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

File No.* SR - 2020 - * 037
Amendment No. (req. for Amendments *) 1

Filing by Cboe EDGX 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) *
☐	☑	☐	☑	☐	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

- ◎ 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 *).

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 * Rebecca Last Name * Tenuta

Title * Counsel

E-mail * rtenuta@cboe.com

Telephone * (312) 786-7068 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.

Date 09/24/2020

By Laura G. Dickman

(Name *)

(Title *)

VP, Associate General Counsel

ldickman@cboe.com

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.

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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) Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to amend the Fifth Amended and Restated Bylaws (the "Parent Bylaws") of its parent corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent"). The Exchange initially submitted this rule filing SR-CboeEDGX-2020-037 to the Securities and Exchange Commission ("Commission") on July 23, 2020 (the "Initial Rule Filing"). This Amendment No. 1 supersedes the Initial Rule Filing and replaces it in its entirety. Amendment No. 1 amends the Initial Rule Filing to provide additional detail and clarity to the Form 19b-4 regarding certain provisions within the Parent Bylaws. The text of the proposed amendments to the Parent Bylaws is included in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Cboe Global Markets, Inc. Board of Directors (the "Parent Board") and the Cboe Exchange, Inc. Board of Directors (the "Exchange Board") and approved the proposed rule change on May 11, 2020 and July 7, 2020, respectively. The proposed amendments to the Parent Bylaws do not require stockholder approval.[1]

As provided in the Parent Bylaws, before any amendment to the Parent Bylaws may be effective, the amendment must be reviewed by the Board of Directors of each self-regulatory subsidiary of Parent (including the Exchange Board), and if the amendment must, pursuant to Section 19 of the Act and the rules and regulations promulgated thereunder, be

[1] See Section 9.1 of the Exchange Bylaws, which states that the Exchange Bylaws may be amended by the Exchange Board at any time; and Section 10.1 of the Parent Bylaws, which states the Parent Bylaws may be amended by the Parent Board at any time.

filed with, or filed with and approved by, the Commission, then the amendment will not be effective until filed with, or filed with and approved by, the Commission, as the case may be.[2] The Exchange Board as well as the Boards of Directors of Cboe Exchange, Inc. ("Cboe Options"), Cboe C2 Exchange, Inc. ("C2"), Cboe BZX Exchange, Inc. ("BZX"), Cboe BYX Exchange, Inc. ("BYX"), and Cboe EDGA Exchange, Inc. ("EDGA") have reviewed the proposed amendment to the Parent Bylaws.

No other action is necessary for this rule filing.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Rebecca Tenuta, (312) 786-7068, Cboe EDGX Exchange, Inc., 400 South LaSalle, Chicago, Illinois 60605.

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

(a) Purpose

The proposed rule change amends the Parent Bylaws to improve the governance processes of Cboe, which is organized under the laws of the State of Delaware, and to make certain provisions more consistent with the Delaware General Corporation Law ("DGCL"). The proposed rule change also makes clarifying and cleanup changes to the Parent Bylaws.

Proposed Changes to Article 2 - Stockholders

The majority of the proposed changes are being made to amend Section 2.11 (Nomination of Directors) and Section 2.12 (Notice of Business at Annual Meetings) and are generally designed to provide the Board with the most information and advance notice possible in connection with business and nominations at annual and special meetings.

[2] See Section 10.2 of the Parent Bylaws.

Additionally, the Exchange notes the proposed changes reflect the most up-to-date disclosure requirement practices. The proposed changes also combine the existing separate provisions for director nominations and stockholder proposals into one provision. Particularly, the proposed rule change combines current Sections 2.11 and 2.12 into one provision: proposed Section 2.11 titled "Notice of Business and Nomination of Directors at Meetings of Stockholders."[3] Specifically, the proposed rule change delineates proposed Section 2.11 into paragraph (a) governing notice requirements for annual meetings, paragraph (b) governing notice requirements for special meetings[4], and paragraph (c), which provides for other general procedures and practices in connection with notices. The proposed delineation does not alter the process or definition of either type of meeting, but instead provides for significantly more detailed written notice requirements as well as updates to the manner and timeliness of notices.

First, the proposed change to Section 2.11(a)(i) relocates the provisions regarding "properly brought" business from current Section 2.12, and streamlines such provisions to clearly state that the only business that will be conducted at an annual meeting of the stockholders is business that has properly been brought before the meeting and specifies to be "properly brought" such business must be included in the Corporation's notice of the meeting and brought pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, (the "Exchange Act") (or any successor provision of law) and included in the Corporation's properly brought business. It also proposes to specify the a precise time that the notices must be made by (i.e., delivered to or mailed and received by the Secretary of the Corporation),

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3 The proposed rule change also updates the subsequent section numbering (current 2.13 through 2.16) to reflect this change (proposed 2.12 through 2.15).

4 See Section 2.3 of the Parent Bylaws for a description of Special Meetings.

which is not later than 5:00 p.m. Eastern Time on the 90th day nor earlier than the 120th day (which are the time frames currently in place) prior to such annual meeting.

Next, the proposed rule change adds greater detail regarding the requirements for proper written notice. Particularly, for notice for stockholder proposals for business other than nominations, (proposed Section 2.11(a)(iii)(A)), the proposed rule change provides that such notice must essentially set forth the same information that would be disclosed in a proxy statement, including:

- a reasonably brief description of the business desired to be brought before the meeting; the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the Certificate of Incorporation or the Bylaws of the Corporation, the language of the proposed amendment);
- the reasons for conducting such business at the meeting; a complete and accurate description of any material interest in such business of such stockholder and any Stockholder Associated Person, individually or in the aggregate, including any anticipated benefit to the stockholder and any Stockholder Associated Person therefrom; and
- all other information relating to such proposed business that would be required to be disclosed in a proxy statement or other filing required to be made by the stockholder or any Stockholder Associated Person in connection with the solicitation of proxies in support of such proposed business pursuant to Regulation 14A under the Exchange Act.

Regarding proposed proper written notice for director nominations (proposed Section 2.11(a)(iii)(B)), the notice must include:

- the name, age, business address and residence address of such nominee, ("Proposed Nominee") (which, the Exchange notes is currently the case);
- the principal occupation or employment of such nominee (which, the Exchange notes is currently the case)
- a completed written questionnaire with respect to the background and qualifications of such Proposed Nominee, which must be completed in a form required by the Corporation and provided to such stockholder within ten days of receiving such request;
- the Proposed Nominee's executed written consent to being named in the proxy statement for the meeting as a director nominee;
- the Proposed Nominee's completed written representation and agreement, which must be completed in a form required by the Corporation and provided to such stockholder within ten days of receiving such request. Importantly, the Proposed Nominee must represent and agree (1) to a "Voting Commitment" that the Proposed Nominee is not and will not become party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Proposed Nominee, if elected as a director, will act or vote on any issue or question (that has not been disclosed to the Corporation). or any Voting Commitment that could limit or interfere with the Proposed Nominee's ability to comply with fiduciary duties under applicable law, (2) that the Proposed Nominee is not and will not become a party to any agreement, arrangement, or

understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, (3) would comply with all applicable rules of the exchange and Corporation and fiduciary duties under state law, (4) would comply with certain Articles of Incorporation with respect to activities related to any of the Exchanges, (5) intends to serve a full term if elected, and (6) will provide true and correct information in communications to the Corporation and its stockholders and will not omit material information or provide misleading information;

- a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships; and
- any other information that would be required to be disclosed statement or other filing required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act (which, the Exchange notes is currently the case).

As to the stockholder providing notice, any Stockholder Associated Person and any Proposed Nominee, (proposed Section 2.11(a)(iii)(C)) the proposed proper written notice must provide:

- name and address of such person (as they appear on the Corporation's books, if applicable) (which, the Exchange notes is currently the case);
- class (which is currently the case) or series and number of shares of capital stock of the Corporation ("Shares") which are, directly or indirectly, owned beneficially

and/or of record by such person, the dates such shares were acquired and the investment intent of such acquisition;

- the name of each nominee holder for, and any pledge by such person or any number of, securities of the Corporation owned beneficially, but not of record;
- short interest, including a definition of what constitutes short interest, wherein a person shall be deemed to have a short interest in a security if such person, directly or indirectly, through any contract, arrangement, understanding, or relationship or otherwise has an opportunity to profit or share in profit derived from decreased value of the subject security;
- a description of any agreement, arrangement or understanding, whether written or oral, (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares (which, the Exchange notes, is currently the case) or similar rights with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of capital stock of the Corporation or with a value derived in whole or in part from the value of any class or series of capital stock of the Corporation (a "Derivative Instrument")), in order to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease voting power with respect to Shares;
- any rights to dividends on the Shares owned beneficially by such person;

- any proportionate interest[5] in Shares or Derivative Instruments by a general or limited partnership or similar entity in which such person (1) is a general partner or beneficially owns an interest in a general partner, or (2) is the manager, managing member, or beneficially owns an interest in such management, of a limited liability company or similar entity;
- any substantial interest (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, in the Corporation or any of its affiliates;
- a complete and accurate description of all agreements, arrangements or understandings, written or oral, and formal or informal, between or among the stockholder providing notice and any of the Stockholder Associated Persons (collectively, the "Stockholders"), or the Stockholders with any Proposed Nominee and any other person in connection with (1) any proxy, contract, arrangement, understanding or relationship where either of the Stockholders have the right to vote any Shares, (2) that such individuals may have reached with any stockholder of the Corporation regarding how such stockholder will vote its shares, take other action in support of any Proposed Nominee, or other action by either of the Stockholders, and (3) any other agreements that would be required to be disclosed by either of the Stockholders or any other person or entity pursuant to a Schedule 13D filed pursuant to the Exchange Act

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5 Interest referred to throughout the proposed stockholder proper written notice may be direct or indirect.

- a complete and accurate description of any performance-related fees to which such person may be entitled as a result of any increase or decrease in the value of Shares or any Derivative Instruments;
- any investment strategy or objective of those who are not an individual and a copy of the prospectus (and other like documents);
- a complete and accurate description of any pending or threatened legal proceeding in which such person is a party or participant involving the Corporation;
- if any agreement, arrangement or understanding has been made to increase or decrease the voting power of such person with respect to any Shares; and
- any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for such business or the election of any Proposed Nominee, or is otherwise required, pursuant to Section 14 of the Exchange Act.

Further, regarding proposed proper written notice, proposed Section 2.11(a)(iii)(D) simplifies the language in connection with the current requirement that the Stockholders must represent if they intend to deliver a proxy statement and/or form of proxy to holders to approve or adopt the proposed business, elect the Proposed Nominee, and/or otherwise solicit proxies or votes from stockholders in support of such proposed business or Proposed Nominee, making it easier to understand.

Proposed Section 2.11(a)(iii)(E) provides for the current requirement that the stockholder providing notice must represent that it is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person, and adds that "in person" may be virtually, in the case of a meeting held solely by means of remote

communication) or by proxy at the meeting to bring such proposed business and/or nominate one or more Proposed Nominee.

Proposed Section 2.11(a)(iii)(F) requires that proper written notice include an acknowledgment that the Corporation does not have to present the business or nomination being brought at the meeting by the stockholder proposing such, if such stockholder does not appear. The proposed rule change also adds that, in addition to the proper written notice information, the Corporation may require any Proposed Nominee to furnish certain other information as the Corporation may reasonably require to determine the eligibility or independence of a Proposed Nominee.

Proposed Section 2.11(b), which, as stated, delineates the provisions governing special meetings of stockholders, amends the procedures governing advance notice of director nominations at a special meeting called by the Board for the election of directors. Currently, notices of a special meeting must be made not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that if the annual meeting is not held within thirty (30) days before or more than seventy (70) days after such anniversary date, then such nomination shall have been delivered to or mailed and received by the Secretary not later than the close of business on the 10th day following the date on which public announcement of the annual meeting date was made. The proposed rule change updates this notice procedure to mirror the same procedural language in proposed Section 2.11(a)(ii) (maintaining the same 90- to 120-day notice requirement), but updates the timing requirements to remove the language regarding the 30-day and 70-day time frames around the anniversary date and provides that, if public announcement of the special meeting and

the nominees proposed by the Board of Directors to be elected at such meeting is first made less than ninety (90) days prior to the date of the special meeting, notice must be made the tenth (10th) day following the day on which such public announcement is first made. The Exchange believes this proposed timing provision simplifies the timing requirement, making it easier to understand and follow, and also provides ample time to provide notice in advance to stockholders of any scheduled special meeting. Proposed Section 2.11(b) also provides that proper written notice of a special meeting must comply with the requirements, as proposed, laid out in Section 2.11(a)(iii).

Proposed Section 2.11(c) provides, generally, for other procedures and practices in connection with notices, as well as certain defined terms. Proposed Section 2.11(c)(i) provides that a stockholder providing notice must update any notice, if necessary, so that the information provided or required to be provided in a notice is be true and correct (A) as of the record date for determining the stockholders entitled to receive notice of the meeting and (B) as of the date that is ten business days prior to the meeting (or any postponement, adjournment or recess thereof). If an update is required to be made as of the record date for determining the stockholders entitled to receive notice of the meeting then the notice of update must be made not later than five business days after the record date for determining the stockholders entitled to receive notice of such meeting. If an update is required to be made as of the date that is ten business days prior to the meeting (or any postponement, adjournment or recess thereof), then the notice of update must be made no later than seven business days prior to the date for the meeting, if practicable, or, if not practicable, on the first practicable date prior to the meeting or any adjournment, recess or postponement thereof Proposed Section 2.11(c)(ii) provides that if any information submitted pursuant to

Section 2.11 is inaccurate in any respect, such information may be deemed not to have been provided in accordance with the Parent Bylaws. As proposed, the stockholder providing the notice has an obligation to notify the Secretary in writing at the principal executive offices of the Corporation of any inaccuracy or change in any such information within two business days of becoming aware of such inaccuracy or change. Additionally, within seven days upon delivery of a written request by the Secretary, the Board of Directors (or a duly authorized committee thereof), any such stockholder is obliged to provide: (A) written verification, reasonably satisfactory to the Board of Directors, any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to Section 2.11, and (B) a written update of any information pursuant to Section 2.11 as of an earlier date. If the stockholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with Section 2.11. Proposed Section 2.11(c)(iii) provides that a stockholder providing notice must also comply with all applicable requirements of state law and all applicable requirements of the Exchange Act and the rules and regulations thereunder, however, references to the Exchange Act and its rules and regulations will not limit the requirements applicable to stockholder proposals or director nominations pursuant to Section 2.11. Proposed Section 2.11(c)(iv) updates current language governing failure for the proposing stockholder to appear by adding that virtual appearances are acceptable when such meeting is being held remotely, as well as the flexibility for the Corporation to waive the appearance requirement. The rule change updates this provision and adds this flexibility in light of the ongoing Covid-19 pandemic and the consequential remote working status for many companies,

including Cboe. Proposed Section 2.11(c)(v) adds the definition of key terms, along with current definitions, for clarity. Specifically, the proposed rule change defines an "affiliate" and "associate" as having the respective meanings set forth in Rule 12b-2 under the Exchange Act and "Stockholder Associated Person" to mean: any person who is a member of a "group" (used in Rule 13d-5 under the Exchange Act) with or otherwise acting in concert with such stockholder providing notice; any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depositary); any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person and beneficially owns, directly or indirectly, shares of stock of the Corporation; any person that directly, or indirectly through one or more intermediaries, controls such stockholder or any Stockholder Associated Person; and any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A, or any successor instructions) with such stockholder or other Stockholder Associated Person in respect of any proposals or nominations, as applicable.

The Exchange notes that many of the proposed rule changes to proposed Section 2.11 are consistent with the bylaws of Cboe's peer financial market/services corporations,

Nasdaq, Inc ("Nasdaq"),[6] Intercontinental Exchange ("ICE"),[7] and/or the CME Group, Inc. ("CME"),[8] including:

- the proposed disclosures required under Regulation 14A for proposed business other than director nominations; director questionnaires;
- consent to be named in the proxy statement as a director nominee;
- a Voting Commitment;
- disclosure of compensation arrangements in connection with service as a director;
- agreement to comply with applicable regulations, organizational documents and policies;
- representation of intent to serve a full term; commitment to provide true and correct facts and to not omit material facts;
- nominee disclosures for contested elections under Section 14;
- required disclosure by a proposing stockholder's 13D group members and related parties;
- disclosure of rights to dividends, short interest, interests held through controlled partnerships or LLCs, and in the Company other than Company common stock;
- disclosure of agreements/arrangements in connection with conferring proxy authority, with any other stockholder regarding voting or supporting the

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6 See By-laws of Nasdaq, Inc., available at https://listingcenter.nasdaq.com/assets/RuleBook/NASDAQ/rules/Nasdaq_Inc_Corporate_Organization_Nasdaq_Inc.pdf.

7 See Eighth Amended and Restated Bylaws of Intercontinental Exchange, Inc., available at https://s2.q4cdn.com/154085107/files/doc_downloads/intercontinental_exchange/bylaws-eighth-amended.pdf.

8 See Fifteenth Amended and Restated Bylaws of CME Group Inc., available at https://www.cmegroup.com/rulebook/files/CME-Bylaws.pdf.

proposal/nominee, with increasing or decreasing voting power, and agreements required to be disclosed on Schedule 13D;

- disclosure of performance-related fees related to the Company's performance;
- disclosure of investment strategy and inclusion of prospectus/offering memorandum;
- disclosure of pending or threatened litigation;
- Special meeting provisions;
- Obligation to update and correct disclosures; and
- Express obligation to appear to present the proposal/nominee.

Additionally, the proposed rule change moves language currently in Section 2.10 providing that the number of nominees for director may not exceed the number of directors to be elected at any meeting to proposed Section 2.11(a) (annual meetings) and Section 2.11(b) (special meetings), therefore adding clarity to the updated Section 2.11 format that this provision continues to apply for both annual and special meetings. The proposed rule change to Section 2.10 also simplifies current language that provides an election may proceed if proper notice is made and received and adds language that nominations may be withdrawn on or prior to the tenth day before the date the Corporation first mails its notice of meeting for such election.

The proposed rule change also amends Section 2.1 (Place of Meetings) by removing language that requires stockholder meetings to be held at the principal place of business of the Company if no location is designated. The Exchange believes that it is appropriate for the Board to retain both control and flexibility over the location and timing of stockholder meetings. The proposed rule change amends Section 2.2 (Annual Meeting) and Section 2.3 (Special Meeting) to provide that the Board may postpone, reschedule or cancel any

previously-scheduled annual meeting or special meeting, respectively. The proposed rule change also updates Section 2.7 (Adjournments) to provide that only the presiding person of a stockholder meeting can adjourn the meeting in the absence of a quorum. The proposed changes are intended to provide the Board the flexibility to postpone, recess, reschedule or cancel a stockholder meeting. The Exchange also notes that the proposed rule changes to Sections 2.2, 2.3, and 2.7 are consistent with the bylaws of Cboe's peer corporation, Nasdaq.[9]

The proposed rule change also makes updates to reflect the current best corporate governance practices to certain Sections under Article 2. In particular, it updates the language in Section 2.5 (Voting List) regarding who is required to prepare the voting list. Section 2.5 currently provides that officer who has charge of the stock ledger prepares the voting list and the proposed rule change updates this to provide that the Corporation prepares the voting list. The proposed rule change is consistent with the DGCL and reflects current best practice. The proposed rule change also amends current Section 2.13 (Organization) (proposed Section 2.12), which currently states that that the Board of Directors may appoint any stockholder to act as chairman of any meeting in the absence of the Chairman of the Board, to instead provide that that the Board of Directors may appoint any director of the Corporation to act as chairman of any meeting in the absence of the Chairman of the Board. Also, current Section 2.16 (Conduct of Meetings) (proposed Section 2.15) makes certain changes to expand the procedural authority of the presiding officer of any stockholder meeting, including the right to recess and/or adjourn meetings for any or no reason, and the determination of when the polls will open and close for any given matter to

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[9] See supra note 6.

be voted on at the meeting, the removal of any stockholder or individual who refuses to comply with meeting procedures, rules, or guidelines, the restrictions on the use of audio and/or video recording devices and cell phones.[10] This is consistent with best practice and ensures that the presiding officer has the flexibility to take measures, as needed, that ensure meetings are conducted in the most appropriate manner.

Proposed Changes to Article 3 - Directors

The proposed rule change amends Section 3.5 (Vacancies) to provide that that vacancies on the Board may be filled exclusively by a majority of the directors. The Exchange notes that stockholders have a common law right under Delaware law to fill director vacancies, unless the Company's Charter or Bylaws explicitly give the Board exclusive authority, therefore, the proposed change is designed to make this right exclusive to the Board. The proposed rule change is consistent with the bylaws of Cboe's peer corporations, Nasdaq and ICE.[11] The proposed rule change to Section 3.10 (Special Meetings) would allow special meetings of the Board to be called with less than 24 hours' notice. Currently, Section 3.10 requires at least 24 hours' notice to directors of special Board

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10 Amendment No. 1 adds this footnote 10 to provide additional detail in connection with potential restrictions on the use of cell phones during stockholder meetings. The Exchange first notes that at its most recent annual meeting of stockholders it provided that the use of cameras, sound recording equipment, communication devices or any similar equipment (including taking pictures or recording video using a cell phone or computer) was prohibited without the prior express written permission of the Company. The Exchange also notes that the authority to restrict the use of devices is implicit in the authority granted by current Section 2.16 (to be renumbered 2.15) of the Bylaws, which currently provides the person presiding over any meeting of stockholders authority to "prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting." The Exchange also understands that the bylaws of various large Delaware-incorporated public companies contain the same or equivalent language regarding the ability to restrict use of audio, video and cellphones at stockholder meetings.

11 See supra notes 6 and 7.

meetings. However, there may be circumstances that necessitate an emergency meeting of the Board with less than 24 hours' notice (e.g., in relation to a pending transaction), and therefore, the proposed changes would allow notice on a shorter time frame if necessary and appropriate under the circumstances. The proposed changes to Section 3.13 (Action by Consent) updates language regarding routine filing of consents following an action by the Board. Specifically, the proposed change updates the consents to reflect the same electronic form as minutes are maintained, which is consistent with recent amendments to the DGCL, reflects current best practice.

The proposed change also adds Section 3.15 (Emergency Bylaws). Specifically, the proposed Section 3.15 provides that, notwithstanding anything to the contrary in the Certificate of Incorporation or these Bylaws, in the event there is any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition (each, an "emergency"), and a quorum of the Board of Directors cannot readily be convened for action, this Section 3.15 shall apply., including:

- Any director or Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, Treasurer or Secretary of the Corporation may call a meeting of the Board of Directors by any feasible means and with such advance notice as circumstances permit in the judgment of the person calling the meeting. Neither the business to be transacted nor the purpose of any such meeting need be specified in the notice thereof.
- One-third (1/3) of the directors shall constitute a quorum, which may in all cases act by majority vote.

- Directors may take action to appoint one or more of the director or directors to membership on any standing or temporary committees of the Board of Directors as they deem advisable. Directors may also take action to designate one or more of the officers of the Corporation to serve as directors of the Corporation while this Section 3.15 applies. To the extent that it considers it practical to do so, the Board of Directors shall manage the business of the Corporation during an emergency in a manner that is consistent with the Certificate of Incorporation and Bylaws. It is recognized, however, that in an emergency it may not always be practical to act in this manner and this Section 3.15 is intended to and does hereby empower the Board of Directors with the maximum authority possible under the DGCL, and all other applicable law, to conduct the interim management of the affairs of the Corporation in an emergency in what it considers to be in the best interests of the Corporation.
- No director, officer or employee acting in good faith in accordance with this Section 3.15 or otherwise pursuant to Section 110 of the DGCL shall be liable except for willful misconduct.
- This Section 3.15 shall continue to apply until such time following the emergency when it is feasible for at least a majority of the directors of the Corporation immediately prior to the emergency to resume management of the business of the Corporation.

- The Board of Directors may modify, amend or add to the provisions of this Section 3.15 in order to make any provision that may be practical or necessary given the circumstances of the emergency. [12]
- The provisions of this Section 3.15 shall be subject to repeal or change by further action of the Board of Directors or by action of the stockholders, but no such repeal or change shall modify the provisions of paragraph (e) of this Section 3.15 with regard to action taken prior to the time of such repeal or change.

The Exchange notes that these proposed changes are largely consistent with the DGCL and are designed to allow the Board and the Corporation to continue to function in the case of an emergency, such as a pandemic or an act of terrorism. The Exchange believes the ongoing COVID-19 pandemic, as well as similar potential events, demonstrate the need for Emergency Bylaws and notes that a number of companies are adopting (or at least considering) emergency bylaws to relax Board requirements when directors may be unavailable due to emergency conditions, such as the pandemic. The Exchange notes that proposed Section 3.15 is meant to provide the Corporation with short-term flexibility to continue operations during an emergency situation, and that proposed paragraph (f) makes

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[12] Amendment No. 1 adds this footnote 12 to clarify that the provisions of proposed Section 3.15 may apply "notwithstanding anything to the contrary in the Certificate of Incorporation or these Bylaws", which includes Section 10.2 of the Parent Bylaws. Section 10.2 provides that before any amendment, alteration or repeal of any provision of these Bylaws shall be effective, such amendment, alteration or repeal shall be submitted to the board of directors of each Regulated Securities Exchange Subsidiary, and if such amendment, alteration or repeal must be filed with or filed with and approved by the Securities and Exchange Commission, then such amendment, alteration or repeal shall not become effective until filed with or filed with and approved by the Securities and Exchange Commission, as the case may be. As such, any Bylaw amendments made to the Parent Bylaws pursuant to proposed Section 3.15(g) must be filed pursuant to Section 10.2 of the Bylaws and Section 19 of the Exchange Act.

clear that, as soon as it is practicable for a majority of the elected directors to reconvene, they would be expected to do so.[13]

Proposed Changes to Article 4 – Committees

The proposed rule change to Section 4.1 (Designation of Committees) adds language that provides the Board with additional rights in their ability to designate committees and committee alternates and specifies that such committees may exercise all powers and authority of the Board in the management of the business. Specifically, the proposed language provides that the Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation, if any, to be affixed to all papers which may require it. The proposed language is consistent with the DGCL and reflects current best practice. The Exchange notes that, pursuant to DGCL Section 141(c)(2), no such committee shall have the power or

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13 Amendment No. 1 provides additional clarity regarding the fact that proposed Section 3.15 is designed to provide the Corporation with short-term flexibility within the temporary scope of an emergency.

authority to approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required to be submitted to stockholders for approval, or adopt, amend or repeal any Bylaw of the Corporation. The Exchange further notes that any such committee may act only insofar as the resolution of the Board of Directors permits, which is the current manner in which the general powers and authority of the committees under Article 4 are checked and balanced.[14] The proposed rule change is designed to provide additional detail regarding the specific authority of the Board to designate members of the committees and their general powers and authority to manage the Corporation, as well as the power invested in the voting members regarding the appointment of a member of the Board to act in a circumstance of disqualification.

The proposed rule changes to Section 4.2 (The Executive Committee) removes language that lists out specific actions or matters that are not to be handled by the Executive Committee under Delaware law, including 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. The proposed change, instead, replaces this list with reference to matters under the DGCL to be submitted to stockholders for approval. The Exchange believes that the proposed change, while being consistent with the DGCL, removes ambiguous and potentially unnecessarily limiting language that lists the circumstances that could not be handled by the Executive Committee that required stockholder approval and replaces it with broader reference to the DGCL.

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[14] Amendment No. 1 adds additional detail regarding the limitation of the power and authority vested in a committee in the management of the business and affairs of the Corporation.

The proposed change to Section 4.5 (The Nominating and Governance Committee) reduces the minimum size requirement of the Nominating and Governance Committee ("N&G Committee") from a minimum of five members to three members. This proposed rule change is intended to provide the Board additional flexibility when populating the N&G Committee and is consistent with the minimum number of members required on other Board committees.[15]

Proposed Changes to Article 8 – Notices

The proposed rule change in Section 8.1 (Notices) replaces language in paragraph (e) that requires that stockholders opt-in to email notice with language that instead allows stockholders to opt-out of email notice or not receive email notice if such notice is prohibited by the DGCL. The proposed rule change also updates Section 8.2 (Electronic Notice) to reflect this change. The proposed rule change also removes the provision in Section 8.1 paragraph (c) which provides that notice may be given by messenger or overnight courier service if 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. The proposed rule change then adds to paragraph (c) that notice is deemed to have been given via this method at the earlier of when the notice is received or left at the stockholder's or director's address. The proposed change is consistent with the DGCL.

Proposed Rule Changes to Article 11 (Forum for Adjudication of Disputes)

The proposed rule changes to Article 11 add clarifying provisions and additional detail regarding the exclusive forum. The proposed changes are designed to update the exclusive forum bylaw to reflect current best practices. Specifically, the proposed rule

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15 See e.g., Sections 4.3 and 4.4 of the Parent Bylaws.

change adds that, among the existing actions listed, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for any action asserting an "internal corporate claim" (defined in the DGCL). The proposed rule change also provides that, in the event that the Delaware Court of Chancery lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware. The proposed rule change provides that any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation is deemed to have notice of and consented to the provisions of Article 1, including exclusive personal jurisdiction in the Delaware Court or Chancery and having service of process made, even if an action (within the scope of Article 11) is filed in a court other than a court located within the State of Delaware. Additionally, the proposed rule change makes clear that the existence of any prior consent to, or selection of, an alternative forum by the Corporation shall not act as a waiver of the Corporation's ongoing consent right in Article 11 and that failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation is entitled to equitable relief, including injunctive relief and specific performance, to enforce Article 11. It also clarifies that a claim may be made against the Corporation or any current or former director, officer, other employee, agent or stockholder of the Corporation, and may arise pursuant to the Certificate of Incorporation or these Bylaws, in addition to the DCGL. The proposed rule change is in line with current best practice, and, additionally, the bylaws of Cboe's peer, CME,[16] currently provide for similar language related to foreign actions and specific performance.

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16 See supra note 8.

Finally, the proposed rule change makes non-substantive edits throughout the above listed Articles of the Parent Bylaws, including updating paragraph lettering and numbering, simplifying language in order to better align it with plain English, update the terms Board of Directors and Exchange Act to be uniform throughout the bylaws (e.g., as opposed to just "Board", or "Securities and Exchange Act", and the other versions of the Act's name).

(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.[17] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[18] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed changes overall are designed to improve the governance process of Cboe, as well as update the Parent Bylaws, where applicable, to reflect and track the DCGL and current best practices. Moreover, the Exchange does not believe the proposed rule changes are controversial and indeed are common among public companies, including its peers, Nasdaq, ICE and CME.

Particularly, the proposed rule changes to proposed Section 2.11 in connection with providing notice regarding business and director nominations at annual and special meetings, will enable the Exchange to continue to be organized and have the capacity to

17 15 U.S.C. 78f(b).

18 15 U.S.C. 78f(b)(1).

be able to carry out the purposes of the Act, because such proposed changes are generally designed to strengthen these provisions by requiring notices (including updates to notices) to disclose to the Board more detailed information than currently required. In this manner, the proposed detailed disclosure requirements would provide the Board with substantially more information by which they may make complete and informed decisions and most appropriately address business before the Board. The Exchange also believes that the proposed rule changes in connection with timely notice, including the 10 days' advanced notice of director nominations (via the required director questionnaire), procedures governing advance notice of director nominations at a special meeting, an obligation to update and correct the notice up to 7 days prior to a meeting, and updated timing regarding the 10-day notice of a special meeting less than 90 days from the scheduled meeting, will allow the Board the appropriate time needed to consider and prepare to address all business, nominations, and other issues to be presented before it. As such, the proposed rule changes will ensure that the Board is able to continue to oversee the orderly operation of the corporation, including the Exchange, in a manner the it deems most appropriate. Additionally, and as listed in detail above, the vast majority of the proposed notice requirements are consistent with the bylaws of Cboe's peer corporations, CME, ICE, and/or Nasdaq, as well as in line with current best practices. The proposed changes are also all consistent with the DCGL.

Moreover, the proposed changes are intended to provide the Board with additional flexibility and more appropriate governance procedures in addressing various circumstances, which will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act. In particular, the proposed rule

changes would allow the Board to retain both control and flexibility over the location and timing of stockholder meetings, would allow the Board to postpone, recess, reschedule or cancel a stockholder meeting, would allow only the presiding person of a stockholder meeting to adjourn and reset a stockholder meeting date in the absence of quorum, would allow for shorter notice in order for the Board to call a special meeting, would allow the Board and the Corporation to continue to function (including remotely) in the case of an emergency, such as the ongoing COVID-19 pandemic, and would provide the Board with increased flexibility in populating the Nomination and Governance Committee. Each of these proposed changes is designed to assist the Exchange in most effectively and efficiently managing evolving corporate matters as they arise, many of which are highly complex and may be time sensitive. Additionally, as indicated above, a majority of the proposed changes align certain Sections in the Parent Bylaws with current best practices and with the DCGL (as well as a change in accordance with Delaware common law) and are also consistent with bylaw provisions of Cboe's peer corporations. Accordingly, the Exchange believes the proposed changes are widely accepted as appropriate governance measures.

Lastly, the proposed nonsubstantive changes to the Parent Bylaws provide additional clarity within the Parent Bylaws and make them easier to understand. By making certain provisions read more in plain English, updating paragraph lettering and numbering, making certain terms uniform and simplifying language throughout, the proposed nonsubstantive changes benefit investors by providing more clarity and reduced complexity within the Parent Bylaws and making the Parent Bylaw better organized and easier to follow thus reducing potential investor confusion.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Parent Bylaws to reflect the changes described above.

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

Not applicable.

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)

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) The Exchange requests accelerated approval of Amendment No. 1 pursuant to Section 19(b)(2) of the Act.[19] Amendment No. 1 does not change the substance of the Initial Rule Filing with respect to the proposed rule text, purpose or justification of the Parent Bylaws, but merely adds additional detail and specificity to the Form 19b-4 regarding the intended scope of the authority of the presiding person to restrict use of devices during a stockholder meeting, the continued application of Section 10.2 to any emergency Bylaw

[19] 15 U.S.C. 78s(b)(2).

amendments made pursuant to proposed Section 3.15, the intended purpose of proposed Section 3.15 to provide the Corporation with short-term flexibility within the temporary scope of an emergency, and the intended scope and limitations of a committee to exercise the powers and authority of the Board of Directors. As such, the Exchange does not believe that Amendment No. 1 makes any material changes to the substance or framework of the proposed rule change as set forth in this Amendment No. 1, and therefore, does not believe that a full notice and comment period is necessary. The Exchange also notes that the Initial Rule Filing was filed for accelerated effectiveness pursuant to Section 19(b)(2) of the Act,[20] so that it may be operative as soon as practicable. As noted above, the proposed changes are designed to enhance the Exchange's governance process and would provide for more detailed disclosures, improved timing for notices, as well as other actions, and additional flexibility for the Exchange to most appropriately address evolving corporate matters, including the ongoing Covid-19 pandemic, as soon as practicable. As stated, a majority of the proposed rule changes are not novel or unique, but rather consistent with current best practices, the DGCL, and/or the bylaws of Cboe's peer corporations, and are thereby, widely accepted governance procedures and practices. Additionally, the Exchange again notes that the Exchange Board and the Parent Board approved the proposed rule change on July 7, 2020 and May 12, 2020, respectively. As such, the Exchange believes it is appropriate for the Commission to approve the proposed rule change on an accelerated basis.

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

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission. The Exchange, however, notes that a majority of the

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[20] 15 U.S.C. 78s(b)(2).

proposed changes are consistent with the DGCL and are also found in the bylaws of Cboe's peer corporations, Nasdaq, ICE, and/or CME.

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 5. Text of proposed amendments to Parent Bylaws.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CboeEDGX-2020-037]

[Insert date]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Amend the Fifth Amended and Restated Bylaws (the "Parent Bylaws") of its Parent Corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent")

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on [insert date], Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "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

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to amend the Fifth Amended and Restated Bylaws (the "Parent Bylaws") of its parent corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent"). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

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

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

1. Purpose

The proposed rule change amends the Parent Bylaws to improve the governance processes of Cboe, which is organized under the laws of the State of Delaware, and to make certain provisions more consistent with the Delaware General Corporation Law ("DGCL"). The proposed rule change also makes clarifying and cleanup changes to the Parent Bylaws.

Proposed Changes to Article 2 - Stockholders

The majority of the proposed changes are being made to amend Section 2.11 (Nomination of Directors) and Section 2.12 (Notice of Business at Annual Meetings) and are generally designed to provide the Board with the most information and advance notice possible in connection with business and nominations at annual and special meetings. Additionally, the Exchange notes the proposed changes reflect the most up-to-date disclosure requirement practices. The proposed changes also combine the existing separate provisions for director nominations and stockholder proposals into one provision. Particularly, the proposed rule change combines current Sections 2.11 and 2.12 into one provision: proposed Section 2.11 titled "Notice of Business and Nomination of Directors at

Meetings of Stockholders."[3] Specifically, the proposed rule change delineates proposed Section 2.11 into paragraph (a) governing notice requirements for annual meetings, paragraph (b) governing notice requirements for special meetings[4], and paragraph (c), which provides for other general procedures and practices in connection with notices. The proposed delineation does not alter the process or definition of either type of meeting, but instead provides for significantly more detailed written notice requirements as well as updates to the manner and timeliness of notices.

First, the proposed change to Section 2.11(a)(i) relocates the provisions regarding "properly brought" business from current Section 2.12, and streamlines such provisions to clearly state that the only business that will be conducted at an annual meeting of the stockholders is business that has properly been brought before the meeting and specifies to be "properly brought" such business must be included in the Corporation's notice of the meeting and brought pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, (the "Exchange Act") (or any successor provision of law) and included in the Corporation's properly brought business. It also proposes to specify the a precise time that the notices must be made by (i.e., delivered to or mailed and received by the Secretary of the Corporation), which is not later than 5:00 p.m. Eastern Time on the 90th day nor earlier than the 120th day (which are the time frames currently in place) prior to such annual meeting.

Next, the proposed rule change adds greater detail regarding the requirements for proper written notice. Particularly, for notice for stockholder proposals for business other than nominations, (proposed Section 2.11(a)(iii)(A)), the proposed rule change provides that

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3 The proposed rule change also updates the subsequent section numbering (current 2.13 through 2.16) to reflect this change (proposed 2.12 through 2.15).

4 See Section 2.3 of the Parent Bylaws for a description of Special Meetings.

such notice must essentially set forth the same information that would be disclosed in a proxy statement, including:

- a reasonably brief description of the business desired to be brought before the meeting; the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the Certificate of Incorporation or the Bylaws of the Corporation, the language of the proposed amendment);
- the reasons for conducting such business at the meeting; a complete and accurate description of any material interest in such business of such stockholder and any Stockholder Associated Person, individually or in the aggregate, including any anticipated benefit to the stockholder and any Stockholder Associated Person therefrom; and
- all other information relating to such proposed business that would be required to be disclosed in a proxy statement or other filing required to be made by the stockholder or any Stockholder Associated Person in connection with the solicitation of proxies in support of such proposed business pursuant to Regulation 14A under the Exchange Act.

Regarding proposed proper written notice for director nominations (proposed Section 2.11(a)(iii)(B)), the notice must include:

- the name, age, business address and residence address of such nominee, ("Proposed Nominee") (which, the Exchange notes is currently the case);
- the principal occupation or employment of such nominee (which, the Exchange notes is currently the case)

- a completed written questionnaire with respect to the background and qualifications of such Proposed Nominee, which must be completed in a form required by the Corporation and provided to such stockholder within ten days of receiving such request;
- the Proposed Nominee's executed written consent to being named in the proxy statement for the meeting as a director nominee;
- the Proposed Nominee's completed written representation and agreement, which must be completed in a form required by the Corporation and provided to such stockholder within ten days of receiving such request. Importantly, the Proposed Nominee must represent and agree (1) to a "Voting Commitment" that the Proposed Nominee is not and will not become party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Proposed Nominee, if elected as a director, will act or vote on any issue or question (that has not been disclosed to the Corporation). or any Voting Commitment that could limit or interfere with the Proposed Nominee's ability to comply with fiduciary duties under applicable law, (2) that the Proposed Nominee is not and will not become a party to any agreement, arrangement, or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, (3) would comply with all applicable rules of the exchange and Corporation and fiduciary duties under state law, (4) would comply with certain Articles of Incorporation with respect to activities related to any of the Exchanges,

(5) intends to serve a full term if elected, and (6) will provide true and correct information in communications to the Corporation and its stockholders and will not omit material information or provide misleading information;

- a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships; and
- any other information that would be required to be disclosed statement or other filing required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act (which, the Exchange notes is currently the case).

As to the stockholder providing notice, any Stockholder Associated Person and any Proposed Nominee, (proposed Section 2.11(a)(iii)(C)) the proposed proper written notice must provide:

- name and address of such person (as they appear on the Corporation's books, if applicable) (which, the Exchange notes is currently the case);
- class (which is currently the case) or series and number of shares of capital stock of the Corporation ("Shares") which are, directly or indirectly, owned beneficially and/or of record by such person, the dates such shares were acquired and the investment intent of such acquisition;
- the name of each nominee holder for, and any pledge by such person or any number of, securities of the Corporation owned beneficially, but not of record;
- short interest, including a definition of what constitutes short interest, wherein a person shall be deemed to have a short interest in a security if such person, directly

or indirectly, through any contract, arrangement, understanding, or relationship or otherwise has an opportunity to profit or share in profit derived from decreased value of the subject security;

- a description of any agreement, arrangement or understanding, whether written or oral, (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares (which, the Exchange notes, is currently the case) or similar rights with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of capital stock of the Corporation or with a value derived in whole or in part from the value of any class or series of capital stock of the Corporation (a "Derivative Instrument")), in order to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease voting power with respect to Shares;
- any rights to dividends on the Shares owned beneficially by such person;
- any proportionate interest[5] in Shares or Derivative Instruments by a general or limited partnership or similar entity in which such person (1) is a general partner or beneficially owns an interest in a general partner, or (2) is the manager, managing member, or beneficially owns an interest in such management, of a limited liability company or similar entity;
- any substantial interest (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, in the Corporation or any of its affiliates;

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5 Interest referred to throughout the proposed stockholder proper written notice may be direct or indirect.

- a complete and accurate description of all agreements, arrangements or understandings, written or oral, and formal or informal, between or among the stockholder providing notice and any of the Stockholder Associated Persons (collectively, the "Stockholders"), or the Stockholders with any Proposed Nominee and any other person in connection with (1) any proxy, contract, arrangement, understanding or relationship where either of the Stockholders have the right to vote any Shares, (2) that such individuals may have reached with any stockholder of the Corporation regarding how such stockholder will vote its shares, take other action in support of any Proposed Nominee, or other action by either of the Stockholders, and (3) any other agreements that would be required to be disclosed by either of the Stockholders or any other person or entity pursuant to a Schedule 13D filed pursuant to the Exchange Act
- a complete and accurate description of any performance-related fees to which such person may be entitled as a result of any increase or decrease in the value of Shares or any Derivative Instruments;
- any investment strategy or objective of those who are not an individual and a copy of the prospectus (and other like documents);
- a complete and accurate description of any pending or threatened legal proceeding in which such person is a party or participant involving the Corporation;
- if any agreement, arrangement or understanding has been made to increase or decrease the voting power of such person with respect to any Shares; and
- any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with

solicitations of proxies for such business or the election of any Proposed Nominee, or is otherwise required, pursuant to Section 14 of the Exchange Act.

Further, regarding proposed proper written notice, proposed Section 2.11(a)(iii)(D) simplifies the language in connection with the current requirement that the Stockholders must represent if they intend to deliver a proxy statement and/or form of proxy to holders to approve or adopt the proposed business, elect the Proposed Nominee, and/or otherwise solicit proxies or votes from stockholders in support of such proposed business or Proposed Nominee, making it easier to understand.

Proposed Section 2.11(a)(iii)(E) provides for the current requirement that the stockholder providing notice must represent that it is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person, and adds that "in person" may be virtually, in the case of a meeting held solely by means of remote communication) or by proxy at the meeting to bring such proposed business and/or nominate one or more Proposed Nominee.

Proposed Section 2.11(a)(iii)(F) requires that proper written notice include an acknowledgment that the Corporation does not have to present the business or nomination being brought at the meeting by the stockholder proposing such, if such stockholder does not appear. The proposed rule change also adds that, in addition to the proper written notice information, the Corporation may require any Proposed Nominee to furnish certain other information as the Corporation may reasonably require to determine the eligibility or independence of a Proposed Nominee.

Proposed Section 2.11(b), which, as stated, delineates the provisions governing special meetings of stockholders, amends the procedures governing advance notice of

director nominations at a special meeting called by the Board for the election of directors. Currently, notices of a special meeting must be made not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that if the annual meeting is not held within thirty (30) days before or more than seventy (70) days after such anniversary date, then such nomination shall have been delivered to or mailed and received by the Secretary not later than the close of business on the 10th day following the date on which public announcement of the annual meeting date was made. The proposed rule change updates this notice procedure to mirror the same procedural language in proposed Section 2.11(a)(ii) (maintaining the same 90- to 120-day notice requirement), but updates the timing requirements to remove the language regarding the 30-day and 70-day time frames around the anniversary date and provides that, if public announcement of the special meeting and the nominees proposed by the Board of Directors to be elected at such meeting is first made less than ninety (90) days prior to the date of the special meeting, notice must be made the tenth (10th) day following the day on which such public announcement is first made. The Exchange believes this proposed timing provision simplifies the timing requirement, making it easier to understand and follow, and also provides ample time to provide notice in advance to stockholders of any scheduled special meeting. Proposed Section 2.11(b) also provides that proper written notice of a special meeting must comply with the requirements, as proposed, laid out in Section 2.11(a)(iii).

Proposed Section 2.11(c) provides, generally, for other procedures and practices in connection with notices, as well as certain defined terms. Proposed Section 2.11(c)(i) provides that a stockholder providing notice must update any notice, if necessary, so that the

information provided or required to be provided in a notice is be true and correct (A) as of the record date for determining the stockholders entitled to receive notice of the meeting and (B) as of the date that is ten business days prior to the meeting (or any postponement, adjournment or recess thereof). If an update is required to be made as of the record date for determining the stockholders entitled to receive notice of the meeting then the notice of update must be made not later than five business days after the record date for determining the stockholders entitled to receive notice of such meeting. If an update is required to be made as of the date that is ten business days prior to the meeting (or any postponement, adjournment or recess thereof), then the notice of update must be made no later than seven business days prior to the date for the meeting, if practicable, or, if not practicable, on the first practicable date prior to the meeting or any adjournment, recess or postponement thereof Proposed Section 2.11(c)(ii) provides that if any information submitted pursuant to Section 2.11 is inaccurate in any respect, such information may be deemed not to have been provided in accordance with the Parent Bylaws. As proposed, the stockholder providing the notice has an obligation to notify the Secretary in writing at the principal executive offices of the Corporation of any inaccuracy or change in any such information within two business days of becoming aware of such inaccuracy or change. Additionally, within seven days upon delivery of a written request by the Secretary, the Board of Directors (or a duly authorized committee thereof), any such stockholder is obliged to provide: (A) written verification, reasonably satisfactory to the Board of Directors, any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to Section 2.11, and (B) a written update of any information pursuant to Section 2.11 as of an earlier date. If the stockholder fails to provide

such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with Section 2.11. Proposed Section 2.11(c)(iii) provides that a stockholder providing notice must also comply with all applicable requirements of state law and all applicable requirements of the Exchange Act and the rules and regulations thereunder, however, references to the Exchange Act and its rules and regulations will not limit the requirements applicable to stockholder proposals or director nominations pursuant to Section 2.11. Proposed Section 2.11(c)(iv) updates current language governing failure for the proposing stockholder to appear by adding that virtual appearances are acceptable when such meeting is being held remotely, as well as the flexibility for the Corporation to waive the appearance requirement. The rule change updates this provision and adds this flexibility in light of the ongoing Covid-19 pandemic and the consequential remote working status for many companies, including Cboe. Proposed Section 2.11(c)(v) adds the definition of key terms, along with current definitions, for clarity. Specifically, the proposed rule change defines an "affiliate" and "associate" as having the respective meanings set forth in Rule 12b-2 under the Exchange Act and "Stockholder Associated Person" to mean: any person who is a member of a "group" (used in Rule 13d-5 under the Exchange Act) with or otherwise acting in concert with such stockholder providing notice; any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depositary); any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person and beneficially owns, directly or indirectly, shares of stock of the Corporation; any person that directly, or indirectly through

one or more intermediaries, controls such stockholder or any Stockholder Associated Person; and any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A, or any successor instructions) with such stockholder or other Stockholder Associated Person in respect of any proposals or nominations, as applicable.

The Exchange notes that many of the proposed rule changes to proposed Section 2.11 are consistent with the bylaws of Cboe's peer financial market/services corporations, Nasdaq, Inc ("Nasdaq"),[6] Intercontinental Exchange ("ICE"),[7] and/or the CME Group, Inc. ("CME"),[8] including:

- the proposed disclosures required under Regulation 14A for proposed business other than director nominations; director questionnaires;
- consent to be named in the proxy statement as a director nominee;
- a Voting Commitment;
- disclosure of compensation arrangements in connection with service as a director;
- agreement to comply with applicable regulations, organizational documents and policies;
- representation of intent to serve a full term; commitment to provide true and correct facts and to not omit material facts;
- nominee disclosures for contested elections under Section 14;

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6 See By-laws of Nasdaq, Inc., available at https://listingcenter.nasdaq.com/assets/RuleBook/NASDAQ/rules/Nasdaq_Inc_Corporate_Organization_Nasdaq_Inc.pdf.

7 See Eighth Amended and Restated Bylaws of Intercontinental Exchange, Inc., available at https://s2.q4cdn.com/154085107/files/doc_downloads/intercontinental_exchange/bylaws-eighth-amended.pdf.

8 See Fifteenth Amended and Restated Bylaws of CME Group Inc., available at https://www.cmegroup.com/rulebook/files/CME-Bylaws.pdf.

- required disclosure by a proposing stockholder's 13D group members and related parties;
- disclosure of rights to dividends, short interest, interests held through controlled partnerships or LLCs, and in the Company other than Company common stock;
- disclosure of agreements/arrangements in connection with conferring proxy authority, with any other stockholder regarding voting or supporting the proposal/nominee, with increasing or decreasing voting power, and agreements required to be disclosed on Schedule 13D;
- disclosure of performance-related fees related to the Company's performance;
- disclosure of investment strategy and inclusion of prospectus/offering memorandum;
- disclosure of pending or threatened litigation;
- Special meeting provisions;
- Obligation to update and correct disclosures; and
- Express obligation to appear to present the proposal/nominee.

Additionally, the proposed rule change moves language currently in Section 2.10 providing that the number of nominees for director may not exceed the number of directors to be elected at any meeting to proposed Section 2.11(a) (annual meetings) and Section 2.11(b) (special meetings), therefore adding clarity to the updated Section 2.11 format that this provision continues to apply for both annual and special meetings. The proposed rule change to Section 2.10 also simplifies current language that provides an election may proceed if proper notice is made and received and adds language that nominations may be withdrawn on or prior to the tenth day before the date the Corporation first mails its notice of meeting for such election.

The proposed rule change also amends Section 2.1 (Place of Meetings) by removing language that requires stockholder meetings to be held at the principal place of business of the Company if no location is designated. The Exchange believes that it is appropriate for the Board to retain both control and flexibility over the location and timing of stockholder meetings. The proposed rule change amends Section 2.2 (Annual Meeting) and Section 2.3 (Special Meeting) to provide that the Board may postpone, reschedule or cancel any previously-scheduled annual meeting or special meeting, respectively. The proposed rule change also updates Section 2.7 (Adjournments) to provide that only the presiding person of a stockholder meeting can adjourn the meeting in the absence of a quorum. The proposed changes are intended to provide the Board the flexibility to postpone, recess, reschedule or cancel a stockholder meeting. The Exchange also notes that the proposed rule changes to Sections 2.2, 2.3, and 2.7 are consistent with the bylaws of Cboe's peer corporation, Nasdaq.[9]

The proposed rule change also makes updates to reflect the current best corporate governance practices to certain Sections under Article 2. In particular, it updates the language in Section 2.5 (Voting List) regarding who is required to prepare the voting list. Section 2.5 currently provides that officer who has charge of the stock ledger prepares the voting list and the proposed rule change updates this to provide that the Corporation prepares the voting list. The proposed rule change is consistent with the DGCL and reflects current best practice. The proposed rule change also amends current Section 2.13 (Organization) (proposed Section 2.12), which currently states that that the Board of Directors may appoint any stockholder to act as chairman of any meeting in the absence of

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[9] See supra note 6.

the Chairman of the Board, to instead provide that that the Board of Directors may appoint any director of the Corporation to act as chairman of any meeting in the absence of the Chairman of the Board. Also, current Section 2.16 (Conduct of Meetings) (proposed Section 2.15) makes certain changes to expand the procedural authority of the presiding officer of any stockholder meeting, including the right to recess and/or adjourn meetings for any or no reason, and the determination of when the polls will open and close for any given matter to be voted on at the meeting, the removal of any stockholder or individual who refuses to comply with meeting procedures, rules, or guidelines, the restrictions on the use of audio and/or video recording devices and cell phones.[10] This is consistent with best practice and ensures that the presiding officer has the flexibility to take measures, as needed, that ensure meetings are conducted in the most appropriate manner.

Proposed Changes to Article 3 - Directors

The proposed rule change amends Section 3.5 (Vacancies) to provide that that vacancies on the Board may be filled exclusively by a majority of the directors. The Exchange notes that stockholders have a common law right under Delaware law to fill

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[10] Amendment No. 1 adds this footnote 10 to provide additional detail in connection with potential restrictions on the use of cell phones during stockholder meetings. The Exchange first notes that at its most recent annual meeting of stockholders it provided that the use of cameras, sound recording equipment, communication devices or any similar equipment (including taking pictures or recording video using a cell phone or computer) was prohibited without the prior express written permission of the Company. The Exchange also notes that the authority to restrict the use of devices is implicit in the authority granted by current Section 2.16 (to be renumbered 2.15) of the Bylaws, which currently provides the person presiding over any meeting of stockholders authority to "prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting." The Exchange also understands that the bylaws of various large Delaware-incorporated public companies contain the same or equivalent language regarding the ability to restrict use of audio, video and cellphones at stockholder meetings.

director vacancies, unless the Company's Charter or Bylaws explicitly give the Board exclusive authority, therefore, the proposed change is designed to make this right exclusive to the Board. The proposed rule change is consistent with the bylaws of Cboe's peer corporations, Nasdaq and ICE.[11] The proposed rule change to Section 3.10 (Special Meetings) would allow special meetings of the Board to be called with less than 24 hours' notice. Currently, Section 3.10 requires at least 24 hours' notice to directors of special Board meetings. However, there may be circumstances that necessitate an emergency meeting of the Board with less than 24 hours' notice (e.g., in relation to a pending transaction), and therefore, the proposed changes would allow notice on a shorter time frame if necessary and appropriate under the circumstances. The proposed changes to Section 3.13 (Action by Consent) updates language regarding routine filing of consents following an action by the Board. Specifically, the proposed change updates the consents to reflect the same electronic form as minutes are maintained, which is consistent with recent amendments to the DGCL, reflects current best practice.

The proposed change also adds Section 3.15 (Emergency Bylaws). Specifically, the proposed Section 3.15 provides that, notwithstanding anything to the contrary in the Certificate of Incorporation or these Bylaws, in the event there is any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition (each, an "emergency"), and a quorum of the Board of Directors cannot readily be convened for action, this Section 3.15 shall apply., including:

- Any director or Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, Treasurer or Secretary of the Corporation may call a

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11 See supra notes 6 and 7.

meeting of the Board of Directors by any feasible means and with such advance notice as circumstances permit in the judgment of the person calling the meeting. Neither the business to be transacted nor the purpose of any such meeting need be specified in the notice thereof.

- One-third (1/3) of the directors shall constitute a quorum, which may in all cases act by majority vote.
- Directors may take action to appoint one or more of the director or directors to membership on any standing or temporary committees of the Board of Directors as they deem advisable. Directors may also take action to designate one or more of the officers of the Corporation to serve as directors of the Corporation while this Section 3.15 applies. To the extent that it considers it practical to do so, the Board of Directors shall manage the business of the Corporation during an emergency in a manner that is consistent with the Certificate of Incorporation and Bylaws. It is recognized, however, that in an emergency it may not always be practical to act in this manner and this Section 3.15 is intended to and does hereby empower the Board of Directors with the maximum authority possible under the DGCL, and all other applicable law, to conduct the interim management of the affairs of the Corporation in an emergency in what it considers to be in the best interests of the Corporation.
- No director, officer or employee acting in good faith in accordance with this Section 3.15 or otherwise pursuant to Section 110 of the DGCL shall be liable except for willful misconduct.

- This Section 3.15 shall continue to apply until such time following the emergency when it is feasible for at least a majority of the directors of the Corporation immediately prior to the emergency to resume management of the business of the Corporation.
- The Board of Directors may modify, amend or add to the provisions of this Section 3.15 in order to make any provision that may be practical or necessary given the circumstances of the emergency. [12]
- The provisions of this Section 3.15 shall be subject to repeal or change by further action of the Board of Directors or by action of the stockholders, but no such repeal or change shall modify the provisions of paragraph (e) of this Section 3.15 with regard to action taken prior to the time of such repeal or change.

The Exchange notes that these proposed changes are largely consistent with the DGCL and are designed to allow the Board and the Corporation to continue to function in the case of an emergency, such as a pandemic or an act of terrorism. The Exchange believes the ongoing COVID-19 pandemic, as well as similar potential events, demonstrate the need for Emergency Bylaws and notes that a number of companies are adopting (or at least

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[12] Amendment No. 1 adds this footnote 12 to clarify that the provisions of proposed Section 3.15 may apply "notwithstanding anything to the contrary in the Certificate of Incorporation or these Bylaws", which includes Section 10.2 of the Parent Bylaws. Section 10.2 provides that before any amendment, alteration or repeal of any provision of these Bylaws shall be effective, such amendment, alteration or repeal shall be submitted to the board of directors of each Regulated Securities Exchange Subsidiary, and if such amendment, alteration or repeal must be filed with or filed with and approved by the Securities and Exchange Commission, then such amendment, alteration or repeal shall not become effective until filed with or filed with and approved by the Securities and Exchange Commission, as the case may be. As such, any Bylaw amendments made to the Parent Bylaws pursuant to proposed Section 3.15(g) must be filed pursuant to Section 10.2 of the Bylaws and Section 19 of the Exchange Act.

considering) emergency bylaws to relax Board requirements when directors may be unavailable due to emergency conditions, such as the pandemic. The Exchange notes that proposed Section 3.15 is meant to provide the Corporation with short-term flexibility to continue operations during an emergency situation, and that proposed paragraph (f) makes clear that, as soon as it is practicable for a majority of the elected directors to reconvene, they would be expected to do so.[13]

Proposed Changes to Article 4 – Committees

The proposed rule change to Section 4.1 (Designation of Committees) adds language that provides the Board with additional rights in their ability to designate committees and committee alternates and specifies that such committees may exercise all powers and authority of the Board in the management of the business. Specifically, the proposed language provides that the Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors

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13 Amendment No. 1 provides additional clarity regarding the fact that proposed Section 3.15 is designed to provide the Corporation with short-term flexibility within the temporary scope of an emergency.

in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation, if any, to be affixed to all papers which may require it. The proposed language is consistent with the DGCL and reflects current best practice. The Exchange notes that, pursuant to DGCL Section 141(c)(2), no such committee shall have the power or authority to approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required to be submitted to stockholders for approval, or adopt, amend or repeal any Bylaw of the Corporation. The Exchange further notes that any such committee may act only insofar as the resolution of the Board of Directors permits, which is the current manner in which the general powers and authority of the committees under Article 4 are checked and balanced.[14] The proposed rule change is designed to provide additional detail regarding the specific authority of the Board to designate members of the committees and their general powers and authority to manage the Corporation, as well as the power invested in the voting members regarding the appointment of a member of the Board to act in a circumstance of disqualification.

The proposed rule changes to Section 4.2 (The Executive Committee) removes language that lists out specific actions or matters that are not to be handled by the Executive Committee under Delaware law, including 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. The proposed change, instead, replaces this list with reference to matters under the DGCL to be submitted to stockholders for approval.

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[14] Amendment No. 1 adds additional detail regarding the limitation of the power and authority vested in a committee in the management of the business and affairs of the Corporation.

The Exchange believes that the proposed change, while being consistent with the DGCL, removes ambiguous and potentially unnecessarily limiting language that lists the circumstances that could not be handled by the Executive Committee that required stockholder approval and replaces it with broader reference to the DGCL.

The proposed change to Section 4.5 (The Nominating and Governance Committee) reduces the minimum size requirement of the Nominating and Governance Committee ("N&G Committee") from a minimum of five members to three members. This proposed rule change is intended to provide the Board additional flexibility when populating the N&G Committee and is consistent with the minimum number of members required on other Board committees.[15]

Proposed Changes to Article 8 – Notices

The proposed rule change in Section 8.1 (Notices) replaces language in paragraph (e) that requires that stockholders opt-in to email notice with language that instead allows stockholders to opt-out of email notice or not receive email notice if such notice is prohibited by the DGCL. The proposed rule change also updates Section 8.2 (Electronic Notice) to reflect this change. The proposed rule change also removes the provision in Section 8.1 paragraph (c) which provides that notice may be given by messenger or overnight courier service if 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. The proposed rule change then adds to paragraph (c) that notice is deemed to have been given via this method at the earlier of when the notice is received or left at the stockholder's or director's address. The proposed change is consistent with the DGCL.

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15 See e.g., Sections 4.3 and 4.4 of the Parent Bylaws.

Proposed Rule Changes to Article 11 (Forum for Adjudication of Disputes)

The proposed rule changes to Article 11 add clarifying provisions and additional detail regarding the exclusive forum. The proposed changes are designed to update the exclusive forum bylaw to reflect current best practices. Specifically, the proposed rule change adds that, among the existing actions listed, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for any action asserting an "internal corporate claim" (defined in the DGCL). The proposed rule change also provides that, in the event that the Delaware Court of Chancery lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware. The proposed rule change provides that any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation is deemed to have notice of and consented to the provisions of Article 1, including exclusive personal jurisdiction in the Delaware Court or Chancery and having service of process made, even if an action (within the scope of Article 11) is filed in a court other than a court located within the State of Delaware. Additionally, the proposed rule change makes clear that the existence of any prior consent to, or selection of, an alternative forum by the Corporation shall not act as a waiver of the Corporation's ongoing consent right in Article 11 and that failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation is entitled to equitable relief, including injunctive relief and specific performance, to enforce Article 11. It also clarifies that a claim may be made against the Corporation or any current or former director, officer, other employee, agent or stockholder of the Corporation, and may arise pursuant to the Certificate of Incorporation or these Bylaws, in addition to the DCGL. The proposed rule change is in

line with current best practice, and, additionally, the bylaws of Cboe's peer, CME,[16] currently provide for similar language related to foreign actions and specific performance.

Finally, the proposed rule change makes non-substantive edits throughout the above listed Articles of the Parent Bylaws, including updating paragraph lettering and numbering, simplifying language in order to better align it with plain English, update the terms Board of Directors and Exchange Act to be uniform throughout the bylaws (e.g., as opposed to just "Board", or "Securities and Exchange Act", and the other versions of the Act's name).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[18] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed changes overall are designed to improve the governance process of Cboe, as well as update the Parent Bylaws, where applicable, to reflect and track the DCGL and current best practices. Moreover, the

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16 See supra note 8.

17 15 U.S.C. 78f(b).

18 15 U.S.C. 78f(b)(1).

Exchange does not believe the proposed rule changes are controversial and indeed are common among public companies, including its peers, Nasdaq, ICE and CME.

Particularly, the proposed rule changes to proposed Section 2.11 in connection with providing notice regarding business and director nominations at annual and special meetings, will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because such proposed changes are generally designed to strengthen these provisions by requiring notices (including updates to notices) to disclose to the Board more detailed information than currently required. In this manner, the proposed detailed disclosure requirements would provide the Board with substantially more information by which they may make complete and informed decisions and most appropriately address business before the Board. The Exchange also believes that the proposed rule changes in connection with timely notice, including the 10 days' advanced notice of director nominations (via the required director questionnaire), procedures governing advance notice of director nominations at a special meeting, an obligation to update and correct the notice up to 7 days prior to a meeting, and updated timing regarding the 10-day notice of a special meeting less than 90 days from the scheduled meeting, will allow the Board the appropriate time needed to consider and prepare to address all business, nominations, and other issues to be presented before it. As such, the proposed rule changes will ensure that the Board is able to continue to oversee the orderly operation of the corporation, including the Exchange, in a manner the it deems most appropriate. Additionally, and as listed in detail above, the vast majority of the proposed notice requirements are consistent with the bylaws of Cboe's peer

corporations, CME, ICE, and/or Nasdaq, as well as in line with current best practices. The proposed changes are also all consistent with the DCGL.

Moreover, the proposed changes are intended to provide the Board with additional flexibility and more appropriate governance procedures in addressing various circumstances, which will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act. In particular, the proposed rule changes would allow the Board to retain both control and flexibility over the location and timing of stockholder meetings, would allow the Board to postpone, recess, reschedule or cancel a stockholder meeting, would allow only the presiding person of a stockholder meeting to adjourn and reset a stockholder meeting date in the absence of quorum, would allow for shorter notice in order for the Board to call a special meeting, would allow the Board and the Corporation to continue to function (including remotely) in the case of an emergency, such as the ongoing COVID-19 pandemic, and would provide the Board with increased flexibility in populating the Nomination and Governance Committee. Each of these proposed changes is designed to assist the Exchange in most effectively and efficiently managing evolving corporate matters as they arise, many of which are highly complex and may be time sensitive. Additionally, as indicated above, a majority of the proposed changes align certain Sections in the Parent Bylaws with current best practices and with the DCGL (as well as a change in accordance with Delaware common law) and are also consistent with bylaw provisions of Cboe's peer corporations. Accordingly, the Exchange believes the proposed changes are widely accepted as appropriate governance measures.

Lastly, the proposed nonsubstantive changes to the Parent Bylaws provide additional clarity within the Parent Bylaws and make them easier to understand. By making certain provisions read more in plain English, updating paragraph lettering and numbering, making certain terms uniform and simplifying language throughout, the proposed nonsubstantive changes benefit investors by providing more clarity and reduced complexity within the Parent Bylaws and making the Parent Bylaw better organized and easier to follow thus reducing potential investor confusion.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Parent Bylaws to reflect the changes described above.

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2020-037 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CboeEDGX-2020-037. 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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 Number SR-CboeEDGX-2020-037 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Secretary

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19 17 CFR 200.30-3(a)(12).

Exhibit 5

(additions are underlined; deletions are [bracketed])

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[FIFTH]SIXTH AMENDED AND RESTATED

BYLAWS
OF
CBOE GLOBAL MARKETS, INC.

* * * * *

ARTICLE 2—STOCKHOLDERS

2.1 *Place of Meetings*. All meetings of stockholders shall be held at such place, if any, within or without the State of Delaware as may be designated from time to time by the Board of Directors 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].

2.2 *Annual Meeting*. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date and at such time and at such place, if any, within or without the State of Delaware as shall be fixed by the Board of Directors, pursuant to a resolution adopted by the affirmative vote of a majority of the total number of directors then in office, or the Chairman of the Board (or, if there is no Chairman of the Board, the Chief Executive Officer) and stated in the notice of the meeting. [If no annual meeting is held in accordance with the foregoing provisions, the Board of Directors shall cause the meeting to be held as soon thereafter as convenient.] If no annual meeting is held in accordance with the foregoing provisions, a special meeting may be held in lieu of the annual meeting, and any action taken at that special meeting shall have the same effect as if it had been taken at the annual meeting, and in such case all references in these Bylaws to the annual meeting of stockholders shall be deemed to refer to such special meeting. The Board of Directors may postpone, recess, reschedule or cancel any previously-scheduled annual meeting of stockholders for any reasonable reason.

2.3 *Special Meeting*. Special meetings of stockholders may be called at any time by only the Chairman of the Board, the Chief Executive Officer, the President or the Board of Directors pursuant to a resolution adopted by the affirmative vote of a majority of the total number of directors then in office. Special meetings may not be called by any other person or persons. Any business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting. The Board of Directors may postpone, recess, reschedule or cancel any previously-scheduled special meeting of stockholders for any reasonable reason.

* * * * *

2.5 *Voting List*. The [officer who has charge of the stock ledger]Corporation 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 (provided, however, if the record date for

determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), 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, at least ten (10) days prior to the meeting ([i]a) on a reasonably accessible, electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or ([ii]b) during ordinary business hours, at the principal place of business of the Corporation. The list of stockholders must also be open to examination at the meeting as required by applicable law. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this *Section 2.5* or to vote in person or by proxy at any meeting of stockholders.

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2.7 *Adjournments*. Any meeting of stockholders may be adjourned to any other time and to any other place at which a meeting of stockholders may be held under these Bylaws by (a) the holders of a majority in voting power of the stockholders present or represented at the meeting and entitled to vote, [although less than]provided that a quorum[, or] is present in person or by proxy at such meeting, or (b) by any officer entitled to preside at or to act as secretary of such meeting, regardless of whether a quorum is present in person or by proxy. Notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. If a quorum is present at a meeting that is later adjourned, then a quorum shall also be deemed present at the adjourned session of such meeting, unless a new record date is, or is required to be, set for the adjourned session.

* * * * *

2.10 *Action at Meeting*. When a quorum is present at any meeting, (a) a majority of the votes properly cast upon any question other than an election of directors shall decide the question, except when a different vote is required by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, and (b) each nominee for director shall be elected to the Board of Directors if a majority of the votes properly cast are in favor of such nominee's election (i.e., if the number of votes properly cast "for" a nominee's election exceeds the number of votes properly cast "against" that nominee's election (with "abstentions" and "broker nonvotes" not counted as a vote cast either "for" or "against" that director's election)); *provided, however*, that, if[, as of the last date by which stockholders of the Corporation may submit notice to nominate a person for election as a director pursuant to *Section 2.11* of these Bylaws or pursuant to any rule or regulation of the Securities and Exchange Commission, the number of nominees for director exceeds the number of directors to be elected at any such meeting] (x) the Secretary receives a notice that a stockholder has nominated one or

more persons for election to the Board of Directors in compliance with the requirements set forth in these Bylaws and (y) such nomination has not been withdrawn by such stockholder on or prior to the tenth (10th) day preceding the date that the Corporation first mails its notice of meeting for such election (a "Contested Election"), a plurality of the votes properly cast for the election of directors shall be sufficient to elect directors. No ballot shall be required for any election unless requested by a stockholder present or represented at the meeting and entitled to vote in the election.

2.11 *Notice of Business and Nomination of Directors at Meetings of Stockholders*.

(a) Annual Meetings of Stockholders.

(i) At an annual meeting of stockholders, only such business shall be conducted as shall have been properly brought before the meeting, and [O]only such persons who are nominated in accordance with the following procedures shall be eligible for election as directors. [The nomination]Business and nominations of persons for election to the Board of Directors at an annual meeting of stockholders may be made only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto), [(B)]given by or at the direction of the Board of Directors[,](or any duly authorized committee thereof, (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof), or (C) by any stockholder [(i)]of the Corporation (I) who is a stockholder of record on the date of the notice given pursuant to this *Section 2.11* through the date of such annual meeting, (II) and who is entitled to vote at the annual meeting and ([ii]III) who complies with the notice procedures set forth in this *Section 2.11*. [Such]Clause (C) of the preceding sentence shall be the exclusive means for a stockholder to propose business or director nominations before an annual meeting of stockholders, other than [those made by or on behalf of the Board of Directors or any committee thereof, shall be made by] business properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (or any successor provision of law) and included in the Corporation's notice [in writing]of meeting in accordance therewith.

(ii) In order for proposals of business or director nominations pursuant to *Section 2.11(a)(i)(C)* to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. In order for such notice to be timely, such notice must be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not [less]later than [ninety (90) days] 5:00 p.m. Eastern Time on the ninetieth (90th) day nor [more]earlier than 5:00 p.m. Eastern Time on the one hundred [twenty]twentieth (120th) day[s] prior to the anniversary date of the immediately preceding annual meeting of stockholders; *provided, however*, that if the annual meeting is not held within thirty (30) days before or more than seventy (70) days after such anniversary date, then such nomination shall have been delivered to or mailed and received by the Secretary not later than [the close of business]5:00 p.m. Eastern Time on the tenth (10^{th}) day following the date on which public announcement of the annual meeting date was made. In no event shall the [public announcement of an] adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the [giving]providing of a stockholder's notice as described above. [Such]The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a Stockholder Associated Person (as defined below), the number of nominees a

stockholder may nominate for election at the annual meeting on behalf of such Stockholder Associated Person) shall not exceed the number of directors to be elected at such annual meeting.

(iii) In order for such notice to be in proper written form, such notice shall set forth [(a)]and include the following information:

(A) as to any business (other than director nominations) that the stockholder proposes to bring before the meeting: (I) a reasonably brief description of the business desired to be brought before the meeting; (II) the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the Certificate of Incorporation or the Bylaws of the Corporation, the language of the proposed amendment); (III) the reasons for conducting such business at the meeting; (IV) a complete and accurate description of any material interest in such business of such stockholder and any Stockholder Associated Person, individually or in the aggregate, including any anticipated benefit to the stockholder and any Stockholder Associated Person therefrom; and (V) all other information relating to such proposed business that would be required to be disclosed in a proxy statement or other filing required to be made by the stockholder or any Stockholder Associated Person in connection with the solicitation of proxies in support of such proposed business pursuant to Regulation 14A under the Exchange Act;

(B) as to each proposed director nominee [(i)] that the stockholder proposes to bring before the meeting (each a "Proposed Nominee"): (I) (the name, age, business address and residence address of such [nominee]Proposed Nominee[,]; ([ii]II) the principal occupation or employment of such [nominee]Proposed Nominee[,]; ([iii]III) a completed written questionnaire with respect to the background and qualifications of such Proposed Nominee, completed by such Proposed Nominee in the form required by the Corporation (which form the stockholder must request in writing from the Secretary prior to submitting notice and which the Secretary shall provide to such stockholder within ten (10) days of receiving such request); (IV) such Proposed Nominee's executed written consent to being named in the proxy statement for the meeting as a director nominee; (V) such Proposed Nominee's completed written representation and agreement in the form required by the Corporation (which form the stockholder must request in writing from the Secretary prior to submitting notice and which the Secretary shall provide to such stockholder within ten (10) days of receiving such request) that such Proposed Nominee: (1) is not and will not become party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Proposed Nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or any Voting Commitment that could limit or interfere with such Proposed Nominee's ability to comply, if elected as a director of the Corporation, with such Proposed Nominee's fiduciary duties under applicable law; (2) is not and will not become a party to any agreement, arrangement, or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director that has not been disclosed to the Corporation; (3) would, if elected as a director, comply with applicable rules of the exchange upon which the Corporation's [the number of] shares of common stock [of the Corporation which are owned beneficially and the number of shares of] trade, the Certificate of Incorporation, all of the Corporation's corporate governance, ethics, conflict of interest, confidentiality and stock [of the Corporation which]

ownership and trading policies and guidelines generally applicable to the Corporation's directors, and applicable fiduciary duties under state law and, if elected as a director of the Corporation, currently would be in compliance with any such policies and guidelines that have been publicly disclosed; (4) consents to the applicability to them of Article Fourteenth, Article Fifteenth and Sections (c) and (d) of Article Sixteenth of the Certificate of Incorporation, as applicable, with respect to their activities related to any of the Regulated Securities Exchange Subsidiaries (as defined in the Certificate of Incorporation); (5) intends to serve a full term if elected as a director of the Corporation and (6) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects, and that do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are [held of record by such nominee, and (iv)]made, not misleading; (VI) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such Proposed Nominee being nominated, on the one hand, and the stockholder providing notice and any Stockholder Associated Person, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K (or any successor provision of law) if the stockholder making the nomination and any Stockholder Associated Person were the "registrant" for purposes of such rule and the Proposed Nominee was a director or executive officer of such registrant; and (VII) any other information concerning the [nominee]Proposed Nominee that [must]would be required to be disclosed [as to nominees] in a proxy statement or other filing required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to [Regulation 14A]Section 14 [under the Securities]of the Exchange Act [of 1934, as amended (the "Act")] (or pursuant to any law or statute replacing such section), and the rules and regulations promulgated thereunder[, including such person's written consent to be named in the proxy statement as a nominee and to serve as a director if elected]; and [(b)]

(C) as to the stockholder [giving the]providing notice [and the beneficial owner, if], any[, on whose behalf the nomination is made (i)] Stockholder Associated Person and any Proposed Nominee: (I) the name and address of such [stockholder]person (if applicable, as they appear on the Corporation's books[, and of such beneficial owner, (ii)]); (II) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially and/or of record by such person, the dates such shares were acquired and the investment intent of such acquisition; (III) the name of each nominee holder for, and any pledge by such person or any number of, securities of the Corporation owned beneficially [and]but not of record by such [stockholder and] person; (IV) short interest of such [beneficial owner, (iii) a description of] person in any [agreement]security of the Corporation (for purposes of these Bylaws, a person shall be deemed to have a short interest in a security if such person, directly or indirectly, through any contract, arrangement [or], understanding [with respect to the nomination between], relationship or [among such stockholder and/]otherwise, has the opportunity to profit or [such beneficial owner, any of their respective affiliates or associates, and]share in any [others acting in concert with]profit derived from any decrease in the value of the [foregoing, including any nominee, (iv]subject security); (V) a description of any agreement, arrangement or understanding, whether written or oral, (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar

rights, hedging transactions, [and]borrowed or loaned shares or similar rights with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of capital stock of the Corporation or with a value derived in whole or in part from the value of any class or series of capital stock of the Corporation (a "Derivative Instrument")), that has been entered into as of the date of the stockholder's notice [by, or on behalf of, such stockholder and such beneficial owners], whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of capital stock of the Corporation, ([v) a representation that the stockholder]VI) any rights to dividends on the shares of the capital stock of the Corporation owned beneficially by such person; (VII) any proportionate interest in shares of capital stock of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or similar entity in which such person (1) is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, or (2) is the manager, managing member or, directly or indirectly, beneficially owns an interest in the manager or managing member of a limited liability company or similar entity; (VIII) any substantial interest, direct or indirect (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, of such person, in the Corporation or any affiliate thereof, other than an interest arising from the ownership of securities of the Corporation where such person receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class or series; (IX) a complete and accurate description of all agreements, arrangements or understandings, written or oral, and formal or informal, (1) between or among the stockholder providing notice and any of the Stockholder Associated Persons or (2) between or among the stockholder providing notice or any of the Stockholder Associated Persons and any other person or entity (naming each such person or entity) in connection with or related to the foregoing or any Proposed Nominee, including, without limitation, (x) any proxy, contract, arrangement, understanding or relationship pursuant to which such proposing stockholder or Stockholder Associated Person has the right to vote any shares of capital stock of the Corporation, (y) that the stockholder providing notice or any of the Stockholder Associated Persons may have reached with any stockholder of the Corporation (including the name of such stockholder) with respect to how such stockholder will vote its shares in the Corporation at any meeting of the Corporation's stockholders or take other action in support of any Proposed Nominee, or other action to be taken, by the stockholder providing notice or any of the Stockholder Associated Persons, and (z) any other agreements that would be required to be disclosed by the stockholder providing notice or any Stockholder Associated Person or any other person or entity pursuant to Item 5 or Item 6 of a Schedule 13D (or any successor provision of law) that would be filed pursuant to the Exchange Act and the rules and regulations promulgated thereunder (regardless of whether the requirement to file a Schedule 13D (or any successor provision of law) is applicable to the stockholder providing notice, any Proposed Nominee, any Stockholder Associated Person or any other person or entity); (X) a complete and accurate description of any performance-related fees (other than an asset-based fee) to which such person may be entitled as a result of any increase or decrease in the value of shares of the capital stock of the Corporation or any Derivative Instruments; (XI) the investment strategy or objective, if any, of such stockholder providing notice and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if

any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person; (XII) a complete and accurate description of any pending or, to such person's knowledge, threatened, legal proceeding in which such person is a party or participant involving the Corporation or any publicly-disclosed officer, affiliate or associate of the Corporation; (XIII) whether and the extent to which any agreement, arrangement or understanding has been made, the effect or intent of which is to increase or decrease the voting power of such person with respect to any shares of the capital stock of the Corporation, without regard to whether such transaction is required to be reported on a Schedule 13D in accordance with the Exchange Act; and (XIV) any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for such business or the election of any Proposed Nominee, or is otherwise required, pursuant to Section 14 of the Exchange Act (or pursuant to any law or statute amending, restating or replacing such section), and the rules and regulations promulgated thereunder;

(D) a representation whether the stockholder providing notice and the Stockholder Associated Person, if applicable, intends or is part of a group which intends to (I) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposed business or elect the Proposed Nominee and/or (II) otherwise solicit proxies or votes from stockholders in support of such proposed business or Proposed Nominee;

(E) a representation that the stockholder providing notice is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person [or by proxy at the meeting to propose such nomination, (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the nominee and/or (b) otherwise to solicit proxies or votes from stockholders in support of such nomination, and (vii) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. The Corporation may require any proposed nominee](including virtually, in the case of a meeting held solely by means of remote communication) or by proxy at the meeting to bring such proposed business and/or nominate one or more Proposed Nominee; and

(F) an acknowledgment that, if the stockholder providing notice (or a qualified representative of such stockholder) does not appear to present such proposed business or Proposed Nominee at the meeting, the Corporation need not present such proposed business or Proposed Nominee for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

In addition to the information required above, the Corporation may require any Proposed Nominee to furnish such other information as the Corporation may reasonably require to determine the eligibility of [such proposed nominee to serve as a director of the Corporation]a Proposed Nominee to serve as a director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee, under the listing standards of each securities exchange upon which the shares of the Corporation are listed, any applicable rules of the Securities and Exchange Commission, any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors, including those applicable to a director's service on any of the committees of the Board of Directors, or the requirements of any other laws or regulations applicable to the Corporation.

[The chairman of the meeting may, if the facts warrant, determine that a nomination was not made in accordance with the foregoing procedure, and, if he or she should so determine, he or she shall so declare to the meeting, and the defective nomination shall be disregarded.]

[2.12 *Notice of Business at Annual Meetings*](b) Special Meetings of Stockholders. [At an annual meeting of the stockholders, o]Only such business [shall be conducted] as shall have been [properly] brought before [the]a special meeting[. To be properly brought before an annual meeting, business must be (a) specified in]of the stockholders pursuant to the Corporation's notice of meeting [(or any supplement thereto) given by or]shall be conducted at [the direction] such meeting. Nominations for persons elected to the Board of Directors[, (b) otherwise properly brought before the meeting] may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board of Directors (or a[ny]duly authorized committee thereof), or [(c) otherwise properly brought before an annual (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation ([i]A) who is a stockholder of record on the date of the [giving of] notice given pursuant to [provided for in] this *Section 2.11*[*2*] and through the date of such special meeting, (B) who is entitled to vote at [such annual]the special meeting, and ([ii]C) who complies with the notice procedures set forth in this *Section 2.11*[*2*]. [For business] In order for nominations pursuant to the foregoing clause (ii) to be properly brought before [an annual]such special meeting by a stockholder, [if such business relates to the election of directors of the Corporation, the procedures in Section 2.11 must be complied with. If such business relates to any other matter, the]such stockholder must have given timely notice [thereof]therefore in [writing]proper written form to the Secretary of the Corporation. In order for such notice [T]to be timely, [a stockholder's notice]it must be delivered to or mailed [to]and received by the Secretary [and received] at the principal executive offices of the Corporation [not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that if the annual meeting is not held within thirty (30) days before or seventy (70) days after such anniversary date, then for the notice by the stockholder to be timely it must be so received not later than the close of business] on the [10]ninetieth (90th) day [following the date] nor earlier than 5:00 p.m. Eastern Time on [which]the one-hundred twentieth (120th) day prior to such special meeting or, if public announcement of the [annual meeting] date [was made. In no event shall the public announcement] of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made less than ninety (90) days prior to the date of the special meeting, the tenth (10th) day following the day on which such public announcement is first made. In no event shall the [an] adjournment or postponement of a[n annual]special meeting commence a new time period (or extend any time period) for the [giving]providing of a stockholder's notice as described above. [To be in proper written form, a stockholder's notice to the Secretary shall set forth (a) as to any business (other than nominations for the election of directors) that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (b) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class and]The number of [shares of capital stock of the Corporation which are owned beneficially and of record by such stockholder and] nominees a stockholder may nominate for

election at the special meeting (or in the case of a stockholder giving the notice on behalf of a Stockholder Associated Person, the number of nominees a stockholder may nominate for election at the special meeting on behalf of such Stockholder Associated Person) shall not exceed the number of directors to be elected at such special meeting. In order for such [beneficial owner, (iii) a description of any agreement, arrangement or understanding with respect to the proposal between or among]notice to be in proper written form, [such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of capital stock of the Corporation, (v) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business, and (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (b) otherwise to solicit proxies or votes from stockholders in support of such proposal. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures]such notice shall set forth and include all information required to be set forth and included in a notice for the nomination of a director under this Section 2.11, including the information set forth in Section 2.11(a)(iii)

(c) General.

(i) A stockholder providing notice of any proposed business or Proposed Nominee to be considered at a meeting of stockholders shall further update in writing any notice provided pursuant to this *Section 2.11*[2], [except] if necessary, so that [any stockholder proposal which complies with Rule 14a-8 of] the [proxy rules,]information provided or [any successor provision, promulgated under the Act,] required to be provided in such notice shall be true and [is to be included in the Corporation's proxy statement]correct (A) as of the record date for [an annual meeting of]determining the stockholders entitled to receive notice of the meeting and (B) as of the date that is ten (10) business days prior to the meeting (or any postponement, adjournment or recess thereof), and such update shall be [deemed to comply with the requirements of this Section 2.12. Notwithstanding the foregoing]received by the Secretary at the principal executive offices of the Corporation (I) not later than five (5) business days after the record date for determining the stockholders entitled to receive notice of such meeting (in the case of an update required to be made under clause (A)) and (II) not later than seven (7) business days prior to the date for the meeting, if practicable, or, if not practicable, on the first practicable date prior to the meeting or any adjournment, recess or postponement thereof (in the case of an update required to be made pursuant to clause (B)).

(ii) If any information submitted pursuant to this *Section 2.11* is inaccurate in any respect, such information may be deemed not to have been provided in accordance with these Bylaws. The stockholder providing the notice shall notify the Secretary in writing at the principal executive offices of the Corporation of any inaccuracy or change in any such information within two (2) business days of becoming aware of such inaccuracy or change. Upon written request by the Secretary, the Board of Directors (or a duly authorized committee thereof), any such stockholder shall provide, within seven (7) business days of delivery of such request (or such other period as may be specified in such request), (A) written verification, reasonably satisfactory to the Board of Directors, any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 2.11, and (B) a written update of any information (including written confirmation by such stockholder that it continues to intend to bring such proposed business or Proposed Nominee before the meeting) submitted by the stockholder pursuant to this Section 2.11 as of an earlier date. If the stockholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with this *Section 2.11*.

(iii) Notwithstanding the provisions of this [Section 2.12 or] *Section 2.11*, a stockholder providing notice shall also comply with all applicable requirements of state law and all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth herein, provided, however, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements applicable to stockholder proposals or director nominations to be considered pursuant to this Section 2.11.

(iv) Notwithstanding the provisions of this *Section 2.11*, unless otherwise required by law or expressly waived in writing by the Corporation, if the stockholder providing notice (or a qualified representative of the stockholder) does not appear [at the annual or special meeting of stockholders of the Corporation]in person (including virtually, in the case of a meeting held solely by means of remote communication) at the stockholder meeting to present [a nomination or proposed business, such nomination may be disregarded and] such proposed business [need]or nomination, as applicable, such proposed business or nomination shall not be presented by the Corporation and shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this [*Section 2.12* and] *Section 2.11*, to be considered a qualified representative of the stockholder providing notice, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting [of stockholders and such person must produce] and such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, must be provided to the Corporation at least twenty-four (24) hours prior to the meeting [of stockholders].

[For purposes of *Section 2.11* and *Section 2.12*,] (v) For purposes of this Section 2.11, (A) an "affiliate" and "associate" each have the respective meanings set forth in Rule 12b-2 under the Exchange Act (or any successor provision at law); (B) "Stockholder Associated Person" shall mean (I) any person who is a member of a "group" (as such term is used in Rule 13d-5 under the Exchange Act (or any successor provision at law)) with or otherwise acting in concert with such stockholder providing notice, (II) any beneficial owner of shares of stock of

the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depositary), (III) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person and beneficially owns, directly or indirectly, shares of stock of the Corporation, (IV) any person that directly, or indirectly through one or more intermediaries, controls such stockholder or any Stockholder Associated Person and (V) any participant (as defined in paragraphs (a)(ii) (vi) of Instruction 3 to Item 4 of Schedule 14A, or any successor instructions) with such stockholder or other Stockholder Associated Person in respect of any proposals or nominations, as applicable; and (C) "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act. [Notwithstanding the foregoing provisions in Section 2.11 or Section 2.12, a stockholder shall also comply with all applicable requirements of the Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.11 and Section 2.12.]

(vi) Nothing in [either]this *Section 2.11* [or Section 2.12] shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals or nominations in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (b) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

(vii) The chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that business [was]or director nominations were not properly brought before the meeting in accordance with the provisions of this *Section 2.11*[*2*, and, if he or she should so determine, the chairman shall so declare to the meeting], and any such business not properly brought before the meeting shall be disregarded and shall not be transacted or considered.

2.12[3] *Action without Meeting*. Stockholders may not take any action by written consent in lieu of a meeting.

2.13[4] *Organization*. The Chairman of the Board, or in the Chairman of the Board's absence, the Chief Executive Officer or President, shall call meetings of the stockholders to order and act as chairman of such meeting; provided, however, that the Board of Directors may appoint any [stockholder]director of the Corporation to act as chairman of any meeting in the absence of the Chairman of the Board. The Secretary of the Corporation shall act as secretary at all meetings of the stockholders; provided, however, that in the absence of the Secretary at any meeting of the stockholders, the chairman of such meeting may appoint any person to act as secretary of the meeting.

2.14[5] *Inspectors of Election*. The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the

discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall ([i]a) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, ([ii]b) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, ([iii]c) count all votes and ballots, ([iv]d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and ([v]e) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

2.15[6] *Conduct of Meetings*. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include or address, without limitation, the following: ([i]a) the establishment of an agenda or order of business for the meeting; ([ii]b) [rules and procedures for maintaining]the maintenance of order at the meeting and the safety of those present[; (iii)](c), including the compliance with state and local laws and regulations concerning safety and security; limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; ([iv]d) restrictions on entry to the meeting after the time fixed for the commencement thereof; [and (v)] (e) limitations on the time allotted to questions or comments by participants[. The presiding person at]; (f) the determination of when the polls shall open and close for any given matter to be voted on at the meeting [of stockholders, in addition to making]; (g) removal of any stockholder or other [determinations that may be appropriate]individual who refuses to [the conduct of the]comply with meeting[, shall, if the facts warrant, determine] procedures, rules or guidelines; and [declare to](h) restrictions on the [meeting that a matter or business was not properly brought before the meeting]use of audio and [if such presiding person should so determine, such presiding person shall so declare to the meeting]/or video recording devices and [any such matter or business not properly brought before the meeting shall not be transacted or considered]cell phones. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

ARTICLE 3—DIRECTOR

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3.2 *Number; Election; Qualification and Term of Office*. The Board of Directors of the Corporation shall consist of not less than 11 and not more than 23 directors, the exact number to be fixed by the Board of Directors from time to time pursuant to resolution adopted by the Board of Directors.

Directors shall be elected annually and shall hold office until the next annual meeting and until such time as their successors are elected or appointed and qualified, except in the event of earlier death, resignation or removal.

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3.5 *Vacancies*. Any vacancy in the Board of Directors, however occurring, including a vacancy resulting from an increase in the number of the directors, may be filled exclusively by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. 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 successor and to his earlier death, resignation or removal.

* * * * *

3.8 *Acting Chairman and Vacancy in Chairman of the Board Position*.

(a) In the absence or inability to act of the Chairman of the Board, the Board of Directors 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 of Directors and shall exercise such other powers and perform such other duties as are delegated to the Acting Chairman by the Board of Directors. The Acting Chairman of the Board may be, but need not be, the same person as the Lead Director.

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

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3.10 *Special Meetings*. Special meetings of the Board of Directors may be called by the Chairman of the Board or the Chief Executive Officer and shall be called by the Secretary upon the written request of any four directors. The Secretary shall give at least 24 hours notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate under the circumstances, of such meeting to each director, either in person, by mail, messenger, overnight courier, facsimile machine, electronic mail or telephone. 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.

* * * * *

3.13 *Action by Consent*. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board of Directors may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent to the action in writing or by electronic transmission[, and]. After an action is taken, the [writing]consent or [writings or electronic transmissions are]consents relating thereto shall be filed with the minutes of proceedings of the Board of Directors or committee [of]in the [Board of Directors,]same paper or electronic form as [applicable]the minutes are maintained.

* * * * *

3.15 *Emergency Bylaws*. Notwithstanding anything to the contrary in the Certificate of Incorporation or these Bylaws, in the event there is any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition (each, an "emergency"), and a quorum of the Board of Directors cannot readily be convened for action, this Section 3.15 shall apply.

(a) Any director or Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, Treasurer or Secretary of the Corporation may call a meeting of the Board of Directors by any feasible means and with such advance notice as circumstances permit in the judgment of the person calling the meeting. Neither the business to be transacted nor the purpose of any such meeting need be specified in the notice thereof.

(b) One-third (1/3) of the directors shall constitute a quorum, which may in all cases act by majority vote.

(c) Directors may take action to appoint one or more of the director or directors to membership on any standing or temporary committees of the Board of Directors as they deem advisable. Directors may also take action to designate one or more of the officers of the Corporation to serve as directors of the Corporation while this Section 3.15 applies.

(d) To the extent that it considers it practical to do so, the Board of Directors shall manage the business of the Corporation during an emergency in a manner that is consistent with the Certificate of Incorporation and Bylaws. It is recognized, however, that in an emergency it may not always be practical to act in this manner and this Section 3.15 is intended to and does hereby empower the Board of Directors with the maximum authority possible under the DGCL, and all other applicable law, to conduct the interim management of the affairs of the Corporation in an emergency in what it considers to be in the best interests of the Corporation.

(e) No director, officer or employee acting in good faith in accordance with this Section 3.15 or otherwise pursuant to Section 110 of the DGCL shall be liable except for willful misconduct.

(f) This Section 3.15 shall continue to apply until such time following the emergency when it is feasible for at least a majority of the directors of the Corporation immediately prior to the emergency to resume management of the business of the Corporation.

(g) The Board of Directors may modify, amend or add to the provisions of this Section 3.15 in order to make any provision that may be practical or necessary given the circumstances of the emergency.

(h) The provisions of this Section 3.15 shall be subject to repeal or change by further action of the Board of Directors or by action of the stockholders, but no such repeal or change shall modify the provisions of paragraph (e) of this Section 3.15 with regard to action taken prior to the time of such repeal or change.

ARTICLE 4—COMMITTEES

4.1 *Designation of Committees*. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation, if any, to be affixed to all papers which may require it. The committees of the Board of Directors shall consist of an Executive Committee, an Audit Committee, a Compensation Committee, a Nominating and Governance Committee and such other standing and special committees as may be approved by the Board of Directors. The Corporation shall have such other committees as may be provided in these Bylaws or as may be from time to time appointed by the Board of Directors. The Board of Directors shall designate the members of these other committees and may designate a Chairman and a Vice-Chairman thereof.

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, and such other number of directors that the Board of Directors deems appropriate, provided that at all times the majority of the directors serving on the Executive Committee must be independent directors. 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 of Directors. Members of the Executive Committee shall not be subject to removal except by the Board of Directors. The Chairman of the Board shall be the Chairman of the Executive Committee. Each member of this Committee shall be a voting member. The Executive Committee shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, except it shall not have the power and authority of the Board of Directors to ([i]a) 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] the DGCL to be submitted to stockholders for approval, or (b) adopt, alter, amend or repeal any Bylaw of the Corporation.

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4.5. *The Nominating and Governance Committee*. The Nominating and Governance Committee shall consist of at least [five]three directors, all of whom must be independent directors and all of whom shall be recommended by the Nominating and Governance Committee for approval by the Board of Directors. The exact number of Nominating and Governance Committee members shall be determined from time to time by the Board of Directors. Members of the Nominating and Governance Committee shall not be subject to removal except by the Board of Directors. The Chairman of the Nominating and Governance Committee shall be recommended by the Nominating and Governance Committee for approval by the Board of Directors. The Nominating and Governance Committee shall have such duties and may exercise such authority as may be prescribed by resolution of the Board of Directors and the Nominating and Governance Committee Charter as adopted by resolution of the Board of Directors.

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ARTICLE 8—NOTICES

8.1 *Notices.* Except as provided in *Section 8.2* and to the extent permitted by law, any notice required to be given by these Bylaws 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], the earlier of when the notice is received or left at the stockholder's or director's address;

(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], when directed to the stockholder's or director's electronic [transmission]mail address unless, in the case of [the] a stockholder, the stockholder has notified the Corporation of an objection to receiving notice by electronic mail or if such notice is prohibited by the DGCL; 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. In the event that a notice is not provided in conformity with the provisions of this *Section 8.1*, the notice will be deemed to have been given to its intended recipient upon any receipt of the notice by its intended recipient.

8.2 *Electronic Notice.* 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]to the stockholder [to whom such notice is given has previously consented to]in accordance with the [receipt of notice by electronic transmission]DGCL.

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ARTICLE 11—FORUM FOR ADJUDICATION OF DISPUTES

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for ([i]a) any derivative action or proceeding brought on behalf of the Corporation, ([ii]b) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, ([iii]c) any action asserting a claim against the Corporation or any current or former director, officer, other employee, agent or stockholder of the Corporation arising pursuant to any provision of the DGCL, the Certificate of Incorporation or these Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, [or] ([iv]d) any action asserting a claim against the Corporation or any current or former director, officer, other employee, agent or stockholder of the Corporation governed by the internal affairs doctrine, or (e) any action asserting an "internal corporate claim" as that term is defined in Section 115 of the DGCL; provided, however, that, in the event that the Delaware Court of Chancery lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article 11. If any action the subject matter of which is within the scope of this Article 11 is filed in a court other than the Delaware Court of Chancery (or any other state or federal court located within the State of Delaware, as applicable) (a "Foreign Action") by or in the name of any stockholder, such stockholder shall be deemed to have notice of and consented to (x) the exclusive personal jurisdiction of the Delaware Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) in connection with any action brought in any such court to enforce this Article 11 and (y) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. The existence of any prior consent to, or selection of, an alternative forum by the Corporation shall not act as a waiver of the Corporation's ongoing consent right as set forth in this Article 11 with respect to any current or future actions or claims. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions.

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