

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 57

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

File No.\* SR - 2011 - \* 010

Amendment No. (req. for Amendments)

Proposed Rule Change by Chicago Board Options Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial \* ☒ Amendment \* ☐ Withdrawal ☐

Section 19(b)(2) \* ☒

Section 19(b)(3)(A) \* ☐

Section 19(b)(3)(B) \* ☐

Rule

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

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)  
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)  
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Submit As Paper Document ☐

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### Description

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

Proposed Rule Change Relating to Bylaw and Related Rule Changes

### 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 proposed rule change.

First Name \* Arthur Last Name \* Reinstein  
Title \* Deputy General Counsel  
E-mail \* reinstel@cboe.com  
Telephone \* (312) 786-7570 Fax (312) 786-7919

### 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 officer.

Date 01/27/2011

By Arthur Reinstein

(Name \*)

Deputy General Counsel

(Title \*)

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.

Arthur Reinstein reinstel@cboe.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information (required)**

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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 (required)**

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

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Exhibit Sent As Paper Document

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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**

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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**

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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**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item 1 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**

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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 Proposed Rule Change

(a) Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to (i) amend its Bylaws and rules to eliminate its office of Vice Chairman of the Board, (ii) amend its Bylaws to eliminate its Trading Advisory Committee and provide that the Board of Directors may establish an Advisory Board, (iii) amend its Bylaws to eliminate its Audit Committee, and (iv) amend its Bylaws to conform the composition requirements of its Board of Directors and Executive Committee to the composition requirements of the Board of Directors and Executive Committee of its affiliate C2 Options Exchange, Incorporated ("C2"). The proposed amendments to CBOE's Bylaws are included in Exhibit 5A, and the proposed amendments to CBOE's rules are included in Exhibit 5B.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The substance of the proposed rule change has been approved by CBOE's Board of Directors. The Exchange must obtain, but has not yet obtained, formal approval from CBOE's Board of Directors for the specific Bylaw and rule changes set forth in the proposed rule change. Once that approval has been obtained, no further action by the Exchange in connection with the proposed rule change will be required and the Exchange plans to file a technical amendment to the proposed rule change to reflect that approval.

(b) Questions and comments on the proposed rule change may be referred to Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462; Arthur Reinstein, Deputy General Counsel, (312) 786-7570; or Patrick

Sexton, Associate General Counsel, (312) 786-7467; Chicago Board Options Exchange, Incorporated, 400 South LaSalle Street, Chicago, Illinois 60605; Fax: (312) 786-7919.

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

(a) Purpose

The purpose of this proposed rule change is to eliminate the office of CBOE Vice Chairman of the Board, to eliminate the CBOE Trading Advisory Committee and allow for a CBOE Advisory Board, to eliminate the CBOE Audit Committee, and to conform the composition requirements for the CBOE Board of Directors and CBOE Executive Committee to the corollary C2 composition requirements.

(1) Elimination of Office of Vice Chairman of the Board

In light of CBOE's demutualization and conversion from a membership organization to a stock corporation owned by a public holding company in June, 2010, and based on the Exchange's experience since that time in operating in that form, the Exchange believes that it is no longer necessary to provide for an office of Vice Chairman of the Board (which is an office held by one of the Exchange's Industry Directors). Historically, the Vice Chairman's primary functions were to take a lead role in facilitating communication between the Exchange and its membership, including lessor members that owned memberships and leased them to trading members, and in coordinating the activities of member committees. The role of the Vice Chairman has been significantly reduced since the Exchange has changed its structure. For example, the Exchange no longer has lessor members (as they became stockholders of CBOE's holding company, CBOE Holdings, Inc. ("CBOE Holdings"), in CBOE's restructuring), the Exchange's trading members are now Trading Permit Holders, and there are far fewer Trading Permit Holder committees than in the past. Additionally, the

Exchange believes that it will continue to be able to obtain input from Trading Permit Holders through, among other things, direct communication with individual Trading Permit Holders and the ability to establish Trading Permit Holder committees (even if fewer than in the past) and an Advisory Board (as proposed by this rule filing).

The Exchange Bylaws will also continue to require that at least 30% of the directors on the CBOE Board of Directors must be Industry Directors and that at least 20% of CBOE's directors must be Representative Directors. Representative Directors are Industry Directors nominated (or otherwise selected through a petition process) by the Industry-Director Subcommittee of the CBOE Nominating and Governance Committee. The Industry-Director Subcommittee is composed of all of the Industry Directors serving on the Nominating and Governance Committee. CBOE Trading Permit Holders may nominate alternative Representative Director candidates to those nominated by the Industry Director Subcommittee, in which case a Run-off Election is held in which CBOE's Trading Permit Holders vote to determine which candidates will be elected to the CBOE Board of Directors to serve as Representative Directors. Thus, the Exchange will continue to provide for the fair representation of CBOE Trading Permit Holders in the selection of directors and the administration of the Exchange consistent with Section 6(b)(3) of the Securities Exchange Act of 1934, as amended ("Act").<sup>1</sup>

The specific proposed CBOE Bylaw and rule changes related to the elimination of the office of Vice Chairman of Board include the following changes:

Section 3.7 of the Bylaws, which describes the selection, the term, and roles of the Vice Chairman, is proposed to be deleted. The current roles of the Vice Chairman listed in

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<sup>1</sup> 15 U.S.C. 78f(b)(3).

Section 3.7 of the Bylaws (and how those roles will be performed going forward) are (i) presiding over meetings of the Board of Directors in the event that the Chairman of the Board is absent or unable to do so (which will be addressed by Section 3.8(a) of the Bylaws to be re-numbered from Section 3.9(a), which is proposed to be amended to eliminate references to the Vice Chairman and which will continue to allow the Board to designate an Acting Chairman of the Board in the absence or inability to act of the Chairman, which could be the Lead Director or another director); (ii) serving as chair of the Trading Advisory Committee (which Committee is proposed to be eliminated by this rule filing); (iii) unless otherwise provided in the rules or by Board resolution, appointing, subject to Board approval, the individuals to serve on Trading Permit Holder committees (which will be addressed by Section 4.1(b) of the Bylaws, which is proposed to be amended to vest this appointment authority, also subject to Board approval of such appointments, in the Chief Executive Officer or his or her designee); and (iv) exercising such other powers and performing such other duties as are delegated to the Vice Chairman by the Board (which is not an item that needs to be addressed since there are no such other powers or duties that the Board has delegated to the Vice Chairman).

Two additional current roles of the Vice Chairman are set forth in Section 5.3 of the Bylaws, which is also proposed to be deleted. Those roles are presiding at meetings of Trading Permit Holders and coordinating the activities of all Trading Permit Holder committees. The Exchange's expectation is that CBOE management will perform these functions.

Section 2.3 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the parties that can call a special meeting of the stockholders. This Section will

continue to permit special meetings of the stockholders to be called by either the Chairman of the Board or a majority of the Board.

Section 3.9(b) of the Bylaws is proposed to be re-numbered as Section 3.8(b) and to be amended to delete how the office of Vice Chairman is filled in the event of a vacancy in that office.

Section 3.12 of the Bylaws is proposed to be re-numbered as Section 3.11 and to be amended to delete the Vice Chairman as one of the parties that can call a special meeting of the Board of Directors. This Section will continue to permit special meetings of the Board to be called by either the Chairman of the Board or the Secretary upon the written request of any four directors.

In a related change, Section 4.1(b) of the Bylaws is proposed to be amended to vest the authority to remove a member of an Exchange committee (i.e., a non-Board committee) in the Chief Executive Officer or his or her designee, subject to the approval of the Board. This authority was previously vested with the Board itself. The Exchange is proposing to vest this authority with the Chief Executive Officer or his or her designee in order to have consistency with the proposed Exchange committee appointment authority which, as is described above, is also proposed to be vested in the Chief Executive Officer or his or her designee, subject to the approval of the Board.

Section 4.2 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the required members of the CBOE Executive Committee.

Section 5.1 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the required officers of the Exchange.

CBOE Rule 2.1(a) is proposed to be amended to vest the appointment and removal authority with respect to Exchange committees in the Chief Executive Officer or his or her designee, subject to the approval of the Board, consistent with the proposed Bylaw changes described above. Currently, Rule 2.1(a) provides that the Vice Chairman possesses this appointment authority, subject to the approval of the Board (except with respect to the Business Conduct Committee ("BCC")); that the President possesses this appointment authority, subject to the approval of the Board, with respect to the BCC; and that the Board possesses the removal authority. The President was vested with the appointment authority for the BCC, subject to the approval of the Board, so that this authority would be exercised by an individual that is not subject to the disciplinary jurisdiction of the BCC. The Chief Executive Officer, like the President, is part of Exchange management and is not a Trading Permit Holder or an associated person of a Trading Permit Holder and is not subject to the disciplinary jurisdiction of the BCC. The Exchange represents that any designee of the Chief Executive Officer designated to appoint the members of the BCC, subject to the approval of the Board, would also not be a Trading Permit Holder or an associated person of a Trading Permit Holder and would also not be subject to the disciplinary jurisdiction of the BCC.

CBOE Rule 16.1 is proposed to be amended to vest the President with summary suspension authority under the Rule instead of the Vice Chairman. The Chairman of the Board would also continue to retain that authority. Also, the title of Chapter XVI of the Exchange's rules is proposed to be shortened from "Summary Suspension by Chairman of the Board or Vice Chairman of the Board" to "Summary Suspension" in order to eliminate the reference to the Vice Chairman.



(2) Elimination of Trading Advisory Committee and Addition of Advisory Board Provision

Section 4.7 of the Bylaws currently provides for a Trading Advisory Committee to advise CBOE's Office of the Chairman regarding matters of interest to Trading Permit Holders. Section 4.7 provides that the Board of Directors sets the number of members on the Trading Advisory Committee, that the majority of the members of the Committee shall be involved in trading either directly or through their firms, that the Chairman of the Committee is the Vice Chairman of the Board, and that the Vice Chairman appoints the other members of the Committee with the approval of the Board.

In place of a Trading Advisory Committee, the Exchange proposes to amend the Bylaws to delete Section 4.7 of the Bylaws as well as a reference to the Trading Advisory Committee in Section 4.1(b) of the Bylaws and to provide in new proposed Section 6.1 of the Bylaws that the Board of Directors may establish an Advisory Board which shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. The Exchange believes that the term "Advisory Board" better reflects the important function served by such a body in providing a vehicle for Exchange management to receive advice from the perspective of Trading Permit Holders and regarding matters that impact Trading Permit Holders.

Under proposed Section 6.1 of the Bylaws, it is proposed that the Board of Directors shall determine the number of members of an Advisory Board, that the Chief Executive Officer or his or her designee shall serve as the Chairman of an Advisory Board, and that the CBOE Nominating and Governance Committee shall recommend the members of an Advisory Board for approval by the Board of Directors.

The Advisory Board would be completely advisory in nature and not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. Although proposed Section 6.1 of the Bylaws provides the Board of Directors with the discretion of whether or not to put in place an Advisory Board, it is the current intention of the Board of Directors to establish an Advisory Board.

(3) Elimination of Exchange Audit Committee

The Exchange proposes to eliminate its Audit Committee because its functions are duplicative of the functions of the Audit Committee of its parent company, CBOE Holdings.

Under its charter, the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board of Directors in discharging its responsibilities relating to, among other things, (i) the qualifications, engagement, and oversight of CBOE Holdings' independent auditor, (ii) CBOE Holdings' financial statements and disclosure matters, (iii) CBOE Holdings' internal audit function and internal controls, and (iv) CBOE Holdings' oversight and risk management, including compliance with legal and regulatory requirements. Because CBOE Holdings' financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings' subsidiaries, including CBOE, the CBOE Holdings Audit Committee's purview necessarily includes CBOE. The CBOE Holdings Audit Committee is composed of at least three CBOE Holdings directors, all of whom must be independent within the meaning given to that term in the CBOE Holdings Bylaws and Corporate Governance Guidelines and Rule 10A-3 under the Act.<sup>2</sup> All CBOE Holdings Audit Committee members must be financially literate (or become financially literate within a reasonable period of time after appointment to the Committee), and at least

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<sup>2</sup> 17 CFR 240.10A-3.

one member of the Committee must be an "audit committee financial expert" as defined by the Securities and Exchange Commission ("SEC").

By contrast, the CBOE Audit Committee has a more limited role, focused solely on CBOE. Under its charter, the primary functions of the CBOE Audit Committee are focused on (i) CBOE's financial statements and disclosure matters and (ii) CBOE's oversight and risk management, including compliance with legal and regulatory requirements, in each case, only to the extent required in connection with CBOE's discharge of its obligations as a self-regulatory organization. However, to the extent that the CBOE Audit Committee reviews financial statements and disclosure matters, its activities are duplicative of the activities of the CBOE Holdings Audit Committee, which is also charged with review of financial statements and disclosure matters. Similarly, the CBOE Holdings Audit Committee has general responsibility for oversight and risk management, including compliance with legal and regulatory requirements, for CBOE Holdings and all of its subsidiaries, including CBOE. Thus, the responsibilities of the CBOE Audit Committee are fully duplicated by the responsibilities of the CBOE Holdings Audit Committee. Accordingly, CBOE is proposing to delete Section 4.3 of the CBOE Bylaws which provides for the CBOE Audit Committee and to delete a reference to the CBOE Audit Committee in Section 4.1(a) of the CBOE Bylaws (which lists the required CBOE Board committees).

Although the CBOE Holdings Audit Committee has and will continue to have overall responsibilities with respect to the internal audit function, the CBOE Board of Directors will still maintain its own independent oversight over the internal audit function with respect to CBOE regulatory functions through the CBOE Regulatory Oversight Committee. Specifically, upon elimination of the CBOE Audit Committee, the charter of the CBOE

Regulatory Oversight Committee will be amended to provide that the Regulatory Oversight Committee will review all internal audits relating to CBOE's regulatory functions and that the Regulatory Oversight Committee will have the authority to review the internal audit plan with respect to CBOE's regulatory functions and to request at any time that CBOE's internal auditor conduct an audit relating to those functions. These changes are in addition to the current CBOE Regulatory Oversight Committee charter provision which provides that the Regulatory Oversight Committee shall meet regularly with CBOE's internal auditor regarding regulatory functions and are consistent with the Regulatory Oversight Committee's existing practice of reviewing internal audits of CBOE's regulatory functions.

CBOE believes that its proposal to eliminate its Audit Committee is substantially similar to prior actions by other securities exchanges with parent company audit committees to eliminate their exchange-level audit committees.<sup>3</sup>

(4) Composition Requirements for Board of Directors and Executive Committee

CBOE proposes to amend its Bylaws to conform the composition requirements of its Board of Directors and Executive Committee to the composition requirements of the Board of Directors and Executive Committee of C2.

Section 3.1 of the CBOE Bylaws currently provides, in pertinent part, that in no event shall the number of Non-Industry Directors on the CBOE Board of Directors constitute less than a majority of the members of the Board. Consistent with Section 3.1 of the C2 Bylaws, CBOE proposes to change this provision to provide that in no event shall the number of Non-Industry Directors on the CBOE Board constitute less than the number of Industry Directors

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<sup>3</sup> See, e.g., Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (File No. NASDAQ-2009-042).

on the Board (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose).

Similarly, Section 4.2 of the CBOE Bylaws currently provides, in pertinent part, that at all times the majority of the directors serving on the CBOE Executive Committee must be Non-Industry Directors. Like with the proposed change to the composition requirements for the CBOE Board of Directors and consistent with Section 4.2 of the C2 Bylaws, CBOE proposes to change this provision to provide that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the CBOE Executive Committee (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose).

Accordingly, following this proposed change to the CBOE Executive Committee composition requirements and the proposed elimination of the Vice Chairman, Section 4.2 of the CBOE Bylaws will require that the Executive Committee include the Chairman of the Board, the Chief Executive Officer (if a director), the Lead Director (if any), at least one Representative Director, and such other number of directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose).<sup>4</sup>

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<sup>4</sup> CBOE's Executive Committee generally does not make a decision unless there is a need for a CBOE Board-level decision between CBOE Board meetings due to the time sensitivity of the matter. In addition, in situations when the Executive Committee does make a decision between CBOE Board meetings, the CBOE Board is generally aware ahead of time of the potential that the Executive Committee may need to make the decision. The CBOE Board is fully informed of any decision made by the Executive Committee at its next meeting and can always decide to review that decision and take a different action. CBOE previously noted the foregoing to the Commission (see Footnote 87 of Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-88)) and it continues to be the case.

CBOE believes that having the same composition requirements for CBOE Holdings' two affiliated securities exchange subsidiaries (CBOE and C2) will promote consistency and efficiency. CBOE and C2 currently have the same individuals serving on the CBOE and C2 Boards and the CBOE and C2 Executive Committees. This approach simplifies the process of scheduling and conducting meetings and allows the Boards and Executive Committees of both exchanges to operate most efficiently. To the extent that CBOE and C2 desire to continue this approach in the future, these proposed changes better enable CBOE and C2 to do so. Also, in addition to being consistent with C2's corollary composition requirements for its Board and Executive Committee, CBOE believes that the proposed CBOE Board and Executive Committee composition requirement changes are consistent with the composition requirements of the Board of Directors and Executive Committee of NASDAQ Stock Market LLC.<sup>5</sup>

(5) Miscellaneous Non-Substantive Bylaw and Rule Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to its Bylaws and rules.

First, the Exchange proposes to amend the title of the Bylaws from "Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated" to "Second Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated" since the Exchange is making the Bylaw changes proposed by this rule filing through as second amendment and restatement of its Bylaws.

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<sup>5</sup> See Article I(1), Section 2(a) of Article III, and Section 5(a) of Article III of the By-Laws of the NASDAQ Stock Market LLC. See also Exchange Act Release No. 44280 (May 8, 2001), 66 FR 26892 (May 15, 2001) (SR-NASD-2001-06) (approving amendment to NASD By-Laws to allow for the treatment of staff Governors as "neutral" for purposes of Industry/Non-Industry balancing on the NASD Board of Governors).

Second, the Exchange is proposing to re-number various sections of the Bylaws to eliminate gaps in the numbering of the Bylaw sections resulting from the proposed deletion of certain of the Bylaw sections as described above.

Third, the Exchange proposes to make a clarifying change to Section 3.2 of the Bylaws to change a reference to the Industry-Director Subcommittee of the Nominating and Governance Committee from "committee" to "Subcommittee."

Fourth, the Exchange is proposing to make a clarifying change to CBOE Rule 2.1 in addition to the changes to Rule 2.1 discussed above to make clear that the term of an Exchange committee member's appointment continues until the first regular meeting of the Board of Directors of the next calendar year and until that committee member's successor is appointed or that committee member's earlier death, resignation, or removal. In other words, if the Board of Directors does not appoint a successor to the committee member at the first regular Board meeting of the year, the committee member would continue in office until a successor is appointed or the person's earlier death, resignation, or removal.

(6) Effectiveness of Changes

The Exchange proposes to make effective the proposed Bylaw and rule changes related to the elimination of the Vice Chairman of the Board that are described in subsection (a)(1) of Item 3 of this rule filing on the date of the annual election of CBOE directors in 2011 (which is anticipated to occur in May 2011). The Exchange proposes to make effective these changes at that time because the current term of the Vice Chairman expires on that date and this will permit the current Vice Chairman to serve out his current term of office.

The Exchange proposes to make effective all of the other changes proposed by this rule filing at the time that the Commission approves this rule filing. These changes include

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those relating to the elimination of the Trading Advisory Committee and the addition of an Advisory Board provision, to the elimination of the CBOE Audit Committee, and to the composition requirements for the Board of Directors and Executive Committee and they also include the miscellaneous non-substantive Bylaw changes (all of which are described in subsections (a)(2) - (a)(5) of Item 3 of this rule filing).

(b) Statutory Basis

For the reasons set forth above, CBOE believes that this filing is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(1) of the Act<sup>7</sup> and Section 6(b)(5) of the Act<sup>8</sup> in particular, in that (i) it enables CBOE to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Trading Permit Holders and persons associated with its Trading Permit Holders, with the provisions of the Act, the rules and regulations thereunder, and the rules of CBOE and (ii) to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed changes will streamline, make more efficient, and improve CBOE's governance structure (i) by eliminating the position of Vice Chairman of the Board which CBOE no longer believes is necessary; (ii) by eliminating the Trading Advisory Committee and adding a Bylaw provision that the Board of Directors may establish an Advisory Board, which CBOE views as a useful vehicle that the Board may utilize to receive

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

<sup>7</sup> 15 U.S.C. 78f(b)(1).

<sup>8</sup> 15 U.S.C. 78f(b)(5).



input from the perspective of Trading Permit Holders and with respect to matters of interest to Trading Permit Holders; (iii) by eliminating the CBOE Audit Committee, which CBOE believes is duplicative of the CBOE Holdings Audit Committee and which change will allow CBOE directors to focus their attention on matters falling directly within the purview of the CBOE Board of Directors; and (iv) by conforming the composition requirements of the CBOE Board of Directors and CBOE Executive Committee to the corollary C2 composition requirements, which CBOE believes will promote consistency and efficiency and better enable CBOE and C2 to have the same Board compositions if desired.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

Item 6. Extension of Time Period for Commission Action

CBOE consents to an extension of the time period for Commission consideration of the proposed rule change specified in Section 19(b)(2) of the Act.<sup>9</sup>

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

Not applicable.

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

CBOE believes that its proposal to eliminate its Audit Committee is substantially

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similar to prior actions by other securities exchanges with parent company audit committees to eliminate their exchange-level audit committees.<sup>10</sup> CBOE believes that its proposed changes to the composition requirements of CBOE's Board of Directors and Executive Committee are consistent with both C2's corollary composition requirements<sup>11</sup> and the composition requirements of the Board of Directors and Executive Committee of NASDAQ Stock Market LLC.<sup>12</sup>

Item 9. Exhibits

- Exhibit 1. Form of Notice of Proposed Rule Change for publication in the Federal Register.
- Exhibit 5. Text of the Proposed Rule Change.
  - A. Text of the Proposed Amendments to the CBOE Bylaws.
  - B. Text of the Proposed Amendments to the CBOE Rules.

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> See, e.g., Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (File No. NASDAQ-2009-042).

<sup>11</sup> See Sections 3.1 and 4.2 of the Amended and Restated Bylaws of C2 Options Exchange, Incorporated.

<sup>12</sup> See Article I(l), Section 2(a) of Article III, and Section 5(a) of Article III of the By-Laws of the NASDAQ Stock Market LLC. See also Exchange Act Release No. 44280 (May 8, 2001), 66 FR 26892 (May 15, 2001) (SR-NASD-2001-06) (approving amendment to NASD By-Laws to allow for the treatment of staff Governors as "neutral" for purposes of Industry/Non-Industry balancing on the NASD Board of Governors).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-CBOE-2011-010)

Dated: \_\_\_\_\_

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Bylaw and Related Rule Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_, 2011, Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. 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 proposes to (i) amend its Bylaws and rules to eliminate its office of Vice Chairman of the Board, (ii) amend its Bylaws to eliminate its Trading Advisory Committee and provide that the Board of Directors may establish an Advisory Board, (iii) amend its Bylaws to eliminate its Audit Committee, and (iv) amend its Bylaws to conform the composition requirements of its Board of Directors and Executive Committee to the composition requirements of the Board of Directors and Executive Committee of its affiliate C2 Options Exchange, Incorporated ("C2").

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

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

The text of the proposed amendments to CBOE's Bylaws and the proposed amendments to CBOE's rules is available on CBOE's website (<http://www.cboe.org/Legal>), at CBOE's Office of the Secretary, and at the Commission.

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

In its filing with the Commission, CBOE 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. CBOE 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 the Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of this proposed rule change is to eliminate the office of CBOE Vice Chairman of the Board, to eliminate the CBOE Trading Advisory Committee and allow for a CBOE Advisory Board, to eliminate the CBOE Audit Committee, and to conform the composition requirements for the CBOE Board of Directors and CBOE Executive Committee to the corollary C2 composition requirements.

(1) Elimination of Office of Vice Chairman of the Board

In light of CBOE's demutualization and conversion from a membership organization to a stock corporation owned by a public holding company in June, 2010, and based on the Exchange's experience since that time in operating in that form, the Exchange believes that it is no longer necessary to provide for an office of Vice Chairman of the Board (which is an office held by one of the Exchange's Industry

Directors). Historically, the Vice Chairman's primary functions were to take a lead role in facilitating communication between the Exchange and its membership, including lessor members that owned memberships and leased them to trading members, and in coordinating the activities of member committees. The role of the Vice Chairman has been significantly reduced since the Exchange has changed its structure. For example, the Exchange no longer has lessor members (as they became stockholders of CBOE's holding company, CBOE Holdings, Inc. ("CBOE Holdings"), in CBOE's restructuring), the Exchange's trading members are now Trading Permit Holders, and there are far fewer Trading Permit Holder committees than in the past. Additionally, the Exchange believes that it will continue to be able to obtain input from Trading Permit Holders through, among other things, direct communication with individual Trading Permit Holders and the ability to establish Trading Permit Holder committees (even if fewer than in the past) and an Advisory Board (as proposed by this rule filing).

The Exchange Bylaws will also continue to require that at least 30% of the directors on the CBOE Board of Directors must be Industry Directors and that at least 20% of CBOE's directors must be Representative Directors. Representative Directors are Industry Directors nominated (or otherwise selected through a petition process) by the Industry-Director Subcommittee of the CBOE Nominating and Governance Committee. The Industry-Director Subcommittee is composed of all of the Industry Directors serving on the Nominating and Governance Committee. CBOE Trading Permit Holders may nominate alternative Representative Director candidates to those nominated by the Industry Director Subcommittee, in which case a Run-off Election is held in which CBOE's Trading Permit Holders vote to determine which candidates will be elected to the

CBOE Board of Directors to serve as Representative Directors. Thus, the Exchange will continue to provide for the fair representation of CBOE Trading Permit Holders in the selection of directors and the administration of the Exchange consistent with Section 6(b)(3) of the Act.<sup>3</sup>

The specific proposed CBOE Bylaw and rule changes related to the elimination of the office of Vice Chairman of Board include the following changes:

Section 3.7 of the Bylaws, which describes the selection, the term, and roles of the Vice Chairman, is proposed to be deleted. The current roles of the Vice Chairman listed in Section 3.7 of the Bylaws (and how those roles will be performed going forward) are (i) presiding over meetings of the Board of Directors in the event that the Chairman of the Board is absent or unable to do so (which will be addressed by Section 3.8(a) of the Bylaws to be re-numbered from Section 3.9(a), which is proposed to be amended to eliminate references to the Vice Chairman and which will continue to allow the Board to designate an Acting Chairman of the Board in the absence or inability to act of the Chairman, which could be the Lead Director or another director); (ii) serving as chair of the Trading Advisory Committee (which Committee is proposed to be eliminated by this rule filing); (iii) unless otherwise provided in the rules or by Board resolution, appointing, subject to Board approval, the individuals to serve on Trading Permit Holder committees (which will be addressed by Section 4.1(b) of the Bylaws, which is proposed to be amended to vest this appointment authority, also subject to Board approval of such appointments, in the Chief Executive Officer or his or her designee); and (iv) exercising such other powers and performing such other duties as are delegated to the Vice

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

Chairman by the Board (which is not an item that needs to be addressed since there are no such other powers or duties that the Board has delegated to the Vice Chairman).

Two additional current roles of the Vice Chairman are set forth in Section 5.3 of the Bylaws, which is also proposed to be deleted. Those roles are presiding at meetings of Trading Permit Holders and coordinating the activities of all Trading Permit Holder committees. The Exchange's expectation is that CBOE management will perform these functions.

Section 2.3 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the parties that can call a special meeting of the stockholders. This Section will continue to permit special meetings of the stockholders to be called by either the Chairman of the Board or a majority of the Board.

Section 3.9(b) of the Bylaws is proposed to be re-numbered as Section 3.8(b) and to be amended to delete how the office of Vice Chairman is filled in the event of a vacancy in that office.

Section 3.12 of the Bylaws is proposed to be re-numbered as Section 3.11 and to be amended to delete the Vice Chairman as one of the parties that can call a special meeting of the Board of Directors. This Section will continue to permit special meetings of the Board to be called by either the Chairman of the Board or the Secretary upon the written request of any four directors.

In a related change, Section 4.1(b) of the Bylaws is proposed to be amended to vest the authority to remove a member of an Exchange committee (i.e., a non-Board committee) in the Chief Executive Officer or his or her designee, subject to the approval of the Board. This authority was previously vested with the Board itself. The Exchange

is proposing to vest this authority with the Chief Executive Officer or his or her designee in order to have consistency with the proposed Exchange committee appointment authority which, as is described above, is also proposed to be vested in the Chief Executive Officer or his or her designee, subject to the approval of the Board.

Section 4.2 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the required members of the CBOE Executive Committee.

Section 5.1 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the required officers of the Exchange.

CBOE Rule 2.1(a) is proposed to be amended to vest the appointment and removal authority with respect to Exchange committees in the Chief Executive Officer or his or her designee, subject to the approval of the Board, consistent with the proposed Bylaw changes described above. Currently, Rule 2.1(a) provides that the Vice Chairman possesses this appointment authority, subject to the approval of the Board (except with respect to the Business Conduct Committee ("BCC")); that the President possesses this appointment authority, subject to the approval of the Board, with respect to the BCC; and that the Board possesses the removal authority. The President was vested with the appointment authority for the BCC, subject to the approval of the Board, so that this authority would be exercised by an individual that is not subject to the disciplinary jurisdiction of the BCC. The Chief Executive Officer, like the President, is part of Exchange management and is not a Trading Permit Holder or an associated person of a Trading Permit Holder and is not subject to the disciplinary jurisdiction of the BCC. The Exchange represents that any designee of the Chief Executive Officer designated to appoint the members of the BCC, subject to the approval of the Board, would also not be



a Trading Permit Holder or an associated person of a Trading Permit Holder and would also not be subject to the disciplinary jurisdiction of the BCC.

CBOE Rule 16.1 is proposed to be amended to vest the President with summary suspension authority under the Rule instead of the Vice Chairman. The Chairman of the Board would also continue to retain that authority. Also, the title of Chapter XVI of the Exchange's rules is proposed to be shortened from "Summary Suspension by Chairman of the Board or Vice Chairman of the Board" to "Summary Suspension" in order to eliminate the reference to the Vice Chairman.

(2) Elimination of Trading Advisory Committee and Addition of Advisory Board Provision

Section 4.7 of the Bylaws currently provides for a Trading Advisory Committee to advise CBOE's Office of the Chairman regarding matters of interest to Trading Permit Holders. Section 4.7 provides that the Board of Directors sets the number of members on the Trading Advisory Committee, that the majority of the members of the Committee shall be involved in trading either directly or through their firms, that the Chairman of the Committee is the Vice Chairman of the Board, and that the Vice Chairman appoints the other members of the Committee with the approval of the Board.

In place of a Trading Advisory Committee, the Exchange proposes to amend the Bylaws to delete Section 4.7 of the Bylaws as well as a reference to the Trading Advisory Committee in Section 4.1(b) of the Bylaws and to provide in new proposed Section 6.1 of the Bylaws that the Board of Directors may establish an Advisory Board which shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. The Exchange believes that the term "Advisory Board" better reflects the important function served by such a body in providing a vehicle for Exchange

management to receive advice from the perspective of Trading Permit Holders and regarding matters that impact Trading Permit Holders.

Under proposed Section 6.1 of the Bylaws, it is proposed that the Board of Directors shall determine the number of members of an Advisory Board, that the Chief Executive Officer or his or her designee shall serve as the Chairman of an Advisory Board, and that the CBOE Nominating and Governance Committee shall recommend the members of an Advisory Board for approval by the Board of Directors.

The Advisory Board would be completely advisory in nature and not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. Although proposed Section 6.1 of the Bylaws provides the Board of Directors with the discretion of whether or not to put in place an Advisory Board, it is the current intention of the Board of Directors to establish an Advisory Board.

(3) Elimination of Exchange Audit Committee

The Exchange proposes to eliminate its Audit Committee because its functions are duplicative of the functions of the Audit Committee of its parent company, CBOE Holdings.

Under its charter, the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board of Directors in discharging its responsibilities relating to, among other things, (i) the qualifications, engagement, and oversight of CBOE Holdings' independent auditor, (ii) CBOE Holdings' financial statements and disclosure matters, (iii) CBOE Holdings' internal audit function and internal controls, and (iv) CBOE Holdings' oversight and risk management, including compliance with legal and regulatory requirements. Because CBOE Holdings' financial statements are prepared on

a consolidated basis that includes the financial results of CBOE Holdings' subsidiaries, including CBOE, the CBOE Holdings Audit Committee's purview necessarily includes CBOE. The CBOE Holdings Audit Committee is composed of at least three CBOE Holdings directors, all of whom must be independent within the meaning given to that term in the CBOE Holdings Bylaws and Corporate Governance Guidelines and Rule 10A-3 under the Act.<sup>4</sup> All CBOE Holdings Audit Committee members must be financially literate (or become financially literate within a reasonable period of time after appointment to the Committee), and at least one member of the Committee must be an "audit committee financial expert" as defined by the SEC.

By contrast, the CBOE Audit Committee has a more limited role, focused solely on CBOE. Under its charter, the primary functions of the CBOE Audit Committee are focused on (i) CBOE's financial statements and disclosure matters and (ii) CBOE's oversight and risk management, including compliance with legal and regulatory requirements, in each case, only to the extent required in connection with CBOE's discharge of its obligations as a self-regulatory organization. However, to the extent that the CBOE Audit Committee reviews financial statements and disclosure matters, its activities are duplicative of the activities of the CBOE Holdings Audit Committee, which is also charged with review of financial statements and disclosure matters. Similarly, the CBOE Holdings Audit Committee has general responsibility for oversight and risk management, including compliance with legal and regulatory requirements, for CBOE Holdings and all of its subsidiaries, including CBOE. Thus, the responsibilities of the CBOE Audit Committee are fully duplicated by the responsibilities of the CBOE

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<sup>4</sup> 17 CFR 240.10A-3.

Holdings Audit Committee. Accordingly, CBOE is proposing to delete Section 4.3 of the CBOE Bylaws which provides for the CBOE Audit Committee and to delete a reference to the CBOE Audit Committee in Section 4.1(a) of the CBOE Bylaws (which lists the required CBOE Board committees).

Although the CBOE Holdings Audit Committee has and will continue to have overall responsibilities with respect to the internal audit function, the CBOE Board of Directors will still maintain its own independent oversight over the internal audit function with respect to CBOE regulatory functions through the CBOE Regulatory Oversight Committee. Specifically, upon elimination of the CBOE Audit Committee, the charter of the CBOE Regulatory Oversight Committee will be amended to provide that the Regulatory Oversight Committee will review all internal audits relating to CBOE's regulatory functions and that the Regulatory Oversight Committee will have the authority to review the internal audit plan with respect to CBOE's regulatory functions and to request at any time that CBOE's internal auditor conduct an audit relating to those functions. These changes are in addition to the current CBOE Regulatory Oversight Committee charter provision which provides that the Regulatory Oversight Committee shall meet regularly with CBOE's internal auditor regarding regulatory functions and are consistent with the Regulatory Oversight Committee's existing practice of reviewing internal audits of CBOE's regulatory functions.

CBOE believes that its proposal to eliminate its Audit Committee is substantially similar to prior actions by other securities exchanges with parent company audit committees to eliminate their exchange-level audit committees.<sup>5</sup>

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(4) Composition Requirements for Board of Directors and Executive Committee

CBOE proposes to amend its Bylaws to conform the composition requirements of its Board of Directors and Executive Committee to the composition requirements of the Board of Directors and Executive Committee of C2.

Section 3.1 of the CBOE Bylaws currently provides, in pertinent part, that in no event shall the number of Non-Industry Directors on the CBOE Board of Directors constitute less than a majority of the members of the Board. Consistent with Section 3.1 of the C2 Bylaws, CBOE proposes to change this provision to provide that in no event shall the number of Non-Industry Directors on the CBOE Board constitute less than the number of Industry Directors on the Board (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose).

Similarly, Section 4.2 of the CBOE Bylaws currently provides, in pertinent part, that at all times the majority of the directors serving on the CBOE Executive Committee must be Non-Industry Directors. Like with the proposed change to the composition requirements for the CBOE Board of Directors and consistent with Section 4.2 of the C2 Bylaws, CBOE proposes to change this provision to provide that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the CBOE Executive Committee (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose).

Accordingly, following this proposed change to the CBOE Executive Committee composition requirements and the proposed elimination of the Vice Chairman, Section

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<sup>5</sup> See, e.g., Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (File No. NASDAQ-2009-042).

4.2 of the CBOE Bylaws will require that the Executive Committee include the Chairman of the Board, the Chief Executive Officer (if a director), the Lead Director (if any), at least one Representative Director, and such other number of directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose).<sup>6</sup>

CBOE believes that having the same composition requirements for CBOE Holdings' two affiliated securities exchange subsidiaries (CBOE and C2) will promote consistency and efficiency. CBOE and C2 currently have the same individuals serving on the CBOE and C2 Boards and the CBOE and C2 Executive Committees. This approach simplifies the process of scheduling and conducting meetings and allows the Boards and Executive Committees of both exchanges to operate most efficiently. To the extent that CBOE and C2 desire to continue this approach in the future, these proposed changes better enable CBOE and C2 to do so. Also, in addition to being consistent with C2's corollary composition requirements for its Board and Executive Committee, CBOE believes that the proposed CBOE Board and Executive Committee composition

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<sup>6</sup> CBOE's Executive Committee generally does not make a decision unless there is a need for a CBOE Board-level decision between CBOE Board meetings due to the time sensitivity of the matter. In addition, in situations when the Executive Committee does make a decision between CBOE Board meetings, the CBOE Board is generally aware ahead of time of the potential that the Executive Committee may need to make the decision. The CBOE Board is fully informed of any decision made by the Executive Committee at its next meeting and can always decide to review that decision and take a different action. CBOE previously noted the foregoing to the Commission (see Footnote 87 of Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-88)) and it continues to be the case.

requirement changes are consistent with the composition requirements of the Board of Directors and Executive Committee of NASDAQ Stock Market LLC.<sup>7</sup>

(5) Miscellaneous Non-Substantive Bylaw and Rule Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to its Bylaws and rules.

First, the Exchange proposes to amend the title of the Bylaws from "Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated" to "Second Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated" since the Exchange is making the Bylaw changes proposed by this rule filing through as second amendment and restatement of its Bylaws.

Second, the Exchange is proposing to re-number various sections of the Bylaws to eliminate gaps in the numbering of the Bylaw sections resulting from the proposed deletion of certain of the Bylaw sections as described above.

Third, the Exchange proposes to make a clarifying change to Section 3.2 of the Bylaws to change a reference to the Industry-Director Subcommittee of the Nominating and Governance Committee from "committee" to "Subcommittee."

Fourth, the Exchange is proposing to make a clarifying change to CBOE Rule 2.1 in addition to the changes to Rule 2.1 discussed above to make clear that the term of an Exchange committee member's appointment continues until the first regular meeting of

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<sup>7</sup> See Article I(l), Section 2(a) of Article III, and Section 5(a) of Article III of the By-Laws of the NASDAQ Stock Market LLC. See also Exchange Act Release No. 44280 (May 8, 2001), 66 FR 26892 (May 15, 2001) (SR-NASD-2001-06) (approving amendment to NASD By-Laws to allow for the treatment of staff Governors as "neutral" for purposes of Industry/Non-Industry balancing on the NASD Board of Governors).

the Board of Directors of the next calendar year and until that committee member's successor is appointed or that committee member's earlier death, resignation, or removal. In other words, if the Board of Directors does not appoint a successor to the committee member at the first regular Board meeting of the year, the committee member would continue in office until a successor is appointed or the person's earlier death, resignation, or removal.

(6) Effectiveness of Changes

The Exchange proposes to make effective the proposed Bylaw and rule changes related to the elimination of the Vice Chairman of the Board that are described in subsection (a)(1) of Item 3 of this rule filing on the date of the annual election of CBOE directors in 2011 (which is anticipated to occur in May 2011). The Exchange proposes to make effective these changes at that time because the current term of the Vice Chairman expires on that date and this will permit the current Vice Chairman to serve out his current term of office.

The Exchange proposes to make effective all of the other changes proposed by this rule filing at the time that the Commission approves this rule filing. These changes include those relating to the elimination of the Trading Advisory Committee and the addition of an Advisory Board provision, to the elimination of the CBOE Audit Committee, and to the composition requirements for the Board of Directors and Executive Committee and they also include the miscellaneous non-substantive Bylaw changes (all of which are described in subsections (a)(2) - (a)(5) of Item 3 of this rule filing).



(b) Statutory Basis

For the reasons set forth above, CBOE believes that this filing is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(1) of the Act<sup>9</sup> and Section 6(b)(5) of the Act<sup>10</sup> in particular, in that (i) it enables CBOE to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Trading Permit Holders and persons associated with its Trading Permit Holders, with the provisions of the Act, the rules and regulations thereunder, and the rules of CBOE and (ii) to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed changes will streamline, make more efficient, and improve CBOE's governance structure (i) by eliminating the position of Vice Chairman of the Board which CBOE no longer believes is necessary; (ii) by eliminating the Trading Advisory Committee and adding a Bylaw provision that the Board of Directors may establish an Advisory Board, which CBOE views as a useful vehicle that the Board may utilize to receive input from the perspective of Trading Permit Holders and with respect to matters of interest to Trading Permit Holders; (iii) by eliminating the CBOE Audit Committee, which CBOE believes is duplicative of the CBOE Holdings Audit Committee and which change will allow CBOE directors to focus

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

<sup>9</sup> 15 U.S.C. 78f(b)(1).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

their attention on matters falling directly within the purview of the CBOE Board of Directors; and (iv) by conforming the composition requirements of the CBOE Board of Directors and CBOE Executive Committee to the corollary C2 composition requirements, which CBOE believes will promote consistency and efficiency and better enable CBOE and C2 to have the same Board compositions if desired.

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

CBOE 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.

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

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

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

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

(A) By order approve 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-010 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2011-010. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2011-010 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.<sup>11</sup>

Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5A**

Additions underlined

Deletions [bracketed]

**SECOND AMENDED AND RESTATED**  
**BYLAWS OF**  
**CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED**  
**ARTICLE I Definitions**

**Section 1.1. Definitions.**

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

- (a) The term “Act” means the Securities Exchange Act of 1934, as amended.
- (b) The term “affiliate” of a Person or “affiliated with” another Person shall have the meaning given to such term in the Rules of the Exchange.
- (c) The term “Board” means the Board of Directors of the Corporation.
- (d) The term “Corporation” means the Chicago Board Options Exchange, Incorporated.
- (e) The term “Exchange” means the Corporation, its exchange market and any facilities thereof.
- (f) The term “Trading Permit Holder” means any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit. If a Trading Permit Holder is an individual, the Trading Permit Holder may also be referred to as an “individual Trading Permit Holder.” If a Trading Permit Holder is not an individual, the Trading Permit Holder may also be referred to as a “TPH organization.” A Trading Permit Holder is a “member” solely for purposes of the Act; however, one’s status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange.
- (g) The term “Person” shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.
- (h) The term “Rules” means the rules of the Exchange as adopted or amended from time to time.
- (i) The term “Trading Permit” shall have the meaning given to such term in the Rules of the Exchange.
- (j) The term “associated with an entity” means any partner, officer or director of such entity (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such entity, or any employee of such entity.

## **ARTICLE II Stockholders**

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

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

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

If required by applicable law, an annual meeting of stockholders shall be held, beginning with the year immediately following the year in which the restructuring of the Corporation from a non-stock corporation to a stock corporation and wholly-owned subsidiary of CBOE Holdings, Inc. is consummated, on the third Tuesday in May of each year or such other date as may be fixed by the Board, at such time as may be designated by the Secretary prior to the giving of notice of the meeting, for the purpose of electing directors to fill expiring terms and any vacancies in unexpired terms and for the transaction of business as may properly come before the meeting.

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

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

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

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

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

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

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

With respect to any question brought before a meeting, when a quorum is present, a majority of the votes properly cast on any question shall decide the question, unless the question is one upon which by express provision of statute or the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control. Notwithstanding the preceding sentence, a plurality of votes properly cast shall elect the directors.

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

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

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

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

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

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

## **ARTICLE III Board of Directors**

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

The Board shall consist of not less than 11 and not more than 23 directors, the exact number to be fixed by the Board from time to time pursuant to resolution adopted by the Board. The number of Non-Industry Directors and Industry Directors may be changed from time to time by resolution adopted by the Board, but in no event shall the number of Industry Directors constitute less than 30% of the members of the Board and in no event shall the number of Non-Industry Directors constitute less than [a majority of the members of the Board] the number of Industry Directors (excluding the Chief Executive Officer from the calculation of Industry Directors for

such purpose). In addition, at all times at least 20% of directors serving on the Board shall be Representative Directors nominated (or otherwise selected through the petition process) as provided for in Section 3.2 by the Industry-Director Subcommittee.

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

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

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

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



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

Only persons who are nominated as Representative Directors by the Nominating and Governance Committee shall be eligible for election as Representative Directors. The Nominating and Governance Committee shall be bound to accept and nominate the Representative Director nominees recommended by the Industry-Director Subcommittee, provided that the Representative Director nominees are not opposed by a petition candidate as forth in Section 3.2 below. If such Representative Director nominees are opposed by a petition candidate then the Nominating and Governance Committee shall be bound to accept and nominate the Representative Director nominees who receive the most votes pursuant to a Run-off Election as set forth in Section 3.2 below.

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

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

The Industry-Director Subcommittee of the Nominating and Governance Committee shall recommend a number of Industry Directors that equals 20% of the total number of directors serving on the Board (the "Representative Director(s)"), provided that if 20% of the directors then serving on the Board is not a whole number, such number of Representative Directors shall be rounded up to the next whole number. Industry Directors not recommended by the Industry-Director Subcommittee shall be nominated by the Nominating and Governance Committee. The Industry-Director Subcommittee shall consist of all of the Industry Directors then serving on the Nominating and Governance Committee.

The Industry-Director Subcommittee shall provide a mechanism for holders of Trading Permits to provide input to the Industry-Director Subcommittee with respect to nominees for the Representative Directors. The Industry-Director Subcommittee shall issue a circular to the holders of Trading Permits identifying the Representative Director nominees selected by the Subcommittee not later than January 15th, or the first business day thereafter if January 15th is not a business day.

Holders of Trading Permits may nominate alternative candidates for election to the Representative Director positions to be elected in a given year by submitting a petition signed by individuals representing not less than 10% of the total outstanding Trading Permits at that time. Petitions must be filed with the Secretary no later than 5:00 p.m. (Chicago time) on the Monday preceding the 1st Friday in February, or the first business day thereafter in the event that Monday occurs on a holiday. The names of all Representative Director nominees recommended by the Industry-Director Subcommittee and those selected pursuant to a valid and timely petition shall, immediately following their selection, be given to the Secretary who shall promptly issue a circular to all of the Trading Permit Holders identifying all such Representative Director candidates.

If one or more valid petitions are received, the Secretary shall issue a circular to all of the Trading Permit Holders identifying those individuals nominated for Representative Director by

the Industry-Director Subcommittee and those individuals nominated for Representative Director through the petition process as well as of the time and date of a run-off election to determine which individuals will be nominated as Representative Director(s) by the Nominating and Governance Committee (the "Run-off Election"). The Run-off Election will be held at least 20 days prior to the mailing of any notice of the annual stockholders' meeting. In any Run-off Election, each holder of a Trading Permit shall have one vote with respect to each Trading Permit held by such Trading Permit Holder for each Representative Director position to be filled that year; provided, however, that no holder of Trading Permits, either alone or together with its affiliates, may account for more than 20% of the votes cast for a candidate, and any votes cast by a holder of Trading Permits, either alone or together with its affiliates, in excess of this 20% limitation shall be disregarded. Votes may be cast in person or by proxy. Additionally, in any Run-off Election, Trading Permits representing one-third of the total outstanding Trading Permits entitled to vote, when present in person or represented by proxy, shall constitute a quorum for purposes of the Run-off Election. The Secretary shall issue a circular to all of the Trading Permit Holders setting forth the results of the Run-off Election. The number of individual Representative Director nominees equal to the number of Representative Director positions to be filled that year receiving the largest number of votes in the Run-off Election (after taking into account the voting limitation set forth herein) will be the persons approved by the Trading Permit Holders to be nominated as the Representative Director(s) by the Nominating and Governance Committee for that year.

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

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

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

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

(b) In the event any Industry Director or Non-Industry Director fails to maintain the qualifications required for such category of director in Section 3.1 hereof, of which failure the Board shall be the sole judge, the term of office of such director shall terminate and such director shall thereupon cease to be a director, his office shall become vacant and, notwithstanding any provision to the contrary, the vacancy may be filled by the Board with a person who qualifies for the category in which the vacancy exists. Notwithstanding the foregoing, unless otherwise required by statute, the Certificate of Incorporation, regulations of the Securities and Exchange Commission ("SEC") or, if applicable, the regulations of any listing exchange on which the Corporation is listed, a director who fails to maintain the applicable qualifications may be

allowed the later of (i) 45 days from the date when the Board determines the director is unqualified or (ii) until the next regular Board meeting following the date when the Board makes such determination, in which to requalify. Following the date when the Board determines the director is unqualified, the director shall be deemed not to hold office and the seat formerly held by the director shall be deemed to be vacant for all purposes. The Board shall be the sole judge of whether the director has requalified. If a director is determined to have requalified, the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such director to the Board; provided, however, that the Board shall be under no obligation to return such director to the Board.

(c) No Representative Director may be removed from office by a vote of the stockholders at any time except for cause, which shall include, but not be limited to (i) a breach of a Representative Director's duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) transactions from which a Representative Director derived an improper personal benefit, or (iv) a failure of a Representative Director to be free from a statutory disqualification (as defined in Section 3(a)(39) of the Act). Any Representative Director may be removed for cause by the holders of a majority of the shares of stock then entitled to be voted at an election of directors.

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

(a) Notwithstanding any provision herein to the contrary, any vacancy in the Board, however occurring, including a vacancy resulting from an increase in the number of the directors, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, provided such new director qualifies for the category in which the vacancy exists. A director elected to fill a vacancy shall hold office until the next annual meeting of stockholders, subject to the election and qualification of his or her successor and to his or her earlier death, resignation, disqualification or removal.

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

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

The Board shall appoint one of the directors to serve as Chairman of the Board. Except as provided for in Section 3.7 [3.8] hereof, the Chairman of the Board shall be the presiding officer at all meetings of the Board and stockholders and shall exercise such other powers and perform such other duties as are delegated to him or her by the Board.

### **[Section 3.7. Vice Chairman of the Board.**

Each year following the annual election of the directors, the Board shall select, from among the Industry Directors, a Vice Chairman of the Board to serve for a term of one year and until a successor is elected or appointed and qualified. The Vice Chairman shall (i) preside over the meetings of the Board in the event the Chairman of the Board is absent or unable to do so, (ii) serve as chair the Trading Advisory Committee, (iii) except as otherwise provided in the Rules or resolution of the Board, appoint, subject to the approval of the Board, the individuals to serve on all Trading Permit Holder committees established in the Rules or by resolution of the Board, and (iv) exercise such other powers and perform such other duties as are delegated to the Vice Chairman of the Board by the Board.]

### **Section 3.7 [3.8]. Lead Director.**

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

### **Section 3.8 [3.9]. Acting Chairman and Vacancy in Chairman [or Vice Chairman of the Board] Position[s].**

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

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

### **Section 3.9 [3.10]. Quorum.**

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

**Section 3.10 [3.11]. Regular Meetings.**

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

**Section 3.11 [3.12]. Special Meetings.**

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

**Section 3.12 [3.13]. Participation in Meeting.**

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

**Section 3.13 [3.14]. Action by Written Consent.**

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

**Section 3.14 [3.15]. Interested Directors.**

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

**ARTICLE IV Committees**

**Section 4.1. Designation of Committees.**

(a) Committees of the Board. The committees of the Board shall consist of an Executive Committee, [an Audit Committee,] a Compensation Committee, a Regulatory Oversight Committee, a Nominating and Governance Committee and such other standing and special committees as may be approved by the Board. Except as may be otherwise provided in these Bylaws or as may be otherwise provided for from time to time by resolution of the Board, the

Board may, at any time, with or without cause, remove any member of any such committees of the Board.

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

#### **Section 4.2. The Executive Committee.**

The Executive Committee will include the Chairman of the Board, the Chief Executive Officer (if a director), [the Vice Chairman of the Board,] the Lead Director, if any, at least one Representative Director and such other number of directors that the Board deems appropriate, provided that [at all times the majority of the directors] in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee [must be Non-Industry Directors] (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose). Members of the Executive Committee (other than those specified in the immediately preceding sentence) shall be recommended by the Nominating and Governance Committee for approval by the Board. Members of the Executive Committee shall not be subject to removal except by the Board. The Chairman of the Board shall be the Chairman of the Executive Committee. Each member of this Committee shall be a voting member. The members of the Executive Committee shall serve for a term of one year expiring at the first regular meeting of directors following the annual meeting of stockholders each year or until their successors are appointed. The Executive Committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, except it shall not have the power and authority of the Board to (i) approve or adopt or recommend to the stockholders any action or matter (other than the election or removal of directors) expressly required by Delaware law to be submitted to stockholders for approval, including without limitation, amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, approving a sale, lease or exchange of all or substantially all of the Corporation's property and assets, or approval of a dissolution of the Corporation or revocation of a dissolution, or (ii) adopt, alter, amend or repeal any bylaw of the Corporation.

#### **[Section 4.3. The Audit Committee.**

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

by resolution of the Board and the Audit Committee Charter as adopted by resolution of the Board.]

**Section 4.3 [4.4]. The Compensation Committee.**

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

**Section 4.4 [4.5]. The Nominating and Governance Committee.**

The Nominating and Governance Committee shall consist of at least seven directors, including both Industry Directors and Non-Industry Directors, and shall at all times have a majority of directors that are Non-Industry Directors. All members of the committee shall be recommended by the Nominating and Governance Committee for approval by the Board. The exact number of Nominating and Governance Committee members shall be determined from time to time by the Board. Members of the Nominating and Governance Committee shall not be subject to removal except by the Board. The Chairman of the Nominating and Governance Committee shall be recommended by the Nominating and Governance Committee for approval by the Board. Subject to Section 3.2 and Section 3.5 of these Bylaws, the Nominating and Governance Committee shall have the authority to nominate individuals for election as directors of the Corporation. The Nominating and Governance Committee shall have such other duties and may exercise such other authority as may be prescribed by resolution of the Board and the Nominating and Governance Committee Charter as adopted by resolution of the Board.

**Section 4.5 [4.6]. The Regulatory Oversight Committee.**

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

**[Section 4.7. Trading Advisory Committee.**

The Trading Advisory Committee shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. It shall consist of such number of members as set by the Board from time to time. The majority of the members of the Trading Advisory Committee shall

be individuals involved in trading either directly or through their firms. The Vice Chairman shall be the Chairman of the Trading Advisory Committee and shall appoint, with the approval of the Board, the other members of the committee.]

**Section 4.6 [4.8]. Other.**

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

**Section 4.7 [4.9]. Conduct of Proceedings.**

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

**ARTICLE V Officers**

**Section 5.1. Designation; Number; Election.**

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

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

**Section 5.2. Chief Executive Officer.**

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



**[Section 5.3. Vice Chairman.**

The Vice Chairman shall perform such duties and possess such powers as the Board or the Chief Executive Officer may from time to time prescribe. The Vice Chairman shall preside at meetings of the Trading Permit Holders. The Vice Chairman shall be responsible for the coordination of the activities of all Trading Permit Holder committees.]

**Section 5.3 [5.4]. President.**

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

**Section 5.4 [5.5]. Chief Financial Officer.**

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

**Section 5.5 [5.6]. Vice Presidents.**

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

**Section 5.6 [5.7]. Secretary.**

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

**Section 5.7 [5.8]. Treasurer.**

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

**Section 5.8 [5.9]. Removals.**

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

**Section 5.9 [5.10]. Resignations.**

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

**Section 5.10 [5.11]. Vacancies.**

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

**Section 5.11 [5.12]. Salaries.**

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

**ARTICLE VI [Reserved] Advisory Board**

**Section 6.1. Advisory Board.**

The Board may establish an Advisory Board which shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. It shall consist of such number of members as set by the Board from time to time. The Chief Executive Officer, or his or her designee, shall be the Chairman of the Advisory Board. The members of the Advisory Board shall be recommended by the Nominating and Governance Committee for approval by the Board.

## **ARTICLE VII Notices**

### **Section 7.1. Notices.**

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

- (a) in person upon delivery of the notice in person to the Person to whom such notice is addressed;
- (b) by mail upon deposit of the notice in the United States mail, enclosed in a postage prepaid envelope;
- (c) by messenger or overnight courier service upon provision of the notice to the messenger or courier service, provided that the delivery method does not require payment of the messenger or courier service fee to deliver the notice by the Person to whom the notice is addressed;
- (d) by facsimile machine upon acknowledgment by the facsimile machine used to transmit the notice of the successful transmission of the notice;
- (e) by electronic mail upon electronic transmission of the notice; and
- (f) by telephone when received.

Any such notice must be addressed to its intended recipient at the intended recipient's address (including the intended recipient's business or residence address, facsimile number, electronic address, or telephone number, as applicable) as it appears on the books and records of the Corporation, or if no address appears on such books and records, then at such address as shall be otherwise known to the Secretary, or if no such address appears on such books and records, then in care of the registered agent of the Corporation in the State of Delaware. In the event that a notice is not provided in conformity with the provisions of this Section 7.1, the notice will be deemed to have been given to its intended recipient upon any receipt of the notice by its intended recipient.

### **Section 7.2. Electronic Notice to Stockholders.**

Whenever any notice whatsoever is required to be given in writing to any stockholder by law, by the Certificate of Incorporation or by these Bylaws, such notice may be given by a form of electronic transmission if the stockholder to whom such notice is given has previously consented to the receipt of notice by electronic transmission.

### **Section 7.3. Waiver of Notice.**

Whenever notice is required to be given under the provisions of any statute, the Certificate of Incorporation, these Bylaws, the Rules or otherwise, a written waiver thereof, signed by the Person entitled to notice, or his proxy, whether before or after the time stated therein shall be deemed equivalent to notice. Except as may be otherwise specifically provided by statute, any waiver by mail, messenger, overnight courier, facsimile machine, or electronic mail, bearing the name of the Person entitled to notice shall be deemed a written waiver duly signed. Attendance of a Person at a meeting, including attendance by proxy, shall constitute a waiver of notice of such meeting except when the Person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business the meeting is not lawfully called or convened. Except as required by statute or the Certificate of Incorporation, neither the

business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or any committee need be specified in any written waiver of notice.

## **ARTICLE VIII General Provisions**

### **Section 8.1. Fiscal Year.**

Except as otherwise determined from time to time by the Board, the fiscal year of the Corporation ends on the close of business on December 31 of each year.

### **Section 8.2. Checks, Drafts and Other Instruments.**

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, or by such agent or agents of the Corporation and in such manner as the Board may from time to time determine.

### **Section 8.3. Corporate Seal.**

The corporate seal, if any, shall be in such form as shall be approved by the Board or an officer of the Corporation.

### **Section 8.4. Voting Securities.**

Except as the Board may otherwise designate, the Chairman of the Board, Chief Executive Officer, Chief Financial Officer or Treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for the Corporation (with or without power of substitution) at, any meeting of stockholders or shareholders of any other corporation or organization, the securities of which may be held by this Corporation.

### **Section 8.5. Evidence of Authority.**

A certificate by the Secretary, or Assistant Secretary, if any, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall, as to all Persons who rely on the certificate in good faith, be conclusive evidence of such action.

### **Section 8.6. Certificate of Incorporation.**

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

### **Section 8.7. Transactions with Interested Parties.**

No contract or transaction between the Corporation and one or more of the directors or officers, or between the Corporation and any other corporation, limited liability company, partnership, association or other organization in which one or more of the directors or officers are directors, managers or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or a committee of the Board which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

(a) The material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

(b) The material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(c) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee of the Board or the stockholders.

Both (i) directors who are directors of both the Corporation and a party with whom the Corporation may be engaged in a transaction and (ii) interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee at which the contract or transaction is authorized.

### **Section 8.8. Severability.**

Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

### **Section 8.9. Pronouns.**

All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

### **Section 8.10. Contracts.**

In addition to the powers otherwise granted to officers pursuant to Article V hereof, the Board may authorize any officer or officers, or any agent or agents, of the Corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

### **Section 8.11. Loans.**

The Corporation may, to the extent permitted by applicable law, lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer or employee who is a director of the Corporation or its subsidiaries, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may

include, without limitation, a pledge of shares of stock of the Corporation. Nothing in this Section 8.11 shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

#### **Section 8.12. Books and Records.**

Subject to applicable law, the Board shall have power from time to time to determine to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by the laws of the State of Delaware. The Corporation shall keep its books and records within the United States. Any books or records of the Corporation may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

#### **Section 8.13. Section Headings.**

Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

#### **Section 8.14. Inconsistent Provisions.**

In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the General Corporation Law of the State of Delaware ("DGCL") or any other applicable law, the provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

### **ARTICLE IX Amendments**

#### **Section 9.1. By the Board.**

These Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, by the Board.

#### **Section 9.2. By the Stockholders.**

These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the affirmative vote of the majority of the stockholders present at any annual meeting of the stockholders at which a quorum is present.

#### **Section 9.3. SEC Approval.**

Before any amendment to, alteration or repeal of any provision of the Bylaws of the Corporation under this Article IX shall be effective, those changes shall be submitted to the Board and if the same must be filed with or filed with and approved by the SEC, then the proposed changes to the Bylaws of the Corporation shall not become effective until filed with or filed with and approved by the SEC, as the case may be.

## **ARTICLE X Rulemaking**

### **Section 10.1. Rulemaking.**

The Board may, by the affirmative vote of a majority of a quorum of the Board, alter, adopt, amend or repeal as it may deem necessary or proper any of the Corporation's Rules, which shall not become effective until filed with or filed with and approved by the SEC, as the case may be.

**Exhibit 5B**Additions underlined

Deletions [bracketed]

**Chicago Board Options Exchange, Incorporated Rules**

\* \* \* \* \*

**Rule 2.1. Committees of the Exchange**

(a) *Establishment of Exchange Committees.* In addition to committees specifically provided for in the Bylaws and the Rules, there shall be the following committees that are not solely composed of directors from the Board of Directors of the Exchange ("Exchange committees"): Appeals, Arbitration, Business Conduct, and such other Exchange committees as may be established in accordance with the Bylaws and Rules. The Chief Executive Officer or his or her designee [Vice Chairman of the Board], with the approval of the Board, shall appoint the chairmen, vice chairmen (if any), and members of all Exchange committees [other than the Business Conduct Committee], as well as fill any vacancies on those committees, unless a different manner of appointment is provided for any Exchange committee under the Bylaws, the Rules or a resolution of the Board establishing that committee. [The President, with the approval of the Board, shall appoint the chairman and members of the Business Conduct Committee, as well as fill any vacancies on the Business Conduct Committee.] The term of an Exchange committee member's appointment shall continue until [expire at] the first regular meeting of the Board of Directors of the next calendar year and until that committee member's successor is appointed or that committee member's earlier death, resignation or removal. In selecting Exchange committee members, consideration shall be given to continuity and to having, where appropriate, a cross section of the Trading Permit Holders represented on each Exchange committee. Except as may be otherwise provided in the Bylaws or the Rules, the Chief Executive Officer or his or her designee, with the approval of the Board, may, at any time, with or without cause, remove any member of any Exchange committee.

\* \* \* \* \*

**CHAPTER XVI Summary Suspension [by Chairman of the Board or Vice Chairman of the Board] (Rules 16.1-16.5)****Rule 16.1. Imposition of Suspension**

A Trading Permit Holder or person associated with a Trading Permit Holder who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a Trading Permit Holder of any self-regulatory organization, or a Trading Permit Holder which is in such financial or operating difficulty that the Chairman of the Board or the President [Vice Chairman of the Board] determines that the Trading Permit Holder cannot be permitted to continue to do business as a Trading Permit Holder with safety to investors, creditors, other Trading Permit Holders, or the Exchange, may be summarily suspended by the Chairman of the Board or the President [Vice Chairman of the Board]. In addition, the Chairman



of the Board or the President [Vice Chairman of the Board] may limit or prohibit any person with respect to access to services offered by the Exchange if any of the criteria or the foregoing sentence is applicable to such person or, in the case of a person who is not a Trading Permit Holder, if the Chairman of the Board or the President [Vice Chairman of the Board] determines that such person does not meet the qualification requirements or other prerequisites for such access with safety to investors, creditors, Trading Permit Holders, or the Exchange. In the event a determination is made to take summary action, as described above, notice thereof will be sent to the Securities and Exchange Commission. Any person aggrieved by any summary action taken under this Rule shall be promptly afforded an opportunity for a hearing by the Exchange in accordance with the provisions of Chapter XIX. In addition, the Securities and Exchange Commission may on its own motion order or such a person may apply to the Securities and Exchange Commission for a stay of such summary action pending the results of a hearing pursuant to Chapter XIX.