an associated person, as its custodian. Therefore, the expansion of the categories of eligible custodians should impose no new burdens on firms that continue to designate associated persons as their custodians. Introducing firms that designate their clearing firms as custodians, subject to their consent, may incur additional costs associated with clearing services.

Firms that designate members as their custodians, subject to their consent, may incur costs associated with record-keeping services provided by such members. For instance, a member that agrees to act as custodian is likely to incur operational and technology costs associated with integrating the former member's books and records into its record-keeping systems. Moreover, the proposed rule change could result in a change in how custodianship of books and records by firms leaving the industry is paid for and managed. For instance, clearing firms might adapt their business models to integrate the costs of custodial services into clearing agreements at the outset of the clearing relationship. This would potentially lead to an industry-wide increase in the costs of clearing agreements, regardless of any custodial undertaking by the clearing firms. However, considering the small number of firms that file Form BDW per year, FINRA believes that this is a low probability outcome.[13] Further, the competitive dynamics of procuring clearing services may preclude this outcome, as firms that raise their fees may lose clients.

The clarification of a custodian's obligations does not add any new direct burdens, but it could make it harder for firms to identify a custodian willing to agree to the obligations. Likewise, the affirmative consent requirement and the requirement to provide a representation to FINRA may make it more difficult for firms to find a willing custodian. However, given the importance to FINRA and investors of proper custody of books and records, FINRA believes that these additional burdens are warranted.

Alternatives Considered

FINRA considered whether to amend Rule 4570 to require a firm that is going out of business to be only able to designate another member as its custodian. While such a requirement would further enhance FINRA's ability to obtain the books and records of former firms, FINRA determined that a firm that is leaving the industry and that is experiencing financial or operational difficulties may find it difficult to find another member that is willing to act as custodian. Further, FINRA continues to evaluate the viability that FINRA make itself available as an alternative custodian for members' records after withdrawal.

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

Written comments were neither solicited nor received.

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 or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2018–039 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–FINRA–2018–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2018–039 and should be submitted on or before December 21, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–26000 Filed 11–29–18; 8:45 am]

BILLING CODE 8011–01–P

[13] On average, 220 firms have filed a Form BDW each year over the last five years. This represents about five percent of all active firms.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84648; File No. SR–NYSEArca–2018–85]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Certificate of Incorporation, Bylaws and Rule 3.3

November 26, 2018.

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

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

proposed rule change from interested persons.

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

The Exchange proposes to amend its certificate of incorporation, bylaws and Rule 3.3(a)(1)(B) to (1) harmonize certain provisions thereunder with similar provisions in the governing documents of the Exchange's national securities exchange affiliates and parent companies; and (2) make clarifying and updating changes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the Certificate of Incorporation of the Exchange (''Exchange Certificate''), Amended and Restated Bylaws of the Exchange (''Exchange Bylaws''), and Rule 3.3(a)(1)(B) to (1) harmonize certain provisions thereunder with similar provisions in the governing documents of the Exchange's national securities exchange affiliates [4] and parent companies; and (2) make clarifying and updating changes.

The Exchange is owned by the Holding Member, which in turn is indirectly wholly owned by NYSE Holdings LLC (''NYSE Holdings''). NYSE Holdings is a wholly owned subsidiary of Intercontinental Holdings, Inc. (''ICE Holdings''), which is in turn wholly owned by the Intercontinental Exchange, Inc. (''ICE'').[5]

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

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

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

The proposed amendments described below are primarily based on the Second Amended and Restated Certificate of Incorporation of Chicago Stock Exchange, Inc. (''NYSE Chicago Certificate''); Second Amended and Restated By-Laws of NYSE Chicago, Inc. (''NYSE Chicago Bylaws'') [8]; Amended and Restated Certificate of Incorporation of NYSE National, Inc. (''NYSE National Certificate''); Fifth Amended and Restated Bylaws of NYSE National, Inc. (''NYSE National Bylaws'') [9]; and Sixth Amended and Restated Certificate of Incorporation of NYSE Group, Inc. (''NYSE Group Certificate). In addition, the amendments to the indemnification provisions are based on the Eighth Amended and Restated Bylaws of Intercontinental Exchange, Inc. (''ICE Bylaws'') and the Sixth Amended and Restated Bylaws of Intercontinental Exchange Holdings, Inc. (''ICE Holdings Bylaws'').

Proposed Amendments to the Exchange Certificate

The Exchange proposes to amend the Exchange Certificate as follows.

Title and Introductory Paragraphs

The Exchange proposes to amend the title to reflect that the proposed Exchange Certificate is the ''Amended and Restated Certificate of Incorporation of NYSE Arca, Inc.'' [10] In addition, it proposes to adopt introductory paragraphs stating the Exchange's name and stating that the Exchange Certificate was adopted and amended in accordance with specific provisions of the General Corporation Law of the State of Delaware (''DGCL''). The introductory paragraphs are substantially similar to the introductory paragraphs of the NYSE Chicago Certificate.

Article 1

In a non-substantive change, the Exchange proposes to replace ''NYSE ARCA, INC.'' with ''NYSE Arca, Inc.'' in Article 1, to reflect that the legal name of the Exchange is not entirely in capital letters. Proposed Article 1 is substantially similar to Article 1 of the NYSE Chicago Certificate and Article

[4] The Exchange has four registered national securities exchange affiliates: NYSE National, Inc. (''NYSE National''), New York Stock Exchange LLC (''NYSE''), NYSE America [sic] LLC (''NYSE American''), and Chicago Stock Exchange, Inc. (''CHX'' and together with the Exchange, NYSE National, NYSE American, and NYSE, the ''NYSE Group Exchanges''). CHX has filed to change its name to NYSE Chicago, Inc. *See* Exchange Act Release No. 84494 (October 26, 2018), 83 FR 54953 (November 1, 2018) (SR–CHX–2018–05) (''NYSE Chicago Release'') (notice of filing and immediate effectiveness of proposal to reflect name changes of the Exchange and its direct parent company and to amend certain corporate governance provisions). The rule changes set forth in the NYSE Chicago Release will become operative upon the Second Amended and Restated Certificate of Incorporation of Chicago Stock Exchange, Inc. (''NYSE Chicago Certificate'') becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

[5] *See* Exchange Act Release No. 82638 (February 6, 2018), 83 FR 6072 (February 12, 2018) (SR–NYSE Arca–2018–09) (notice of filing and immediate effectiveness of proposed rule change to amend certain of the governing documents of the Exchange's intermediate parent companies).

[6] *See* NYSE Chicago Release, *supra* note 4, at 54953.

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

[8] The NYSE Chicago Certificate and NYSE Chicago Bylaws will become operative when the NYSE Chicago Certificate becomes effective pursuant to its filing with the Secretary of State of the State of Delaware. *Id.*

[9] The Exchange notes that, concurrent with this filing, NYSE National is filing changes to the NYSE National Certificate and Bylaws. *See* SR–NYSENat–2018–24. References to such documents in this filing are to the NYSE National Certificate and Bylaws currently in effect. The Exchange governing documents use ''member,'' ''Exchange'' and ''Board'' instead of ''stockholder,'' ''Corporation,'' and ''Board of Directors,'' which are used by CHX and NYSE National in their governing documents. When comparing a proposed change to the provision it is based on, the below descriptions do not note when such terms differ, as they are not substantive differences.

[10] *See* Exhibit B [sic] to Amendment No. 2, SR–PCX–2006–24 (March 6, 2006); *see also* Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006) (SR–PCX–2006–24) (notice of filing and immediate effectiveness of proposed rule change and Amendments No. 1 and 2 thereto to change the names of the Pacific Exchange, Inc., PCX Equities, Inc., PCX Holdings, Inc., and the Archipelago Exchange, L.L.C.).

FIRST of the NYSE National Certificate, provided that the Exchange Certificate provision defines ''Exchange.''

Article 2 and Certificate of Change of Registered Agent and/or Registered Office

In a non-substantive change, the Exchange proposes to update the address of the registered office and name of the registered agent, as previously filed. The Exchange also proposes to delete the ''Certificate of Change of Registered Agent and/or Registered Office.'' [11]

Article 9

Article 9 permits the Exchange to enter into a compromise with its creditors in certain circumstances. The Exchange proposes to amend current Article 9 to be consistent with the relevant provision of the DGCL, including the use of ''corporation'' instead of ''Exchange.'' [12] The proposed article would be substantially similar to Article TENTH of the NYSE Chicago Certificate and Article TENTH of the NYSE National Certificate.

Article 10

In a non-substantive change, the Exchange proposes to correct a reference to ''this Article 11'' to reference Article 10.

Article 12

Article 12 addresses indemnification. The Exchange proposes to delete Article 12 in its entirety, as the indemnification provision is set forth in Article VII, Section 7.01 of the Exchange Bylaws, making this provision redundant. Subsequent articles would be renumbered accordingly. NYSE Chicago made a similar change, deleting Article EIGHTH(a) of its Certificate.[13]

Article 13

Current Article 13 (proposed Article 12) states that the approval of a majority of the members of the Board and a majority of the existing Corporate Members shall be required to amend or repeal any provision of the Exchange Certificate, and that any change to the Exchange Certificate or Bylaws that is required to be approved by or filed with the Commission before it may become effective shall not become effective until the required Commission procedures have been satisfied.

The Exchange proposes to amend the provision to state that the Exchange reserves the right to amend the Exchange Certificate and to change or repeal any provision thereof, provided that any amendment must be approved by a majority of the members of the Board present at the relevant meeting and by a majority of the existing Corporate Members. In addition, the Exchange proposes to add a sentence providing that before any amendment to, alteration or repeal of any provision of the Exchange Certificate shall be effective, those changes shall be submitted to the Board and, if required, the proposed changes shall not become effective until filed with or filed with and approved by the Commission, as the case may be. The revised provision would read as follows (deletions bracketed; new text italicized):

The approval of either a majority of the Board of Directors or the affirmative vote of a majority of the existing Corporate Members, shall be required to adopt, amend or repeal any provision of the bylaws of the Exchange. The [approval of]*Exchange reserves the right to amend this certificate of incorporation, and to change or repeal any provision of the certificate of incorporation, and all rights conferred upon Corporate Members by such certificate of incorporation are granted subject to this reservation; provided, however, that any amendment to this certificate of incorporation must be approved by* a majority of *the members of* the Board of Directors *who are present at the meeting at which the amendment is proposed* and *by* a majority of the existing Corporate Members [shall be required to amend or repeal any provision of this Certificate of Incorporation]. Any change to the Certificate of Incorporation or bylaws that is required to be approved by or filed with the United States Securities and Exchange Commission (the ''Commission'') before it may become effective shall not become effective until the procedures of the Commission necessary to make it effective shall have been satisfied. *Before any amendment to, or repeal of, any provision of this Certificate of Incorporation shall be effective, those changes shall be submitted to the Board of Directors of the Exchange and if such amendment or repeal must be filed with or filed with and approved by the Commission, then the proposed changes to this Certificate of Incorporation shall not become effective until filed with or filed with and approved by the Commission, as the case may be.*

The proposed new text would be substantially similar to Article ELEVENTH of the NYSE Chicago Certificate. In addition, the proposed final sentence is consistent with the final sentence of Article ELEVENTH of the NYSE National Certificate.

Article 14

Article 14 sets forth the name and mailing address of each of the incorporators. In a non-substantive change, the Exchange proposes to delete current Article 14 in its entirety, as it is obsolete.[14] Neither NYSE Chicago nor NYSE National have a similar provision in their respective certificates.[15]

Proposed Article 13 and Signature Block

In an administrative change, the Exchange proposes to add a statement in proposed Article 13 setting forth the date and time that the Exchange Certificate shall be effective, as well as to add a signature block with the date of execution. The proposed change would be consistent with Article XIV and signature block of the NYSE Group Certificate.

Proposed Amendments to the Exchange Bylaws

The Exchange proposes to amend the Exchange Bylaws as follows.

Article I (Offices)

Article I contains a provision stating that the Exchange shall have a registered office in Delaware as required by law, and elsewhere as determined by the Board. The Exchange proposes to (a) amend the title and number to the provision in Article I, and (b) add a sentence that states that the Exchange's Delaware registered agent shall be such person or entity determined by the Board. The proposed title and final sentence would be consistent with the final sentence of Article I, Section 1 of the NYSE Chicago Bylaws and of Article II, Section 2.1 of the NYSE National Bylaws.[16]

Article II (Members)

The Exchange proposes to delete Sections 2.02, 2.04, and 2.05, which are marked ''Reserved,'' and renumber the remaining sections of Article II accordingly.

Proposed Article 2.03 (Dividends; Regulatory Fees and Penalties: Current Section 2.06 states that ''revenues received by the Exchange from regulatory fees or regulatory penalties will be applied to fund the legal,

[11] *See* Exchange Act Release No. 82924 (March 22, 2018), 83 FR 13163 (March 27, 2018) (SR–NYSEArca–2018–18).

[12] *See* Del. Code tit. 8, § 102(b)(2)(ii).

[13] *See* NYSE Chicago Release, *supra* note 4, at 54956.

[14] *See* Del. Code tit. 8, § 242(a)(7)(a).

[15] The Exchange notes that the certificates of incorporation of NYSE Group, ICE Holdings and ICE also do not have similar provisions.

[16] *See* NYSE Chicago Release, *supra* note 4, at 54957.

regulatory and surveillance operations of the Exchange and will not be used to pay dividends.''

The Exchange proposes to maintain the substance of current Section 2.06, renumbering it as Article 2.03, but substantially conforming the provision to the governing documents of the other NYSE Group Exchanges.[17] The proposed language would expand the scope of the provision to include regulatory assets and fines as well as fees or penalties collected by the Exchange's regulatory staff, and would add a prohibition on the payment of distributions to other entities. The Exchange would also revise the title and add subparagraphs. Proposed Section 2.03 provides as follows (deletions bracketed; new text italicized):

(b) Any [revenues received by the Exchange from]*regulatory assets or any* regulatory fees*, fines* or [regulatory] penalties *collected by the Exchange's regulatory staff* will be applied to fund the legal, regulatory and surveillance operations of the Exchange*, and the Exchange shall not distribute such assets, fees, fines or penalties* [and will not be used] to pay dividends *or be distributed to any other entity.* For purposes of this Section, regulatory penalties shall include restitution and disgorgement of funds intended for customers.

Article III (Board of Directors)

Section 3.03 (Vacancies): Section 3.03 provides that any vacancy on the Board may be filled by the Chairman of the Board, subject to the approval by a majority of the directors.

In an administrative change, the Exchange proposes to add text stating that (a) such approval must be made by a majority of the directors then in office, as opposed to total number of seats on the Board; and (b) the Holding Member may also fill any vacancy, and those vacancies resulting from removal from office by a vote of the Holding Member for cause may be filled by a vote of the Holding Member at the same meeting at which such removal occurs. The first sentence of the amended paragraph would be as follows (additions italicized):

Whenever between meetings of the Exchange any vacancy exists on the Board of Directors by reason of death, resignation, removal or increase in the authorized number of directors or otherwise, it may be filled *(i)* by the Chairman of the Board, subject to approval by a majority of the Board of Directors *then in office, or (ii) by action taken by the Holding Member, and those vacancies resulting from removal from office by a vote of the Holding Member for cause may be filled by a vote of the Holding Member at the same meeting at which such removal occurs.*

The change would be consistent with clause (ii) of Article II, Section 5 of the NYSE Chicago Bylaws, which was amended at the time of its acquisition by ICE.[18]

Section 3.04 (Place of Meetings): Section 3.04 provides that any meeting of the Board may be held within or without the State of Delaware.

In an administrative change, the Exchange proposes to amend the provision to state that the meeting shall be at the place designated in the notice of the meeting, but that if no designation is made, the meeting will be at the principal office of the Exchange. The change would be consistent with the first sentence of NYSE National Bylaws Article III, Section 3.8 and NYSE Chicago Bylaws, Article II, Section 7.[19]

Sections 3.07 (Quorum): Section 3.07 (Quorum) provides that the presence of a majority of the number of directors on the Board is necessary to constitute a quorum, and adds that, if less than a quorum is present at a Board meeting, the directors present may adjourn the meeting to another time or place until a quorum is present.

The Exchange proposes to revise the quorum requirement to state that ''Except as otherwise required by law, at all meetings of the Board, the presence of a majority of the number of directors then in office shall constitute a quorum for the transaction of business.'' In addition, it proposes to replace the sentence regarding procedures if less than a quorum is present with the statement that, if a quorum is not present, ''a majority of the directors present at the meeting may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present.''

Changing the quorum requirement to a majority of the directors then in office would be consistent with the quorum provisions of the other NYSE Group Exchanges.[20] The proposed text is substantially similar to the second and fourth sentences of NYSE Chicago Bylaws Article II, Section 10. [21]

Section 3.08 (Vote): Pursuant to Section 3.08, the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by law, the Exchange Certificate, the Exchange Bylaws or the Rules.

The Exchange proposes to add a sentence stating that each director shall be entitled to one vote. The revised provision is substantially similar to the first and third sentences of NYSE Chicago Bylaws Article II, Section 10. [22]

Section 3.09 (Action in Lieu of a Meeting): Section 3.09 provides that, unless otherwise restricted by the Exchange Certificate, Exchange By-Laws, or Exchange Rules, action may be taken without a meeting if certain procedural requirements are met.

In an administrative change, the Exchange proposes to replace ''Unless otherwise restricted by'' with ''Unless otherwise provided by law.'' The proposed change would allow the provision to be consistent with both applicable law and the Exchange governing documents and rules, should applicable law set forth specific requirements that differ from such documents. The change would be consistent with NYSE Chicago Bylaws Article II, Section 13.

Article V (Officers)

Section 5.01 (General): Section 5.01 provides that officers of the Exchange must include a Secretary and may include a President, Chief Executive Officer (''CEO'') and, upon the CEO's recommendation, any other officers deemed desirable for the conduct of business. In addition, it states that any two or more offices may be held by the same person.

In an administrative change, the Exchange proposes to amend Section 5.01 to provide that the Board shall elect officers of the Exchange as it deems appropriate. The statement that two or more offices may be held by the same person would be revised to exclude the Chief Regulatory Officer and the Secretary from holding the office of CEO or President. The revised provision would be substantially similar to Article VI, Section 6.1 of the NYSE National

[17] *See* NYSE Chicago Bylaws, Article IX, Section 5; NYSE National Bylaws, Article X, Section 10.4; NYSE Operating Agreement, Article IV, Section 4.05; and NYSE American Operating Agreement, Article IV, Section 4.05.

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

[19] The remaining text of the NYSE National and NYSE Chicago provisions address conference call meetings, which are covered in Article III, Section 3.10 of the Exchange Bylaws.

[20] *See* NYSE Chicago Bylaws Article II, Section 10; NYSE National Bylaws Article III, Section 3.11; NYSE Operating Agreement, Article II, Section 2.03(d); and NYSE American Operating Agreement, Article II, Section 2.03(d). *See also* DCGL Section 141(b).

[21] *See* NYSE Chicago Release, *supra* note 4, at 54958–54959.

[22] *See id. See also* NYSE National Bylaws Article III, Section 3.11.

Bylaws and Article V, Section 1 of the NYSE Chicago Bylaws.[23]

Section 5.02 (Privileges): In a non-substantive change, the Exchange proposes to revise the name of Section 5.02 to ''Powers and Duties,'' as it is more indicative of the content of the Section, which sets forth the powers and duties of officers. The Exchange does not propose to amend the text of Section 5.02. The revised title would be the same as the title of Article VI, Section 6.4 of the NYSE National Bylaws and Article V, Section 3 of the NYSE Chicago Bylaws.

Section 5.03 (Term of Office; Removal and Vacancy): The first sentence of Section 5.03 provides that ''[e]ach officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.''

The Exchange proposes to add death and retirement as events that would cause an officer to no longer hold office. The proposed change would be consistent with Article V, Section 2(a) of the NYSE Chicago Bylaws.[24]

Section 5.04 (Chief Executive Officer): The second sentence of Section 5.04 states that ''[s]ubject to the control of the Board of Directors, the Chief Executive Officer, or such other officer or officers as may be designated by the Board, shall have general executive charge, management and control of the properties, business and operations of the Exchange with all such powers as may be reasonably incident to such responsibilities; may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Exchange; and shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned by the Board of Directors.''

The Exchange proposes to delete the second sentence of Section 5.04, as Section 5.02 already provides that the any officer of the Exchange, including the CEO, shall, unless otherwise ordered by the Board, have such powers and duties as generally pertain to their office as well as such powers and duties as from time to time may be conferred by the Board. The Exchange notes that Article VI of the NYSE National Bylaws similarly does not have a separate provision regarding the powers of its chief executive officer.[25]

Article VI (Miscellaneous)

Section 6.05 (Affiliate Transaction): Section 6.05 sets forth a list of transactions that the Exchange may not enter into with any affiliate of the Exchange unless such transaction shall have been first approved by a majority vote of the disinterested directors of the Exchange who are also public directors, and sets our related definitions and requirements.

The Exchange proposes to delete Section 6.05 in its entirety. Section 6.05 of the Exchange Bylaws dates to the demutualization of the Exchange (then ''Pacific Exchange, Inc.''), when its ownership structure was materially different.[26] The Exchange believes that Section 6.05 is no longer necessary given the corporate structure of ICE and the Exchange, as reflected by the fact that no other NYSE Group Exchange has a similar provision in its governing documents.[27]

Article VII (Indemnification)

Section 7.01 (Indemnification): Section 7.01 sets forth provisions related to indemnification by the Exchange. As a wholly-owned subsidiary of ICE, the Exchange believes it appropriate to harmonize the Exchange's indemnification provisions with those of ICE and the Exchange's intermediate holding company, ICE Holdings.[28] The same change was made to Article VI of the NYSE Chicago Bylaws.[29]

Accordingly, the Exchange proposes to delete the text of Section 7.01 (Indemnification) in its entirety and replace it with proposed text that is substantially similar to the CHX, ICE and ICE Holdings provisions, with the exception of changes to be consistent with the Exchange Bylaws' terminology.[30] The proposed text follows:

(a) The Exchange shall, to the fullest extent permitted by law, as those laws may be amended and supplemented from time to time, indemnify any director or officer made, or threatened to be made, a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director or officer of the Exchange or a predecessor corporation or, at the Exchange's request, a director, officer, partner, member, employee or agent of another corporation or other entity; provided, however, that the Exchange shall indemnify any director or officer in connection with a proceeding initiated by such person only if such proceeding was authorized in advance by the Board of Directors of the Exchange. The indemnification provided for in this Section 7.01 shall: (i) Not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office; (ii) continue as to a person who has ceased to be a director or officer; and (iii) inure to the benefit of the heirs, executors and administrators of an indemnified person.

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

[23] *See* NYSE Chicago Release, *supra* note 4, at 54962.

[24] *See id.*

[25] *See also* NYSE Operating Agreement, Article II, Section 2.04(c); and NYSE American Operating Agreement, Article II, Section 2.04(c);

[26] *See* Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR–PCX–2004–08) (order approving proposed rule change and notice of filing and order granting accelerated approval of Amendment No. 1 thereto relating to the demutualization of the Pacific Exchange, Inc.); *see also* Article VI, Section 6.05 of Exhibit E to SR–PCX–2004–08 (February 10, 2004).

[27] The Exchange notes that it has not found a similar provision in the bylaws of other incorporated self-regulatory organizations. *See* Tenth Amended and Restated Bylaws of CBOE Exchange, Inc. [sic]; Ninth Amended and Restated Bylaws of CBOE EDGA Exchange, Inc.; Ninth Amended and Restated Bylaws of CBOE EDGX Exchange, Inc.; Eighth Amended And Restated Bylaws of CBOE BYX Exchange, Inc.; and By-Laws Of Nasdaq BX, Inc. *See also* By-Laws of The Nasdaq Stock Market LLC; By-Laws Of Nasdaq ISE, LLC; and the Second Amended and Restated Operating Agreement of Investors' Exchange LLC.

[28] *See* ICE Bylaws, Article X, Section 10.6, and ICE Holdings Bylaws, Article X, Section 10.6.

[29] *See* NYSE Chicago Release, *supra* note 4, at 54962–54963. The Exchange understands that NYSE, NYSE American, and NYSE National propose to file similar changes to their respective indemnification provisions.

[30] For example, proposed Section 7.01 uses ''officer'' instead of ''Senior Officers,'' ''Exchange'' instead of ''Corporation,'' and ''Section 7.01'' instead of ''Section 10.6.''

obligations to the Exchange or any other willful and deliberate breach in bad faith of such person's duty to the Exchange or its stockholders.

(c) The foregoing provisions of this Section 7.01 shall be deemed to be a contract between the Exchange and each director or officer who serves in such capacity at any time while this bylaw is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts. The rights provided to any person by this bylaw shall be enforceable against the Exchange by such person, who shall be presumed to have relied upon it in serving or continuing to serve as a director or officer or in such other capacity as provided above.

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

(e) To assure indemnification under this Section 7.01 of all directors, officers, employees and agents who are determined by the Exchange or otherwise to be or to have been ''fiduciaries'' of any employee benefit plan of the Exchange that may exist from time to time, Section 145 of the Delaware General Corporation Law shall, for the purposes of this Section 7.01, be interpreted as follows: An ''other enterprise'' shall be deemed to include such an employee benefit plan, including without limitation, any plan of the Exchange that is governed by the Act of Congress entitled ''Employee Retirement Income Security Act of 1974,'' as amended from time to time; the Exchange shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the Exchange also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to such Act of Congress shall be deemed ''fines.''

Article IX (Amendment)

In a conforming change, the Exchange proposes to add a section number before the word ''Amendment.''

Proposed Amendments to Rule 3.3(a)(1)(B)

Rule 3.3(a)(1)(B) establishes the composition of the Exchange Regulatory Oversight Committee (''ROC''), and is substantially the same as the related provisions in the governing documents of the other NYSE Group Exchanges.[31] Among other things, the provision states that ''[t]he Board may, on affirmative vote of a majority of directors, at any time remove a member of the ROC for cause.'' The Exchange proposes to add language clarifying that the majority affirmative vote requirement is based on the ''directors then in office,'' as opposed to total number of seats on the Board. The change would be consistent with Article IV, Section 6 of the NYSE Chicago Bylaws.[32]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[33] in general, and furthers the objectives of Section 6(b)(1) [34] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[35] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed amendments to the Exchange Bylaws, Certificate and Rule 3.3(a) would enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because such amendments would add or expand upon existing provisions to protect and maintain the independence and integrity of the Exchange and its regulatory function and reinforce the notion that the Exchange is not solely a commercial enterprise, but a national securities exchange subject to the obligations imposed by the Exchange Act. Such provisions include ensuring that regulatory assets, fees, fines, and penalties may only be used to fund legal, regulatory and surveillance operations; and providing that any amendments to the Exchange Certificate must be submitted to the Board and, as applicable, shall not be effective until filed with or filed with and approved by the Commission. The Exchange believes that such provisions are consistent with and will facilitate a governance structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to the Exchange. The Exchange also believes that such amendments would act to insulate the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can carry out its regulatory obligations and that, in general, the Exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. Therefore, the Exchange believes that the proposed rule change would prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The Exchange believes that the proposed amendments to harmonize certain provisions of the Exchange Bylaws, Certificate and Rule 3.3(a) with similar provisions of the governing documents of other NYSE Group Exchanges, ICE and ICE Holdings would contribute to the orderly operation of the Exchange and would enable the

[31] *See* NYSE National Bylaws, Article V, Section 5.6; NYSE Operating Agreement, Article II, Section 2.03(h)(ii); NYSE American Operating Agreement, Article II, Section 2.03(h)(ii); and NYSE Chicago Bylaws, Article IV, Section 6.

[32] *See* NYSE Chicago Release, *supra* note 4, at 54961. The Exchange understands that NYSE, NYSE American, and NYSE National propose to file similar changes to their respective ROC provisions.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(1).

[35] 15 U.S.C. 78f(b)(5).

Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members. For example, the proposed changes would create greater conformity between the Exchange's provisions relating to officers, committees, and indemnification and those of its affiliates, particularly NYSE National and CHX. The Exchange believes that such conformity would streamline the NYSE Group Exchanges' corporate processes, create more equivalent governance processes among them, and also provide clarity to the Exchange's members, which is beneficial to both investors and the public interest. At the same time, the Exchange will continue to operate as a separate self-regulatory organization and to have rules, membership rosters and listings distinct from the rules, membership rosters and listings of the other NYSE Group Exchanges.

The Exchange also believes that the greater consistency among the governing documents of the NYSE Group Exchanges, ICE and ICE Holdings would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest. Indeed, the proposed amendments would make the corporate requirements and administrative processes relating to the Board, Board committees, officers, and other corporate matters more similar to those of the NYSE Group Exchanges, in particular NYSE National and CHX, which have been established as fair and designed to protect investors and the public interest.[36]

The Exchange believes that the deletion of Article VI, Section 6.05 of the Exchange Bylaws would be consistent with the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members. Section 6.05 does not relate to the operations of the Exchange's markets, but rather to potential transactions with affiliates of the Exchange. Section 6.05 dates to the demutualization of the Exchange, when its ownership structure was materially different.[37] The Exchange believes that Section 6.05 is no longer necessary given the corporate structure of ICE and the Exchange, as reflected by the fact that no other NYSE Group Exchange has a similar provision in its governing documents.[38] For the same reasons, the Exchange believes that the proposed deletion would be consistent with the promotion of the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

The proposed amendments to clarify the meaning of certain provisions of the Exchange Bylaws, Certificate and Rule 3.3(a), to better comport certain provisions with the DGCL and to effect non-substantive changes would facilitate the Exchange's continued compliance with the Exchange Certificate and Bylaws and applicable law, which would further enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. Such amendments would also remove impediments to and perfects the mechanism of a free and open market by removing confusion that may result from corporate governance provisions that are either unclear or inconsistent with the governing law.

The Exchange also believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The Exchange further believes that the proposed amendments would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

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

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

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[39] and Rule 19b–4(f)(6) thereunder.[40] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[41] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2018–85 on the subject line.

[36] *See* NYSE Chicago Release, *supra* note 4; Exchange Act Release Nos. 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR–CHX–2018–004); and 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR–NSX–2016–16) (order approving proposed rule change in connection with proposed acquisition of the Exchange by NYSE Group, Inc.).

[37] *See* note 26, *supra*.

[38] *See* note 27, *supra*.

[39] 15 U.S.C. 78s(b)(3)(A)(iii).

[40] 17 CFR 240.19b–4(f)(6).

[41] 15 U.S.C. 78s(b)(2)(B).

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–NYSEArca–2018–85. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All ubmissions should refer to File Number SR–NYSEArca–2018–85 and should be submitted on or before December 21, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25998 Filed 11–29–18; 8:45 am]

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[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84653; File No. SR–CboeBZX–2018–083]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To the Modification of Certain Routing Fees

November 26, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to modify certain Routing Fees.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend its fee schedule to amend pricing for orders routed to Cboe EDGA Exchange, Inc., (''EDGA''), which yield fee codes AA, BJ, and RA.[3] Particularly, as of November 1, 2018, EDGA implemented pricing changes for transactions that add and remove liquidity.[4] The filing generally proposes that orders that add liquidity will be assessed a fee of $0.00300 per share and orders that remove liquidity will be provided a rebate of $0.00240 per share. Based on the changes in pricing at EDGA, the Exchange proposes the pricing changes described below.

First, the Exchange notes that orders routed to EDGA using ALLB routing strategy (which yield fee code AA) and orders routed to EDGA using a TRIM or TRIM2 routing strategy (which yield fee code BJ) are currently assessed $0.00030 per share. The Exchange proposes to eliminate this fee and instead provide a rebate of $0.00240 per share for these orders. Next, the Exchange notes that orders routed to EDGA that add liquidity (which yield fee code RA) are assessed $0.00030 per share. The Exchange proposes to increase the rate from $0.00030 per share to $0.00300 per share.

2. Statutory Basis

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes the proposed changes are reasonable because they reflect a pass-through of the pricing changes by EDGA described above. The Exchange further believes the proposed fee change is non-discriminatory because it applies uniformly to all Members. The Exchange lastly notes that routing through the Exchange is voluntary and that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

[3] The Exchange initially filed the proposed fee changes on November 1, 2018 (SR-CboeBZX–2018–080). On business date November 13, 2018, the Exchange withdrew that filing and submitted this filing.

[4] *See* SR-CboeEDGA–2018–017.