board of Directors” means the Board of Directors of the Company.
- (d) “broker” shall have the same meaning as in Section 3(a)(4) of the Act.
- (e) “Commission” means the Securities and Exchange Commission.
- (f) “Company” means Bats BYX Exchange, Inc., a Delaware corporation.
- (g) “day” means calendar day.
- (h) “dealer” shall have the same meaning as in Section 3(a)(5) of the Act.
- (i) “Director” means the persons elected or appointed to the Board of Directors from time to time in accordance with the Certificate of Incorporation and these Bylaws.
- (j) “Exchange” means the national securities exchange operated by the Company.
- (k) “Exchange Member” means any registered broker or dealer that has been admitted to membership in the national securities exchange operated by the Company. An Exchange Member is not a stockholder of the Company by reason of being an Exchange Member. An Exchange Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act.
- (l) “Executive Representative” means the person identified to the Company by an Exchange Member as the individual authorized to represent, vote, and act on behalf of the Exchange Member. An Exchange Member may change its Executive Representative or appoint a substitute for its Executive Representative upon giving notice thereof to the Secretary of the Company via electronic process or such other process as the Company may

prescribe. An Executive Representative of an Exchange Member or a substitute shall be a member of senior management of the Exchange Member.

(m) “Independent Director” means a Director who has no material relationship with the Company or any affiliate of the Company, or any Exchange Member or any affiliate of any such Exchange Member; *provided*, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Company or its stockholder.

(n) “Independent member” means a member of any committee who has no material relationship with the Company or any affiliate of the Company, or any Exchange Member or any affiliate of any such Exchange Member, other than as a committee member. The term Independent member may but is not required to refer to an Independent Director who serves on a committee.

(o) “Industry Director” means a Director who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director’s firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director’s or member’s firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.

(p) “Industry member” means a member of any committee or hearing panel who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers,

and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.

(q) "List of Candidates" means the list of nominees for Member Representative Director positions as nominated by the Member Nominating Committee and amended by petitions filed by Exchange Members. The List of Candidates is submitted to Exchange Members for the final selection of nominees to be elected by stockholders to serve as Member Representative Directors.

(r) "Member Nominating Committee" means the Member Nominating Committee elected pursuant to these Bylaws.

(s) "Member Representative Director" means a Director who has been appointed as such to the initial Board of Directors pursuant to Article III, Section 4(g) of these Bylaws, or elected by stockholders after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to these Bylaws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member.

(t) "Member Representative member" means a member of any committee or hearing panel who is an officer, director, employee or agent of an Exchange Member that is not a Stockholder Exchange Member.

(u) "Nominating Committee" means the Nominating Committee elected pursuant to these Bylaws.

(v) "Non-Industry Director" means a Director who is (i) an Independent Director; or (ii) any other individual who would not be an Industry Director.

(w) "Non-Industry member" means a member of any committee who is (i) an Independent member; or (ii) any other individual who would not be an Industry member.

(x) "person" shall mean a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.

(y) “person associated with an Exchange Member” or “associated person of an Exchange Member” means any partner, officer, or director of an Exchange member (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Exchange member, or any employee of such Exchange member, except that any person associated with an Exchange member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Bylaws.

(z) “Record Date” means a date at least thirty-five (35) days before the date announced as the date for the annual meeting of stockholders and set as the last date on which Exchange Members may petition to add to the List of Candidates and used to determine whether Exchange Members are entitled to vote on the final List of Candidates.

(aa) “registered broker or dealer” means any registered broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act.

(bb) “Rules” or “Exchange Rules” shall have the same meaning as set forth in Section 3(a)(27) of the Act.

(cc) “stockholder” means any person who maintains a direct ownership interest in the Company. The sole stockholder of the Company shall be Bats Global Markets Holdings, Inc.

(dd) “Stockholder Exchange Member” means an Exchange Member that also maintains, directly or indirectly, an ownership interest in the Company.

(ee) “statutory disqualification” shall have the same meaning as in Section 3(a)(39) of the Act.

(ff) “Trading Permit Holder” shall have the same meaning as Exchange Member.

## **Article II**

### **Office and Agent**

#### **Section 1.** Principal Business Office

The principal business office of the Company shall be located at 8050 Marshall Dr., Suite 120, Lenexa, KS 66214, or such other location as may hereafter be determined by the Board of Directors. The Company may have such other office or offices as the Board of Directors may from time to time designate or as the purposes of the Company may require from time to time.

#### **Section 2.** Registered Office

The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

**Section 3.** Registered Agent

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

**Article III**  
**Board of Directors**

**Section 1.** Powers

(a) The business and affairs of the Company shall be managed by its Board, except to the extent that the authority, powers and duties of such management shall be delegated to a committee or committees of the Board pursuant to these Bylaws or the Rules. The Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. To the fullest extent permitted by applicable law and these Bylaws the Board may delegate any of its powers to a committee appointed pursuant to Article V or to any officer, employee or agent of the Company.

(b) The Board shall have the power to adopt, amend or repeal the Rules in accordance with Article X, Section 1.

(c) The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of the Company, not inconsistent with law, the Certificate of Incorporation or these Bylaws, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected, to the fullest extent permitted by law, in relying in good faith upon the books of account or reports made to the Company by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of the Company, or in relying in good faith upon other records of the Company.

(d) In connection with managing the business and affairs of the Company, the Board shall consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act, including, without limitation, the requirements that (a) the Rules shall be designed to protect investors and the public interest and (b) the Exchange shall be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its "members," as that term is defined in Section 3 of the Act (such statutory members being referred to in these Bylaws as "Exchange Members") and persons associated with Exchange Members, with the provisions of the Act, the rules and regulations under the Act, and the Rules of the Exchange.

(e) In light of the unique nature of the Company and its operations and in light of the Company's status as a self-regulatory organization, the Board, when evaluating any proposal, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board deems relevant, including, without limitation, to the extent deemed relevant: (i) the potential impact thereof on the integrity, continuity and stability of the national securities exchange operated by the Company and the other operations of the Company, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

## **Section 2.** Composition of the Board

(a) The Board of Directors shall consist of four (4) or more Directors, the number thereof to be determined from time to time by resolution of the Board of Directors, subject to the compositional requirements of the Board set forth in Article III, Section 2(b).

(b) At all times the Board of Directors shall consist of one (1) Director who is the Chief Executive Officer of the Company and who shall be considered to be an Industry Director, and sufficient numbers of Non-Industry (including Independent), Industry and Member Representative Directors to meet the following composition requirements:

(i) the number of Non-Industry Directors, including at least one Independent Director, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors elected pursuant to Article III, Section 4; and

(ii) the number of Member Representative Directors shall be at least twenty (20) percent of the Board.

(c) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as a Member Representative, Non-Industry, or Independent Director, if applicable, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee each nominee's classification, if applicable. Directors shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

(d) A Director may not be subject to a statutory disqualification.

## **Section 3.** Terms of Office; Classes

(a) The Board term of the Chief Executive Officer shall expire when such individual ceases to be Chief Executive Officer of the Company.

(b) Each of the Non-Industry and Industry Directors (excluding the Chief Executive Officer, but including Member Representative Directors), shall be divided into three (3) classes, designated Class I, Class II and Class III, which shall be as nearly equal in number and classification as the total number of such Directors then serving on the Board permits. Directors other than the Chief Executive Officer shall serve staggered three-year terms, with the term of office of one class expiring each year. A Director may serve for any number of terms, consecutive or otherwise. In order to commence such staggered three-year terms, Directors in Class I shall hold office until the second annual election of the Board of Directors, Directors in Class II shall initially hold office until the third annual election of the Board of Directors, and Directors in Class III shall initially hold office until the fourth annual election of the Board of Directors. Commencing with the second annual election of the Board of Directors, the term of office for each class of Directors elected at such time shall be three years from the date of their election. Notwithstanding the foregoing, in the case of any new Director as contemplated by Article III, Section 2(a), such Director shall be added to a class, as determined by the Board at the time of such Director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such Director has been added.

#### **Section 4.**                      Nomination and Election

(a) The Nominating Committee each year shall nominate Directors for each Director position standing for election at the annual meeting of stockholders that year. For positions requiring persons who qualify as Member Representative Directors, the Nominating Committee shall nominate only those persons whose names have been approved and submitted by the Member Nominating Committee, and approved by, if applicable, Exchange Members pursuant to the procedures set forth below in this Section 4.

(b) The Member Nominating Committee shall consult with the Nominating Committee, the Chairman and Chief Executive Officer, and shall solicit comments from Exchange Members for the purpose of approving and submitting names of candidates for election to the position of Member Representative Director. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member.

(c) Not later than sixty (60) days prior to the date announced as the date for the annual or special meeting of stockholders, the Member Nominating Committee shall report to the Nominating Committee and the Secretary the initial nominees for Member Representative Director positions on the Board that have been approved and submitted by the Member Nominating Committee. The Secretary shall promptly notify Exchange Members of those initial nominees. Exchange Members may identify other candidates ("Petition Candidates" for purposes of this Section 4) for the Member Representative Director positions by delivering to the Secretary, at least thirty-five (35) days before the date announced as the date for the annual or special meeting of stockholders (the "Record Date" for purposes of this Section 4), a written petition, which shall designate the candidate by name and office and shall be signed by Executive Representatives of ten percent (10%) or more of the Exchange Members. An Exchange Member may endorse as many candidates as there are Member



Representative Director positions to be filled. No Exchange Member, together with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate, and any signatures of such Exchange Member, together with its affiliates, in excess of the fifty percent (50%) limitation shall be disregarded.

(d) Each petition for a Petition Candidate must include a completed questionnaire used to gather information concerning Member Representative Director candidates and must be filed with the Company (the Company shall provide the form of questionnaire upon the request of any Exchange Member).

(e) If no valid petitions from Exchange Members are received by the Record Date, the initial nominees approved and submitted by the Member Nominating Committee shall be nominated as Member Representative Directors by the Nominating Committee. If one or more valid petitions from Exchange Members are received by the Record Date, the Secretary shall include such additional nominees, along with the initial nominees nominated by the Member Nominating Committee, on a list of nominees (the "List of Candidates"). Upon completion, the List of Candidates shall be sent by the Secretary to all Exchange Members that were Exchange Members on the Record Date, by any means, including electronic transmission, to confirm the nominees for the Member Representative Director positions. The List of Candidates shall be accompanied by a notice regarding the time and date of an election to be held at least twenty (20) days prior to the annual or special stockholders' meeting to confirm the Exchange Members' selections of nominees for Member Representative Directors.

(f) With respect to the election held to determine the final nomination of Member Representative Directors, each Exchange Member shall have the right to cast one (1) vote for each available Member Representative Director nomination; provided, however, that any such vote must be cast for a person on the List of Candidates and that no Exchange Member, together with its affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate, and any votes cast by such Exchange Member, together with its affiliates, in excess of such twenty percent (20%) limitation shall be disregarded. The votes shall be cast by written ballot, electronic transmission or any other means as set forth in a notice to the Exchange Members sent by the Company prior to such election. Only votes received prior to 4:00 p.m. Central Time on the date of the election shall count for the nomination of a Member Representative Director. The persons on the List of Candidates who receive the most votes shall be selected as the nominees for the Member Representative Director positions to be elected by stockholders.

(g) The initial Directors of the Board of Directors shall be appointed by the stockholder and shall serve until the first annual meeting of stockholders.

## **Section 5.** Chairman of the Board

The Chief Executive Officer shall be the Chairman of the Board ("Chairman"). The Chairman shall preside at all meetings of the Board at which the Chairman is present; provided, however, that he or she shall not participate in executive sessions of the Board.

The Chairman shall exercise such other powers and perform such other duties as may be assigned to the Chairman from time to time by the Board. The Board of Directors shall designate a Lead Director from among the Board's Independent Directors to preside over executive sessions of the Board. The Board shall publicly disclose the identity of the Lead Director and the means by which interested parties may communicate with the Lead Director.

## **Section 6.**                      Vacancies

(a) Whenever any Director position, other than a Member Representative Director position, becomes vacant prior to the election of a successor at the end of such Director's term, whether because of death, disability, disqualification, removal, or resignation, and whenever any newly-created Director position, other than a Member Representative Director position, becomes available because of an increase in the number of Directors, the Nominating Committee shall nominate, and stockholders shall elect, a person satisfying the classification (Industry, Non-Industry, or Independent Director), if applicable, for the directorship to fill such vacancy until the expiration of the remaining term or to fill such newly-created Director position until the expiration of such position's designated term; *provided*, however, that the Board shall not be deemed to be in violation of Article III, Section 2(b) by virtue of a Director's vacancy if such position is filled by the later of (i) 60 days from the date of such vacancy or (ii) the date of the next annual stockholders' meeting.

(b) Whenever any Member Representative Director position becomes vacant prior to the election of a successor at the end of such Member Representative Director's term, whether because of death, disability, disqualification, removal, or resignation, and whenever any newly-created Member Representative Director position becomes available because of an increase in the number of Directors, then the stockholders shall follow the procedures set forth in this Section 6(b). In such event, the Member Nominating Committee shall either (i) recommend an individual to the stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy. A Member Representative Director elected pursuant to this Section 6(b) shall serve until the expiration of the remaining term or until the expiration of such position's designated term; *provided*, however, that the Board shall not be deemed to be in violation of Article III, Section 2(b) by virtue of a Member Representative Director's vacancy if such position is filled by the later of (i) 60 days from the date of such vacancy or (ii) the date of the next annual stockholders' meeting.

## **Section 7.**                      Removal and Resignation

(a) Except as hereinafter provided, any Director may be removed or expelled with or without cause by majority vote of stockholders, and may be removed by the Board of Directors in the manner provided by Article III, Section 7(b) below; *provided*, however, that any Member Representative Director may only be removed for cause, which shall include, without limitation, such Director being subject to a statutory disqualification.

(b) A Director shall be removed immediately upon a determination by the Board, by a majority vote of the remaining Directors, (a) that the Director no longer satisfies the

classification for which the Director was elected; and (b) that the Director's continued service as such would violate the compositional requirements of the Board set forth in Article III, Section 2(b).

(c) Any Director may resign at any time either upon notice of resignation to the Chairman of the Board, the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

**Section 8.** Place of Meetings; Mode

Any meeting of the Board may be held at such place, within or without the State of Delaware, as shall be designated in the notice of such meeting, but if no such designation is made, then the meeting will be held at the principal business office of the Company. Members of the Board or any committee of the Board may participate in a meeting of the Board or committee by conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

**Section 9.** Regular Meetings

Regular meetings of the Board may be held, with or without notice, at such time or place as may from time to time be specified in a resolution adopted by the Board.

**Section 10.** Special Meetings

(a) Special meetings of the Board may be called on a minimum of two (2) days' notice to each Director by the Chairman or the President, and shall be called by the Secretary upon the written request of three (3) Directors then in office.

(b) The person or persons calling a special meeting of the Board shall fix the time and place at which the meeting shall be held, and such time and place shall be specified in the notice of such meeting. Notice of any special meeting shall be given to each Director at his or her business address or such other address as he or she may have advised the Secretary to use for such purpose. If delivered, notice shall be deemed to be given when delivered to such address or to the Director to be notified. If mailed, such notice shall be deemed to be given five (5) business days after deposit in the United States mail, postage prepaid, of a letter addressed to the appropriate location. Notice may also be given by telephone, electronic transmission or other means not specified in this section, and in each such case shall be deemed to be given when actually received by the Director to be notified.

**Section 11.** Exchange Member Meetings

The Company shall not be required to hold meetings of the Exchange Members.

**Section 12.** Voting, Quorum and Action by the Board

Each Director shall be entitled to one (1) vote. At all meetings of the Board, the presence of a majority of the number of Directors then in office shall constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. The act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board except as may be otherwise specifically provided by statute, the Certificate of Incorporation, or these Bylaws.

**Section 13.** Presumption of Assent

A Director of the Company who is present at a duly convened meeting of the Board or of a committee of the Board at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his or her dissent or election to abstain shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent or election to abstain to such action with the person acting as the secretary of the meeting before the adjournment of the meeting or shall forward such dissent or election to abstain by registered or certified mail to the Secretary of the Company immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a Director who voted in favor of such action.

**Section 14.** Action in Lieu of Meeting

Unless otherwise restricted by statute, the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing(s) or electronic transmission(s) are filed with the minutes of proceedings of the Board or the committee.

**Section 15.** Waiver of Notice

(a) Whenever notice is required to be given by law, the Certificate of Incorporation or these Bylaws, a waiver thereof by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board, or members of a committee, need be specified in any waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**Section 16.** Compensation of Board and Committee Members

The Board may provide for reasonable compensation of the Chairman, the Directors and the members of committees. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Company.

**Section 17.** Interpretation of Bylaws

The Board shall have the power to interpret these Bylaws and any interpretation made by it shall be final and conclusive.

**Section 18.** Conflicts of Interest; Contracts and Transactions Involving Directors

(a) A Director or a member of any committee may not participate in the consideration or decision of any matter relating to a particular Exchange Member, company, or individual if such Director or committee member has a material interest in, or a professional, business, or personal relationship with, that Exchange Member, company, or individual, or if such participation shall create an appearance of impropriety. In any such case, the Director or committee member shall recuse himself or herself or shall be disqualified. If a member of the Board or any committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Board or applicable committee.

(b) No contract or transaction between the Company and one or more of its Directors or officers, or between the Company and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum.

## **Article IV STOCKHOLDERS**

**Section 1.** Annual Meeting; Election of Directors and Other Matters

(a) The annual meeting of the stockholders shall be held at such place and time as determined by the Board for the purpose of electing Directors and members of the Nominating Committee and Member Nominating Committee, and for conducting such other

business as may properly come before the meeting. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

(b) The first annual meeting of the stockholders shall be held prior to the Company's commencement of operations as an Exchange.

## **Section 2. Special Meetings**

Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board or the President, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Company entitled to vote. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. Business transacted at any special meeting of stockholders shall be limited to the purpose(s) stated in the notice of the meeting.

## **Section 3. List of Stockholders**

The Secretary of the Company, or such other person designated by the Secretary or the Board, shall have charge of the stock ledger of the Company and shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present.

## **Section 4. Quorum and Vote Required for Action**

(a) The holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might

have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(b) When a quorum is present at any meeting, the vote of the holders of a majority of the capital stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question.

#### **Section 5. Voting of Shares; Proxies**

Unless otherwise provided in the Certificate of Incorporation or these Bylaws, each stockholder of the Company shall at every meeting of the stockholders be entitled to one (1) vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period. Any such proxy shall be in writing and shall be filed with the Secretary of the Company before or at the time of the meeting.

#### **Section 6. Action in Lieu of Meeting**

As set forth in the Certificate of Incorporation of the Company, any action upon which a vote of stockholders is required or permitted, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding capital stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Company in the manner required by law, provided that the matter to be acted upon by such written consent previously has been directed by the Board to be submitted to the stockholders for their action by written consent. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not so consented in writing.

#### **Section 7. Assignment**

The stockholder may not transfer or assign, in whole or in part, its ownership interest(s) in the Company.

### **Article V Committees of the Board**

#### **Section 1. Number of Committees**

The committees of the Board shall consist of a Compensation Committee, an Audit Committee, a Regulatory Oversight Committee, an Appeals Committee, and such other

committees as may be from time to time established by the Board. Committees shall have such authority as is vested in them by these Bylaws or the Rules, or as is delegated to them by the Board. All committees are subject to the control and supervision of the Board.

**Section 2.** Appointment and Removal; Vacancies; Term

(a) The Chairman, with the approval of the Board, shall appoint, consistent with these Bylaws, the members of all committees of the Board, as well as the chair of each committee, and the Chairman may, at any time, with or without cause, remove any member of a committee so appointed, with the approval of the Board. Each committee shall be comprised of at least three (3) people and may include persons who are not members of the Board; provided, however, that such committee members who are not also members of the Board shall only participate in committee actions to the extent permitted by law. In appointing members to committees of the Board, the Chairman is responsible for determining that any such committee meets the composition requirements set forth in this Article V.

(b) Upon request of the Secretary, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Independent member. The Secretary shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

(c) The term of office of a committee member shall terminate immediately upon a determination by the Board, by a majority vote of the Directors, (i) that the committee member no longer satisfies the classification for which the committee member was selected; and (ii) that the committee member's continued service as such would violate the compositional requirements of such committee set forth in this Article V.

(d) Any vacancy occurring in a committee shall be filled by the Chairman for the remainder of the term, with the approval of the Board.

(e) Except as otherwise provided by the Bylaws, members of a committee shall hold office for a one-year period.

**Section 3.** Powers and Duties of Committees

To the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company.

**Section 4.** Conduct of Proceedings

Except as otherwise provided in these Bylaws or by the Board, each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such



committee may determine. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

**Section 5.** Voting, Quorum and Action by Committees

Each committee member shall be entitled to one (1) vote. Unless otherwise required by the Bylaws, the presence of a majority of the number of committee members serving on a committee shall constitute a quorum for the transaction of business of such committee. If a quorum shall not be present at any meeting of a committee, the committee members present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. The act of a majority of the committee members present at any meeting at which there is a quorum shall be the act of such committee except as may be otherwise specifically provided by statute or these Bylaws.

**Section 6.** Specified Committees

(a) The Chairman, with the approval of the Board, shall appoint a Compensation Committee. The Compensation Committee shall consider and recommend compensation policies, programs, and practices for officers and other employees of the Company. Each voting member of the Compensation Committee shall be a Non-Industry Director.

(b) The Chairman, with the approval of the Board, shall appoint an Audit Committee consisting of Directors. A majority of the Audit Committee members shall be Non-Industry Directors. A Non-Industry Director shall serve as Chairman of the Audit Committee. The Audit Committee shall perform the following primary functions, as well as such other functions as may be specified in the charter of the Audit Committee: (A) provide oversight over the Company's financial reporting process and the financial information that is provided to stockholders and others; (B) provide oversight over the systems of internal controls established by management and the Board and the Company's legal and compliance process; (C) select, evaluate and, where appropriate, replace the Company's independent auditors (or nominate the independent auditors to be proposed for ratification by stockholders); and (D) direct and oversee all the activities of the Company's internal audit function, including but not limited to management's responsiveness to internal audit recommendations. The Audit Committee shall have exclusive authority to: (A) hire or terminate the head of the Company's Internal Audit Department; (B) determine the compensation of the head of the Internal Audit Department; and (C) determine the budget for the Internal Audit Department. The Internal Audit Department and its head shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Internal Audit Department also report to senior management of the Company on matters the Audit Committee deems appropriate and may request that senior management of the Company perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal audit function.

(c) The Chairman, with the approval of the Board, shall appoint a Regulatory Oversight Committee. The Regulatory Oversight Committee shall oversee the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities,

including those responsibilities with regard to each of its facilities, as defined in Section 3(a)(2) of the Act, assess Exchange's regulatory performance, assist the Board and committees of the Board in reviewing the regulatory plan and the overall effectiveness of Exchange's regulatory functions and, in consultation with the Chief Executive Officer of the Company, establish the goals, assess the performance, and fix the compensation of the Chief Regulatory Officer of the Company. Each member of the Regulatory Oversight Committee shall be a Non-Industry Director.

(d) The Chairman, with the approval of the Board, shall appoint an Appeals Committee. The Appeals Committee shall preside over all appeals related to disciplinary and adverse action determinations in accordance with the Exchange Rules. The Appeals Committee shall consist of one Independent Director, one Industry Director, and one Member Representative Director. If the Independent Director recuses himself or herself from an appeal, due to a conflict of interest or otherwise, such Independent Director may be replaced by a Non-Industry Director for purposes of the applicable appeal if there is no other Independent Director able to serve as the replacement.

(e) The Chairman, with the approval of the Board, may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Company between meetings of the Board. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Independent Directors on the Executive Committee shall be at least as great as the percentage of Independent Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board.

(f) The Chairman, with the approval of the Board, may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Company, including recommendations for Company's annual operating and capital budgets.

## **Article VI**

### **Nominating Committees**

#### **Section 1.** Election of Nominating Committee and Member Nominating Committee

The Nominating Committee and the Member Nominating Committee shall each be elected on an annual basis by vote of stockholders. The stockholder shall appoint the initial Nominating Committee and Member Nominating Committee consistent with the compositional requirements of this Article VI. In each subsequent year, each of the Nominating Committee and Member Nominating Committee, after completion of its respective duties for nominating Directors for election to the Board for that year, shall nominate candidates to serve on the succeeding year's Nominating Committee or Member

Nominating Committee, as applicable, such candidates to be voted on by stockholders at the annual meeting of stockholders. Additional candidates for the Member Nominating Committee may be nominated and elected pursuant to the same process as provided for in Article III, Section 4.

**Section 2.** Nominating Committee

The Nominating Committee shall nominate candidates for election to the Board at the annual stockholder meeting and all other vacant or new Director positions on the Board. The Nominating Committee, in making such nominations, is responsible for ensuring that candidates meet the compositional requirements of Article III, Section 2(b). The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. A Nominating Committee member may simultaneously serve on the Nominating Committee and the Board, unless the Nominating Committee is nominating Director candidates for the Director's class, as explained in Article III, Section 3. Notwithstanding the preceding sentence, a Director may serve on the Nominating Committee in his or her final year of service on the Board. Following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.

**Section 3.** Member Nominating Committee

The Member Nominating Committee shall nominate candidates for each Member Representative Director position on the Board that is to be elected by Exchange Members or stockholders under the terms of these Bylaws. Each member of the Member Nominating Committee shall be a Member Representative member.

**Article VII**  
**Officers, Agents and Employees**

**Section 1.** General

The officers of the Company shall include a Chief Executive Officer, a President, a Chief Regulatory Officer, a Secretary, a Treasurer, and such other officers as in the Board's opinion are desirable for the conduct of the business of the Company. Any two or more offices may be held by the same person, except that the offices of the President and Secretary may not be held by the same person.

**Section 2.** Appointment and Tenure

Each officer of the Company shall be appointed by the Board on an annual basis, and shall hold office until his or her successor is appointed and qualified or until his or her earlier death, disability, disqualification, removal, or resignation. An officer may serve for any number of terms, consecutive or otherwise.

**Section 3.** Resignation and Removal of Officers; Vacancies

(a) Any officer may resign at any time upon notice of resignation to the Chairman and Chief Executive Officer, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

(b) Any officer of the Company may be removed, with or without cause, by the Board. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the Company.

(c) Vacancies in any office of the Company may be filled for the unexpired term by the Board.

#### **Section 4.** Compensation

The Compensation of the Chief Executive Officer shall be fixed by the Compensation Committee. Except as otherwise provided in Article V, Section 6(c) of these Bylaws, the salaries of all other officers and agents of the Company shall be fixed by the Chief Executive Officer, in consultation with the Compensation Committee.

#### **Section 5.** Powers and Duties; Delegation

Each of the officers of the Company shall, unless otherwise ordered by the Board, have such powers and duties as customarily pertain to the respective office, and such further powers and duties as from time to time may be conferred by the Board, or by an officer delegated such authority by the Board. The Board may delegate the duties and powers of any officer of the Company to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

#### **Section 6.** Chief Executive Officer

The Chief Executive Officer shall be the Chairman of the Board and shall preside at all meetings of the Board at which the Chief Executive Officer is present; provided, however, that he or she shall not participate in executive sessions of the Board. The Chief Executive Officer shall be the chief executive officer of the Company, shall have general supervision over the business and affairs of the Company, and shall serve at the pleasure of the Board. The Chief Executive Officer shall have all powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.

#### **Section 7.** President

The President shall, in the absence of the Chairman and Chief Executive Officer, preside at all meetings of the Board at which the President is present. The President shall have general supervision over the operations of the Company. The President shall have all

powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.

**Section 8.** Vice President

The Board shall appoint one or more Vice Presidents. In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in such Vice President's title as the Board may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, the Chief Executive Officer or the President. The term "Vice President" used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

**Section 9.** Chief Regulatory Officer

An officer of the Company with the position of Executive Vice President or Senior Vice President shall be designated as the Chief Regulatory Officer of the Company. The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Company, including responsibility for overseeing the Company's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Company is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Company in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee. The Chief Regulatory Officer may, but is not required to, also serve as the General Counsel of the Company.

**Section 10.** Secretary

The Secretary shall act as Secretary of all meetings of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Company, and shall have supervision over the care and custody of the books and records of the Company. The Secretary shall be empowered to affix the Company's seal, if any, to documents, the execution of which on behalf of the Company under its seal is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such

other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer or the President.

**Section 11.** Assistant Secretary

In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.

**Section 12.** Treasurer

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Company and shall cause the funds of the Company to be deposited in the name of the Company in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of the Company. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, the Chief Executive Officer or the President.

**Section 13.** Assistant Treasurer

In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.

**Article VIII**  
**Indemnification**

**Section 1.** Indemnification of Directors, Officers, Employees And Other Agents.

The Company shall indemnify its Directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law; provided, however, that the Company may limit the extent of such indemnification by individual contracts with its Directors and executive officers; and, provided, further, that the Company shall not be required to indemnify any Director or executive officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the Company or its Directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the Company or (iii) such indemnification is provided by the Company, in its

sole discretion, pursuant to the powers vested in the Company under the Delaware General Corporation Law.

(a) *Other Officers, Employees and Other Agents.* The Company shall have the power to indemnify its other officers, employees and other agents as set forth in the Delaware General Corporation Law.

(b) *Expenses.* The Company shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a Director or executive officer, of the Company, or is or was serving at the request of the Company as a Director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any Director or executive officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Article VIII or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Article VIII, Section 1, no advance shall be made by the Company to an executive officer of the Company (except by reason of the fact that such executive officer is or was a Director of the Company in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Company.

(c) *Enforcement.* Without the necessity of entering into an express contract, all rights to indemnification and advances to Directors and executive officers under this Article VIII shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the Company and the Director or executive officer. Any right to indemnification or advances granted by this Article VIII to a Director or executive officer shall be enforceable by or on behalf of the person holding such right in the forum in which the proceeding is or was pending or, if such forum is not available or a determination is made that such forum is not convenient, in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. The Company shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the Company to indemnify the claimant for the amount claimed. Neither the failure of the Company (including its Board of Directors,

independent legal counsel or its Stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Company (including its Board of Directors, independent legal counsel or its Stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

(d) *Non Exclusivity of Rights.* To the fullest extent permitted by the Company's Certificate of Incorporation and the Delaware General Corporation Law, the rights conferred on any person by this Article VIII shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of Stockholders or disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The Company is specifically authorized to enter into individual contracts with any or all of its Directors, officers, employees or agents respecting indemnification and advances, to the fullest extent permitted by the Delaware General Corporation Law and the Company's Certificate of Incorporation.

(e) *Survival of Rights.* The rights conferred on any person by this Article VIII shall continue as to a person who has ceased to be a Director or executive officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

(f) *Insurance.* The Company, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Article VIII.

(g) *Amendments.* Any repeal or modification of this Article VIII shall only be prospective and shall not affect the rights under this Article VIII in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the Company.

(h) *Saving Clause.* If this Article VIII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify each Director and executive officer to the fullest extent permitted by any applicable portion of this Article VIII that shall not have been invalidated, or by any other applicable law.

(i) *Certain Definitions.* For the purposes of this Article VIII, the following definitions shall apply:

(i) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement and appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative.



(ii) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding, including expenses of establishing a right to indemnification under this Article VIII or any applicable law.

(iii) The term the “Company” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References in this Article VIII to a “Director,” “officer,” “employee,” or “agent” of the Company shall include, without limitation, situations where such person is serving at the request of the Company as a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

## **Section 2. Exchange Not Liable**

Except as provided in the Exchange Rules, the Company shall not be liable for any loss or damage sustained by any current or former Exchange Member growing out of the use or enjoyment by such Exchange Member of the facilities afforded by the Company (or any predecessor or successor thereof) or its subsidiaries.

## **Article IX Amendments; Emergency Bylaws**

### **Section 1. By Stockholders or Board**

These Bylaws may be altered, amended, or repealed, or new Bylaws may be adopted, (i) by the written consent of the stockholders of the Company, or (ii) at any regular or special meeting of the Board by a resolution adopted by the Board.

### **Section 2. Emergency Bylaws**

The Board may adopt emergency Bylaws subject to repeal or change by action of the stockholders of the Company which shall, notwithstanding any different provision of law, the Certificate of Incorporation, or these Bylaws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which the Company conducts its business or customarily holds meetings of the Board, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a

committee thereof cannot readily be convened for action. Such emergency Bylaws may make any provision that may be practicable and necessary under the circumstances of the emergency.

**Section 3.** Authority to Take Action Under Extraordinary Market Conditions

The Board, or such person or persons as may be designated by the Board, in the event of extraordinary market conditions, shall have the authority to take any action regarding:

- (a) the trading in or operation of the national securities exchange operated by the Company or any other organized securities markets that may be operated by the Company, the operation of any automated system owned or operated by the Company, and the participation in any such system of any or all persons or the trading therein of any or all securities; and
- (b) the operation of any or all offices or systems of Exchange Members, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

**Article X**  
**Exchange Authorities**

**Section 1.** Rules

(a) The Board, acting in accordance with the terms of these Bylaws and the Rules, shall be vested with all powers necessary for the governance of the Company as an “exchange” within the meaning of the Act. To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among Exchange Members, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the Company and of the Act, the Board is hereby authorized to adopt such rules and such amendments thereto as it may, from time to time, deem necessary or appropriate. If any such rules or amendments thereto are approved by the Commission or otherwise become effective as provided in the Act, they shall become operative Exchange Rules as of the date of Commission approval or effectiveness under the Act unless a later operative date is declared by the Company. The Board is hereby authorized, subject to the provisions of these Bylaws and the Act, to administer, enforce, interpret, issue exemptions from, suspend, or cancel any Rules adopted hereunder.

**Section 2.** Disciplinary Proceedings

(a) The Board is authorized to establish procedures relating to disciplinary proceedings involving Exchange Members and their associated persons.

(b) The Board is authorized to impose appropriate sanctions applicable to Exchange Members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all Exchange Members, limitation of activities, functions, and operations of an Exchange Member, or any other fitting sanction, and to impose appropriate sanctions applicable to persons associated with Exchange Members, including censure, fine, suspension, or barring a person associated with an Exchange Member from being associated with all Exchange Members, limitation of activities, functions, and operations of a person associated with an Exchange Member, or any other fitting sanction, for:

(i) a breach by an Exchange Member or a person associated with an Exchange Member of any covenant with the Company or its stockholders;

(ii) violation by an Exchange Member or a person associated with an Exchange Member of any of the terms, conditions, covenants, and provisions of the Bylaws, the Rules, or the federal securities laws, including the rules and regulations adopted thereunder;

(iii) failure by an Exchange Member or person associated with an Exchange Member to: (A) submit a dispute for arbitration as may be required by the Rules; (B) appear or produce any document in the Exchange Member's or person's possession or control as directed pursuant to the Rules; (C) comply with an award of arbitrators properly rendered, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied; or (D) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition; or

(iv) failure by an Exchange Member or person associated with an Exchange Member to adhere to any ruling, order, direction, or decision of or to pay any sanction, fine, or costs imposed by the Board or any entity to which the Board has delegated its powers.

### **Section 3. Membership Qualifications**

(a) The Board shall have authority to adopt rules and regulations applicable to Exchange Members, applicants seeking to become Exchange Members, and persons associated with applicants or Exchange Members, establishing specified and appropriate standards with respect to the training, experience, competence, financial responsibility, operational capability, and such other qualifications as the Board finds necessary or desirable.

(b) The Board may from time to time make such changes in such rules, regulations, and standards as it deems necessary or appropriate.

(c) Uniform standards for regulatory and other access issues, such as admission to membership and conditions to becoming an Exchange market maker, shall be promulgated

and applied on a consistent basis, and the Company shall institute safeguards to ensure fair and evenhanded access to all of its services and facilities.

**Section 4.** Fees, Dues, Assessments, and Other Charges

The Board shall have authority to fix and levy the amount of fees, dues, assessments, and other charges to be paid by Exchange Members and issuers and any other persons using any facility or system that the Company operates or controls; provided, however, that such fees, dues, assessments, and other charges shall be equitably allocated among Exchange Members and issuers and any other persons using any facility or system that the Company operates or controls. Any revenues received by the Company from fees derived from its regulatory function or regulatory penalties will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Company (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers.

**Article XI**  
**Miscellaneous Provisions**

**Section 1.** Fiscal Year

The fiscal year of the Company shall be as determined from time to time by the Board.

**Section 2.** Participation in Board and Committee Meetings

All meetings of the Board (and any committees of the Board) pertaining to the self-regulatory function of the Company (including disciplinary matters) shall be closed to all persons other than members of the Board and officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. In no event shall members of the Board of Directors of CBOE Holdings, Inc., CBOE V, LLC or Bats Global Markets Holdings, Inc. who are not also members of the Board, or any officers, staff, counsel or advisors of CBOE Holdings, Inc., CBOE V, LLC or Bats Global Markets Holdings, Inc. who are not also officers, staff, counsel or advisors of the Company (or any committees of the Board), be allowed to participate in any meetings of the Board (or any committee of the Board) pertaining to the self-regulatory function of the Company (including disciplinary matters).

**Section 3.** Books and Records; Confidentiality of Information and Records Relating to SRO Function

The books and records of the Company shall be maintained at a location within the United States. All books and records of the Company reflecting confidential information pertaining to the self-regulatory function of the Company (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained

in confidence by the Company and its personnel and will not be used by the Company for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any Exchange Member) other than to personnel of the Commission, and those personnel of the Company, members of committees of the Board, members of the Board, hearing officers and other agents of the Company to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Company.

#### **Section 4.** Dividends

Subject to any provisions of any applicable statute, other provisions of these By-Laws, or the Certificate of Incorporation, dividends may be declared upon the capital stock of the Company by, and in the absolute discretion of, the Board; and any such dividends may be paid in cash, property or shares of stock of the Company, as determined by the Board, and shall be declared and paid on such dates and in such amounts as are determined by the Board.

#### **Section 5.** Reserves

Before payment of any dividends, there may be set aside out of any funds of the Company available for dividends such sum or sums as the Board from time to time, in its absolute discretion, determines to be proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Company, or for such other purpose as the Board shall determine to be conducive to the interests of the Company, and the Board may modify or abolish any such reserve in the manner in which it was created.

#### **Section 6.** Execution of Instruments, Contracts, etc.

(a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of the Company by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board may authorize any officer, employee, or agent, in the name of and on behalf of the Company, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States government or by any state, county, municipal, or other governmental authority may be executed in the name of the Company by any officer of the Company, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of the Company. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

#### **Section 7.** Power to Vote Stock

Unless otherwise instructed by the Board, the Chief Executive Officer of the Company shall have the power and authority on behalf of the Company to attend and to vote at any meeting of stockholders, partners or equity holders of any corporation, partnership or any other entity in which the Company may hold stock, partnership or other equity interests, as the case may be, and may exercise on behalf of the Company any and all of the rights and powers incident to the ownership of such stock, partnership or other equity interest at such meeting, and shall have the power and authority to execute and deliver proxies, waivers and consents on behalf of the Company in connection with the exercise by the Company of the rights and powers incident to the ownership of such stock, partnership or other equity interest. The Board and the Chief Executive Officer may from time to time confer like powers upon any other person or persons.

**Section 8.** Severability

If any provision of these Bylaws, or the application of any provision of these Bylaws to any person or circumstances, is held invalid, the remainder of these Bylaws and the application of such provision to other persons or circumstances shall not be affected.]

EXHIBIT 5D

{ Additions are underlined; deletions are [bracketed]}

**SIXTH AMENDED AND RESTATED****BYLAWS OF****BATS BYX EXCHANGE, INC.****ARTICLE I Definitions****Section 1.1. Definitions.**

When used in these Bylaws, except as expressly otherwise provided or unless the context otherwise requires:

(a) The term “Act” means the Securities Exchange Act of 1934, as amended.

(b) The term “affiliate” of a Person or “affiliated with” another Person means a Person who, directly or indirectly, controls, is controlled by, or is under common control with, such other person.

(c) The term “Board” means the Board of Directors of the Corporation.

(d) The term “Corporation” means Bats BYX Exchange, Inc.

(e) The term “Exchange” means the Corporation, its exchange market and any facilities thereof.

(f) The term “Exchange Member” shall have the same meaning as the term “Member” in the Rules of the Exchange.

(g) The term “Person” shall mean 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.

(h) The term “Rules” means the rules of the Exchange as adopted or amended from time to time.

(i) The term “associated with an entity” means any partner, officer or director of such entity (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such entity, or any employee of such entity.

(j) The term “Representative Director Nominating Body” shall mean the Industry-Director Subcommittee of the Nominating and Governance Committee if there are at least two Industry Directors on the Nominating and Governance Committee. If the Nominating and Governance Committee has less than two Industry Directors, than the “Representative Director Nominating Body” shall mean the Exchange Member Subcommittee of the Advisory Board.

## **ARTICLE II Stockholders**

### **Section 2.1. Place of Meetings.**

All meetings of stockholders shall be held at such place within or without the State of Delaware as may be designated from time to time by the Board or the Chairman of the Board (or, if there is no Chairman of the Board, the Chief Executive Officer) or, if not so designated, at the principal place of business of the Corporation in Chicago, Illinois.

### **Section 2.2. Annual Meetings.**

If required by applicable law, an annual meeting of stockholders shall be held on the third Tuesday in May of each year or such other date as may be fixed by the Board, at such time as may be designated by the Secretary prior to the giving of notice of the meeting, for the purpose of electing directors to fill expiring terms and any vacancies in unexpired terms and for the transaction of business as may properly come before the meeting. In no event shall the annual meeting date each year be prior to the completion of the process for the nomination of the Representative Directors for that annual meeting as set forth in Sections 3.1 and 3.2.

### **Section 2.3. Special Meetings.**

Special meetings of stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation of the Corporation, may be called by the Chairman of the Board or by a majority of the Board.

### **Section 2.4. Notice of Stockholders' Meetings.**

Unless otherwise prescribed by statute or the Certificate of Incorporation, notice of each meeting of stockholders, stating the date, time and place thereof, and, in the case of special meetings, the purpose or purposes for which such meeting is called, shall be given to each stockholder of record entitled to vote thereat not more than 60 days and at least 10 days before the date of the meeting.

### **Section 2.5 Quorum and Adjournments.**

Except as otherwise provided by statute or the Certificate of Incorporation, a majority of the outstanding stock of the Corporation entitled to vote at the meeting, when present in person or represented by proxy, shall constitute a quorum at all meetings of stockholders for the transaction of business. If such quorum shall not be present or represented by proxy at any meeting of stockholders, holders of a majority of the stock present in person or represented by proxy at the meeting shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting unless otherwise required by statute, until a quorum shall be present or represented. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally notified. Nothing in these Bylaws shall affect the right to adjourn a meeting from time to time where a quorum is present.

### **Section 2.6. Voting by Stockholders.**

With respect to any question brought before a meeting, when a quorum is present, a majority of the votes properly cast on any question shall decide the question, unless the question is one



upon which by express provision of statute or the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control. Notwithstanding the preceding sentence, a plurality of votes properly cast shall elect the directors.

### **Section 2.7. Determination of Stockholders of Record.**

(a) The Board may fix a record date to determine the stockholders entitled to notice of and to vote at a meeting of stockholders or any adjournment thereof ("Record Date"). The Record Date shall not be more than 60 days nor less than 10 days before the date of the meeting.

(b) If no Record Date is fixed by the Board for a meeting of stockholders, the Record Date for the meeting shall be at the close of business on the day preceding the date on which notice of the meeting is given by the Corporation.

(c) A Record Date shall apply to any adjournment of a meeting of stockholders; provided, however, that the Board may fix a new Record Date for the adjourned meeting.

### **Section 2.8. Action by Written Consent of Stockholders.**

Unless otherwise restricted by the Certificate of Incorporation, any corporate action upon which a vote of stockholders is required or permitted may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on that matter were present and voted and shall be delivered to the Corporation in the manner required by law at its registered office within the State of Delaware or at its principal place of business or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders of the Corporation are recorded. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to in the consent unless, within 60 days of the earliest dated consent delivered to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation as required by these Bylaws or by applicable law. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not so consented in writing.

## **ARTICLE III Board of Directors**

### **Section 3.1. Number, Election and Term of Office of Directors.**

The Board shall consist of not less than 5 directors. The Board shall determine from time to time pursuant to resolution adopted by the Board the total number of directors, the number of Non-Industry Directors and Industry Directors (if any), and the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any). In no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose). In addition, at all times at least 20% of directors serving on the Board shall be Representative Directors nominated (or otherwise selected through the petition process) as provided for in Section 3.2 by the Representative Director Nominating Body.

A “Non-Industry Director” is a person who is not an Industry Director.

An “Industry Director” is any director who (i) is an Exchange Member or otherwise subject to regulation by the Exchange; (ii) is a broker-dealer or an officer, director or employee of a broker-dealer or has been in any such capacity within the prior three years; (iii) is, or was within the prior three years, associated with an entity that is affiliated with a broker-dealer whose revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated; (iv) has a material ownership interest in a broker-dealer and has investments in broker-dealers that account for a material portion of the director's net worth; (v) has a consulting or employment relationship with or has provided professional services to the Exchange or any of its affiliates or has had such a relationship or has provided such services within the prior three years; or (vi) provides, or has provided within the prior three years, professional or consulting services to a broker-dealer, or to an entity with a 50% or greater ownership interest in a broker-dealer whose revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated, and the revenue from all such professional or consulting services accounts for a material portion of either the revenues received by the director or the revenues received by the director's firm or partnership.

Notwithstanding the foregoing, a director shall not be deemed to be an “Industry Director” solely because either (A) the person is or was within the prior three years an outside director of a broker-dealer or an outside director of an entity that is affiliated with a broker-dealer, provided that the broker-dealer is not an Exchange Member or otherwise subject to regulation by the Exchange, or (B) the person is or was within the prior three years associated with an entity that is affiliated with a broker-dealer whose revenues do not account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated, provided that the broker-dealer is not an Exchange Member or otherwise subject to regulation by the Exchange. At all times, at least one Non-Industry Director shall be a Non-Industry Director exclusive of the exceptions provided for in the immediately preceding sentence and shall have no material business relationship with a broker or dealer or the Exchange or any of its affiliates. For purposes of this Section 3.1, the term “outside director” shall mean a director of an entity who is not an employee or officer (or any person occupying a similar status or performing similar functions) of such entity.

The Board of Directors of the Exchange or the Nominating and Governance Committee of the Board shall make all materiality determinations under the foregoing two paragraphs. A director shall qualify as a Non-Industry Director only so long as such director meets the requirements for that position.

Directors will serve one-year terms ending on the annual meeting following the meeting at which such directors were elected or at such time as their successors are elected or appointed and qualified, except in the event of earlier death, resignation, disqualification or removal.

Only persons who are nominated as Representative Directors by the Nominating and Governance Committee shall be eligible for election as Representative Directors. The Nominating and Governance Committee shall be bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body, provided that the Representative Director nominees are not opposed by a petition

candidate as forth in Section 3.2 below. If such Representative Director nominees are opposed by a petition candidate then the Nominating and Governance Committee shall be bound to accept and nominate the Representative Director nominees who receive the most votes pursuant to a Run-off Election as set forth in Section 3.2 below.

The Nominating and Governance Committee shall determine, subject to review by the Board, whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of that committee shall, subject to review, if any, by the Board, be final.

### **Section 3.2. Nomination of Representative Directors.**

The Representative Director Nominating Body shall recommend a number of directors that equals 20% of the total number of directors serving on the Board (the “Representative Director(s)”), provided that if 20% of the directors then serving on the Board is not a whole number, such number of Representative Directors shall be rounded up to the next whole number. Directors not recommended by the Representative Director Nominating Body shall be nominated by the Nominating and Governance Committee. Any person nominated by the Representative Director Nominating Body and any petition candidate nominated pursuant to this Section 3.2 shall satisfy the compositional requirements determined by the Board from time to time pursuant to a resolution adopted by the Board in accordance with Section 3.1, designating the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any).

The Representative Director Nominating Body shall provide a mechanism for Exchange Members to provide input to the Representative Director Nominating Body with respect to nominees for the Representative Directors. The Representative Director Nominating Body shall issue a circular to Exchange Members identifying the Representative Director nominees selected by the Representative Director Nominating Body not earlier than December 1<sup>st</sup> and not later than January 15th, or the first business day thereafter if January 15th is not a business day.

Exchange Members may nominate alternative candidates for election to the Representative Director positions to be elected in a given year by submitting a petition signed by individuals representing not less than 10% of the Exchange Members at that time. Petitions must be filed with the Secretary no later than 5:00 p.m. (Chicago time) on the 10<sup>th</sup> business day following the issuance of the circular to the Exchange Members identifying the Representative Director nominees selected by the Representative Director Nominating Body (the “Petition Deadline”). The names of all Representative Director nominees recommended by the Representative Director Nominating Body and those selected pursuant to a valid and timely petition shall, immediately following their selection, be given to the Secretary who shall promptly issue a circular to all of the Exchange Members identifying all such Representative Director candidates.

If one or more valid petitions are received, the Secretary shall issue a circular to all of the Exchange Members identifying those individuals nominated for Representative Director by the Representative Director Nominating Body and those individuals nominated for Representative Director through the petition process as well as of the time and date of a run-off election to determine which individuals will be nominated as Representative Director(s) by the Nominating and Governance Committee (the “Run-off Election”). The Run-off Election will be held not more than 45 days after the Petition Deadline. In any Run-off Election, each Exchange Member shall have one vote for each Representative Director position to be filled that year; provided,

however, that no Exchange Member, either alone or together with its affiliates, may account for more than 20% of the votes cast for a candidate, and any votes cast by an Exchange Member, either alone or together with its affiliates, in excess of this 20% limitation shall be disregarded. Votes may be cast in person or by proxy. Additionally, in any Run-off Election, one-third of the Exchange Members entitled to vote, when present in person or represented by proxy, shall constitute a quorum for purposes of the Run-off Election. The Secretary shall issue a circular to all of the Exchange Members setting forth the results of the Run-off Election. The number of individual Representative Director nominees equal to the number of Representative Director positions to be filled that year receiving the largest number of votes in the Run-off Election (after taking into account the voting limitation set forth herein) will be the persons approved by the Exchange Members to be nominated as the Representative Director(s) by the Nominating and Governance Committee for that year.

### **Section 3.3. Powers of the Board.**

The Board shall be the governing body of the Corporation and shall be vested with all powers necessary for the management of the business and affairs of the Corporation and for the promotion of its welfare, objects and purposes. The Board shall regulate the business conduct of Exchange Members and may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or the Certificate of Incorporation directed or required to be exercised or done by others. In the exercise of such powers, the Board may organize such subsidiary corporations, impose such fees and charges, adopt or amend such Rules, issue such orders and directions, and make such decisions as it deems necessary or appropriate. It may prescribe and impose penalties for violations of the Rules, for neglect or refusal to comply with orders, directions or decisions of the Board, or for any other offenses against the Corporation.

### **Section 3.4. Resignation, Disqualification and Removal of Directors.**

(a) A director may resign at any time by giving written notice of his resignation to the Chairman of the Board or the Secretary, and such resignation, unless specifically contingent upon its acceptance, will be effective as of its date or of the date specified therein.

(b) In the event any Industry Director or Non-Industry Director fails to maintain the qualifications required for such category of director in Section 3.1 hereof, of which failure the Board shall be the sole judge, the term of office of such director shall terminate and such director shall thereupon cease to be a director, his office shall become vacant and, notwithstanding any provision to the contrary, the vacancy may be filled by the Board with a person who qualifies for the category in which the vacancy exists. Notwithstanding the foregoing, unless otherwise required by statute, the Certificate of Incorporation, regulations of the Securities and Exchange Commission ("SEC") or, if applicable, the regulations of any listing exchange on which the Corporation is listed, a director who fails to maintain the applicable qualifications may be allowed the later of (i) 45 days from the date when the Board determines the director is unqualified or (ii) until the next regular Board meeting following the date when the Board makes such determination, in which to requalify. Following the date when the Board determines the director is unqualified, the director shall be deemed not to hold office and the seat formerly held by the director shall be deemed to be vacant for all purposes. The Board shall be the sole judge of whether the director has requalified. If a director is determined to have requalified, the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the

Board, as necessary, to appoint such director to the Board; provided, however, that the Board shall be under no obligation to return such director to the Board.

(c) No Representative Director may be removed from office by a vote of the stockholders at any time except for cause, which shall include, but not be 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). Any Representative Director may be removed for cause by the holders of a majority of the shares of stock then entitled to be voted at an election of directors.

### **Section 3.5. Filling of Vacancies.**

(a) 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 by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, provided such new director qualifies for the category in which the vacancy exists. A director elected to fill a vacancy shall hold office until the next annual meeting of stockholders, subject to the election and qualification of his or her successor and to his or her earlier death, resignation, disqualification or removal.

(b) If the Board fills a vacancy resulting from a Representative Director position becoming vacant prior to the expiration of such Representative Director's term, or resulting from the creation of an additional Representative Director position required by an increase in the size of the Board, then the Board shall follow the procedures set forth in this Section 3.5(b). In such an event, the Representative Director Nominating Body shall either (i) recommend an individual to the Board to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the Board from which the Board shall elect the individual to fill such vacancy. The Board shall elect, pursuant to this Section 3.5(b), only individuals recommended by the Representative Director Nominating Body; provided, however, the Board shall not be required to take any action or elect any individual if the Board believes that taking such action or electing such individual would be contrary to the Board's fiduciary duties. Any vacancy filled pursuant to this Section 3.5(b), shall be filled by the vote of a majority of the directors then in office, although less than a quorum. The Representative Director Nominating Body shall only recommend individuals to fill a vacancy in a Representative Director position who satisfy the compositional requirements designated by the Board from time to time pursuant to resolution adopted by the Board in accordance with Section 3.1, designating the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any).

### **Section 3.6. Chairman of the Board of Directors.**

The Board shall appoint one of the directors to serve as Chairman of the Board. Except as provided for in Section 3.7 hereof, the Chairman of the Board shall be the presiding officer at all meetings of the Board and stockholders and shall exercise such other powers and perform such other duties as are delegated to him or her by the Board.

**Section 3.7. Lead Director.**

The Board may appoint one of the Non-Industry Directors to serve as the Lead Director. The Lead Director shall perform such duties and possess such powers as the Board may from time to time prescribe. The Lead Director, if appointed, shall be authorized to preside at meetings of the directors that are not officers or employees of the Exchange.

**Section 3.8. Acting Chairman and Vacancy in Chairman Position.**

(a) In the absence or inability to act of the Chairman of the Board, the Board may designate an Acting Chairman of the Board. The Acting Chairman of the Board, in the absence or inability to act of the Chairman, shall be presiding officer at all meetings of the Board and shall exercise such other powers and perform such other duties as are delegated to the Acting Chairman by the Board.

(b) If a vacancy occurs in the office of Chairman, the Board may fill such vacancy by the affirmative vote of at least a majority of the directors then in office.

**Section 3.9. Quorum.**

At all meetings of the Board, two-thirds of the number of directors then in office shall constitute a quorum for the transaction of business, and the vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute or the Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

**Section 3.10. Regular Meetings.**

Regular meetings of the Board shall be held at such time and at such place as shall from time to time be determined by the Chairman of the Board with notice of such determination provided to the full Board.

**Section 3.11. Special Meetings.**

Special meetings of the Board may be called by the Chairman of the Board and shall be called by the Secretary upon the written request of any four directors. The Secretary shall give at least 24 hours notice of such meeting to each director, in a manner permitted by Section 7.1. Every such notice shall state the time and place of the meeting which shall be fixed by the person calling the meeting, but need not state the purpose thereof except as otherwise required by statute.

**Section 3.12. Participation in Meeting.**

Members of the Board or of any committee thereof may participate in a meeting of the Board or such committee by conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such a meeting.

**Section 3.13. Action by Written Consent.**

Unless otherwise restricted by statute or the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or of such committee.

**Section 3.14. Interested Directors.**

No director shall be disqualified from participating in any meeting, action or proceeding of the Board by reason of being or having been a member of a committee which has made prior inquiry, examination or investigation of the subject under consideration. No director shall participate in the adjudication of any matter with respect to which the Board is acting as an adjudicative body under the Rules, and in which such director is personally interested, although interested directors may be counted in determining the presence of a quorum at the meeting of the Board or of a committee which authorizes actions with respect to such matter.

**ARTICLE IV Committees****Section 4.1. Designation of Committees.**

(a) Committees of the Board. The committees of the Board shall consist of an Executive Committee, a Regulatory Oversight Committee, a Nominating and Governance Committee and such other standing and special committees as may be approved by the Board. Except as may be otherwise provided in these Bylaws or as may be otherwise provided for from time to time by resolution of the Board, the Board may, at any time, with or without cause, remove any member of any such committees of the Board.

(b) Committees of the Exchange. The Exchange also shall have such committees as may be provided in these Bylaws or the Rules or as may be from time to time created by the Board. Except as may be otherwise provided in these Bylaws, the Rules or the resolution of the Board establishing any such other committee, the Chief Executive Officer or his or her designee, with the approval of the Board, shall appoint the members of such Exchange committees (other than the committees of the Board) and may designate, with the approval of the Board, a Chairman and a Vice-Chairman thereof. Except as may be otherwise provided in these Bylaws or the Rules, the Chief Executive Officer or his or her designee, with the approval of the Board, may, at any time, with or without cause, remove any member of any such Exchange committees.

**Section 4.2. The Executive Committee.**

The Executive Committee will include the Chairman of the Board, the Chief Executive Officer (if a director), the Lead Director, if any, at least one Representative Director and such other number of directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose). Members of the Executive Committee (other than those specified in the immediately preceding sentence) shall be recommended by the Nominating and Governance Committee for approval by the Board. Members of the Executive Committee shall

not be subject to removal except by the Board. The Chairman of the Board shall be the Chairman of the Executive Committee. Each member of this Committee shall be a voting member. The members of the Executive Committee shall serve for a term of one year expiring at the first regular meeting of directors following the annual meeting of stockholders each year or until their successors are appointed. The Executive Committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, except it shall not have the power and authority of the Board to (i) approve or adopt or recommend to the stockholders any action or matter (other than the election or removal of directors) expressly required by Delaware law to be submitted to stockholders for approval, including without limitation, amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, approving a sale, lease or exchange of all or substantially all of the Corporation's property and assets, or approval of a dissolution of the Corporation or revocation of a dissolution, or (ii) adopt, alter, amend or repeal any bylaw of the Corporation.

#### **Section 4.3. The Nominating and Governance Committee.**

The Nominating and Governance Committee shall consist of at least five directors and shall at all times have a majority of directors that are Non-Industry Directors. All members of the committee shall be recommended by the Nominating and Governance Committee for approval by the Board. The exact number of Nominating and Governance Committee members shall be determined from time to time by the Board. Members of the Nominating and Governance Committee shall not be subject to removal except by the Board. The Chairman of the Nominating and Governance Committee shall be recommended by the Nominating and Governance Committee for approval by the Board. Subject to Section 3.2 and Section 3.5 of these Bylaws, the Nominating and Governance Committee shall have the authority to nominate individuals for election as directors of the Corporation. The Nominating and Governance Committee shall have such other duties and may exercise such other authority as may be prescribed by resolution of the Board and the Nominating and Governance Committee Charter as adopted by resolution of the Board. If the Nominating and Governance Committee has two or more Industry Directors, there shall be an Industry-Director Subcommittee consisting of all of the Industry Directors then serving on the Nominating and Governance Committee, which shall act as the Representative Director Nominating Body if and to the extent required by these Bylaws.

#### **Section 4.4. The Regulatory Oversight Committee.**

The Regulatory Oversight Committee shall consist of at least three directors, all of whom shall be Non-Industry Directors and all of whom shall be recommended by the Non-Industry Directors on the Nominating and Governance Committee for approval by the Board. The exact number of Regulatory Oversight Committee members shall be determined from time to time by the Board. Members of the Regulatory Oversight Committee shall not be subject to removal except by the Board. The Chairman of the Regulatory Oversight Committee shall be recommended by the Non-Industry Directors of the Nominating and Governance Committee for approval by the Board. The Regulatory Oversight Committee shall have such duties and may exercise such authority as may be prescribed by resolution of the Board, these Bylaws or the Rules of the Exchange.



**Section 4.5. Other.**

All other committees shall have such duties and may exercise such authority as may be prescribed for them by the Certificate of Incorporation, these Bylaws or the Rules or by resolution of the Board.

**Section 4.6. Conduct of Proceedings.**

Unless otherwise provided in the Certificate of Incorporation, these Bylaws, the Rules, the charter of the committee or by the Board of Directors by resolution, each committee may determine the manner in which committee proceedings shall be conducted. In the absence of any such established procedures, each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article 3 of these Bylaws. Committees shall keep minutes of their meetings and periodically report their proceedings to the Board and appropriate committees of the Board to the extent requested by the Board or Board committee.

**ARTICLE V Officers****Section 5.1. Designation; Number; Election.**

(a) The officers of the Corporation shall be a Chief Executive Officer, a President, a Chief Financial Officer, one or more Vice-Presidents (the number thereof to be determined by the Board), a Secretary, a Treasurer, and such other officers as the Board may determine, including an Assistant Secretary and Assistant Treasurer. The Chief Executive Officer shall be appointed by an affirmative vote of the majority of the Board, and may, but need not be the Chairman of the Board. Such affirmative vote may also prescribe his duties not inconsistent with these Bylaws and may prescribe a tenure of office. The remaining officers of the Corporation shall be appointed by the Board, each to serve until a successor has been duly chosen and qualified or until the officer's earlier death, resignation or removal.

(b) Two or more offices may be held by the same person, except the offices of Chief Executive Officer and President. In addition, the Chief Executive Officer and the President may not also be either the Secretary or Assistant Secretary.

**Section 5.2. Chief Executive Officer.**

The Chief Executive Officer shall, subject to the direction of the Board, have general charge and supervision of the business of the Corporation. The Chief Executive Officer shall be the official representative of the Corporation in all public matters. The Chief Executive Officer shall perform such other duties and possess such other powers as the Board may from time to time prescribe and that are incident to such office. The Chief Executive Officer shall not engage in any other business during his incumbency except with approval of the Board, and by his acceptance of the office of Chief Executive Officer he shall be deemed to have agreed to uphold these Bylaws.

**Section 5.3. President.**

The President shall be the chief operating officer of the Corporation and shall perform such duties and possess such powers as the Board or the Chief Executive Officer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer, the President shall perform the officer duties of the Chief Executive Officer and, when

so performing, shall have all the powers of and be subject to all the restrictions upon the office of Chief Executive Officer.

#### **Section 5.4. Chief Financial Officer.**

The Chief Financial Officer shall perform such duties and possess such powers as the Board or the Chief Executive Officer may from time to time prescribe. The Chief Financial Officer shall have the custody of the Corporation's funds and securities; shall keep full and accurate all books and accounts of the Corporation as shall be necessary or desirable in accordance with applicable law or generally accepted accounting principles; shall deposit all monies and other valuable effects in the name and to the credit of the Corporation as may be ordered by the Chief Executive Officer or the Board; shall cause the funds of the Corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the Board, at its regular meeting or when the Board so requires, an account of the Corporation.

#### **Section 5.5. Vice Presidents.**

Vice Presidents shall perform the duties prescribed by the Board, Chief Executive Officer or President.

#### **Section 5.6. Secretary.**

The Secretary shall keep official records of meetings of stockholders and of Exchange Members at which action is taken and of all meetings of the Board; the Secretary shall, in person or by representative, perform like services for the standing and special committees when required; the Secretary shall give notice of meetings of stockholders and of Exchange Members and of special meetings of the Board in accordance with the provisions of the Rules or these Bylaws or as required by statute; the Secretary shall post all notices which may be required to be posted upon the Corporation website; the Secretary shall be custodian of the books, records, and corporate seal of the Corporation and attest, upon behalf of the Corporation, all contracts and other documents requiring authentication; the Secretary shall perform such other duties as may be prescribed by the Board, Chairman of the Board, Chief Executive Officer or President.

#### **Section 5.7. Treasurer.**

The Treasurer shall perform such duties and possess such powers as the Board, the Chief Executive Officer or the Chief Financial Officer may from time to time prescribe.

#### **Section 5.8. Removals.**

Any officer appointed by the Board may be removed at any time by the Board, the Chief Executive Officer or the President; provided that the Chief Executive Officer can only be removed by the Board. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any vacancies occurring in any office of the Corporation at any time may be filled by the Board or an officer authorized by the Board to appoint a person to hold such office.

**Section 5.9. Resignations.**

Any officer may resign by delivering such officer's written resignation to the Corporation at its principal office or to the Chief Executive Officer or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

**Section 5.10. Vacancies.**

The Board may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of Chief Executive Officer, President, Secretary and Treasurer. Any vacancies occurring in any office of the Corporation at any time also may be filled by an officer authorized by the Board to appoint a person to hold such office. Each such successor shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal.

**Section 5.11. Salaries.**

Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board unless otherwise delegated to a Committee of the Board or to members of senior management. No officer shall be prevented from receiving such salary by reason of the fact that the officer is also a director of the Corporation.

**ARTICLE VI Advisory Board****Section 6.1. Advisory Board.**

The Board may establish an Advisory Board which shall advise the Board and management regarding matters of interest to Exchange Members. If an Advisory Board is established it would consist of such number of members as set by the Board from time to time, including at least two members who are Exchange Members or persons associated with Exchange Members. The Chief Executive Officer, or his or her designee, shall be the Chairman of the Advisory Board. The members of the Advisory Board shall be recommended by the Nominating and Governance Committee for approval by the Board. There shall be an Exchange Member Subcommittee of the Advisory Board consisting of all members of the Advisory Board who are Exchange Members or persons associated with Exchange Members, which shall act as the Representative Director Nominating Body if and to the extent required by these Bylaws.

**ARTICLE VII Notices****Section 7.1. Notices.**

Except as provided in Section 7.2 and to the extent permitted by law, any notice required to be given by the Bylaws or the Rules or otherwise shall be deemed to have been given:

(a) in person upon delivery of the notice in person to the Person to whom such notice is addressed;

(b) by mail upon deposit of the notice in the United States mail, enclosed in a postage prepaid envelope;

(c) by messenger or overnight courier service upon provision of the notice to the messenger or courier service, provided that the delivery method does not require payment of the messenger or courier service fee to deliver the notice by the Person to whom the notice is addressed;

(d) by facsimile machine upon acknowledgment by the facsimile machine used to transmit the notice of the successful transmission of the notice;

(e) by electronic mail upon electronic transmission of the notice; and

(f) by telephone when received.

Any such notice must be addressed to its intended recipient at the intended recipient's address (including the intended recipient's business or residence address, facsimile number, electronic address, or telephone number, as applicable) as it appears on the books and records of the Corporation, or if no address appears on such books and records, then at such address as shall be otherwise known to the Secretary, or if no such address appears on such books and records, then in care of the registered agent of the Corporation in the State of Delaware. In the event that a notice is not provided in conformity with the provisions of this Section 7.1, the notice will be deemed to have been given to its intended recipient upon any receipt of the notice by its intended recipient.

#### **Section 7.2. Electronic Notice to Stockholders.**

Whenever any notice whatsoever is required to be given in writing to any stockholder by law, by the Certificate of Incorporation or by these Bylaws, such notice may be given by a form of electronic transmission if the stockholder to whom such notice is given has previously consented to the receipt of notice by electronic transmission.

#### **Section 7.3. Waiver of Notice.**

Whenever notice is required to be given under the provisions of any statute, the Certificate of Incorporation, these Bylaws, the Rules or otherwise, a written waiver thereof, signed by the Person entitled to notice, or his proxy, whether before or after the time stated therein shall be deemed equivalent to notice. Except as may be otherwise specifically provided by statute, any waiver by mail, messenger, overnight courier, facsimile machine, or electronic mail, bearing the name of the Person entitled to notice shall be deemed a written waiver duly signed. Attendance of a Person at a meeting, including attendance by proxy, shall constitute a waiver of notice of such meeting except when the Person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business the meeting is not lawfully called or convened. Except as required by statute or the Certificate of Incorporation, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or any committee need be specified in any written waiver of notice.

### **ARTICLE VIII General Provisions**

#### **Section 8.1. Fiscal Year.**

Except as otherwise determined from time to time by the Board, the fiscal year of the Corporation ends on the close of business on December 31 of each year.

**Section 8.2. Checks, Drafts and Other Instruments.**

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, or by such agent or agents of the Corporation and in such manner as the Board may from time to time determine.

**Section 8.3. Corporate Seal.**

The corporate seal, if any, shall be in such form as shall be approved by the Board or an officer of the Corporation.

**Section 8.4. Voting Securities.**

Except as the Board may otherwise designate, the Chairman of the Board, Chief Executive Officer, Chief Financial Officer or Treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for the Corporation (with or without power of substitution) at, any meeting of stockholders or shareholders of any other corporation or organization, the securities of which may be held by this Corporation.

**Section 8.5. Evidence of Authority.**

A certificate by the Secretary, or Assistant Secretary, if any, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall, as to all Persons who rely on the certificate in good faith, be conclusive evidence of such action.

**Section 8.6. Certificate of Incorporation.**

All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended, altered or restated and in effect from time to time.

**Section 8.7. Transactions with Interested Parties.**

No contract or transaction between the Corporation and one or more of the directors or officers, or between the Corporation and any other corporation, limited liability company, partnership, association or other organization in which one or more of the directors or officers are directors, managers or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or a committee of the Board which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

(a) The material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

(b) The material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee of the Board or the stockholders.

Both (i) directors who are directors of both the Corporation and a party with whom the Corporation may be engaged in a transaction and (ii) interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee at which the contract or transaction is authorized.

#### **Section 8.8. Severability.**

Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

#### **Section 8.9. Pronouns.**

All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

#### **Section 8.10. Contracts.**

In addition to the powers otherwise granted to officers pursuant to Article V hereof, the Board may authorize any officer or officers, or any agent or agents, of the Corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

#### **Section 8.11. Loans.**

The Corporation may, to the extent permitted by applicable law, lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer or employee who is a director of the Corporation or its subsidiaries, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may include, without limitation, a pledge of shares of stock of the Corporation. Nothing in this Section 8.11 shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

#### **Section 8.12. Books and Records.**

Subject to applicable law, the Board shall have power from time to time to determine to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by the laws of the State of Delaware. The Corporation shall keep its books and records within the United States. Any books or records of the Corporation may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

**Section 8.13. Section Headings.**

Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

**Section 8.14. Inconsistent Provisions.**

In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the General Corporation Law of the State of Delaware (“DGCL”) or any other applicable law, the provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

**ARTICLE IX Amendments****Section 9.1. By the Board.**

These Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, by the Board.

**Section 9.2. By the Stockholders.**

These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the affirmative vote of the majority of the stockholders present at any annual meeting of the stockholders at which a quorum is present.

**Section 9.3. SEC Approval.**

Before any amendment to, alteration or repeal of any provision of the Bylaws of the Corporation under this Article IX shall be effective, those changes shall be submitted to the Board and if the same must be filed with or filed with and approved by the SEC, then the proposed changes to the Bylaws of the Corporation shall not become effective until filed with or filed with and approved by the SEC, as the case may be.

**ARTICLE X Rulemaking****Section 10.1. Rulemaking.**

The Board may, by the affirmative vote of a majority of a quorum of the Board, alter, adopt, amend or repeal as it may deem necessary or proper any of the Corporation’s Rules, which shall not become effective until filed with or filed with and approved by the SEC, as the case may be.

EXHIBIT 5E{ Additions are underlined; deletions are [bracketed]}**Rules of Bats BYX Exchange, Inc.**

\* \* \* \* \*

## Rule 1.1. Adoption of Exchange Rules

The following Exchange Rules are adopted pursuant to Article III, Section 3.3[1] and Article X, Section 10.1 of the By-Laws of the Exchange.

\* \* \* \* \*

## Rule 2.10. No Affiliation between Exchange and any Member

Without the prior approval of the Commission, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a Member. In addition, without the prior approval of the Commission, a Member shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. The term affiliate shall have the meaning specified in Rule 12b-2 under the Act. Nothing in this Rule 2.10 shall prohibit a Member or its affiliate from acquiring or holding an equity interest in CBOE Holdings, Inc. that is permitted by the ownership and voting limitations contained in the Certificate of Incorporation and Bylaws of CBOE Holdings, Inc. In addition, nothing in this Rule 2.10 shall prohibit a Member from being or becoming an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange, solely by reason of such Member or any officer, director, manager, managing member, partner or affiliate of such Member being or becoming either (a) a Director [(as such term is defined in the Bylaws of the Exchange)] pursuant to the Bylaws of the Exchange, or (b) a Director serving on the Board of Directors of CBOE Holdings, Inc.

\* \* \* \* \*

## Rule 8.6. Hearings

## (a) Selection of Hearing Panel

(1) Definitions. For purposes of this paragraph (a), the terms set forth below shall have the following meanings:

(A) The term "Industry member" means a member of any hearing panel who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed



ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the member or 20 percent or more of the gross revenues received by the member's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the member or 20 percent or more of the gross revenues received by the member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.

(B) The term "Member Representative member" means a member of any hearing panel who is an officer, director, employee or agent of an Exchange Member.

(2) Subject to Rule 8.7. concerning summary proceedings, a hearing on the charges shall be held before a panel of three (3) hearing officers (the "Hearing Panel") appointed by the Chief Executive Officer. Each Hearing Panel shall be comprised as follows: (i) a professional hearing officer, who shall serve as Chairman of the Hearing Panel, (ii) a hearing officer who is an Industry member, as such term is defined in [the By-Laws] Rule 8.6, and (iii) a hearing officer who is a Member Representative member, as such term is defined in [the By-Laws] Rule 8.6 (each a "Hearing Officer"). Prospective Hearing Officers shall be required to disclose to the Exchange their employment history for the past 10 years, any past or current material business or other financial relationships with the Exchange or any members of the Exchange, and any other information deemed relevant by the Exchange. Such disclosures relating to the particular Hearing Officers selected by the Chief Executive Officer shall be provided to the Respondent upon request after the selection of the Hearing Panel. In selecting Hearing Officers for a particular matter, the Chief Executive Officer should give reasonable consideration to the prospective Hearing Officers' professional competence and reputation, experience in the securities industry, familiarity with the subject matter involved, the absence of bias and any actual or perceived conflict of interest, and any other relevant factors.

\* \* \* \* \*

## Rule 15.2. Regulatory Revenues

Any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers (except in the event of liquidation of the Exchange, which case Bats Global Markets Holdings, Inc. will be entitled to the distribution of the remaining assets of the Exchange).