

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–90072; File No. S7–24–89]

**Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Forty-Ninth Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis**

October 1, 2020.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on September 4, 2020,<sup>3</sup> the Participants<sup>4</sup> in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“UTP Plan” or “Plan”) filed with the Securities and Exchange Commission (“Commission”) a proposal to amend the UTP Plan. The amendment represents the Forty-Ninth Amendment to the Plan (“Amendment”). Under the Amendment, the Participants propose to add MIAX PEARL, LLC (“MIAX PEARL”) as a Participant to the Plan.

The proposed Amendment has been filed by the Participants pursuant to Rule 608(b)(3)(ii) under Regulation NMS<sup>5</sup> as concerned solely with the administration of the Plan and as a “Ministerial Amendment” under Section XVI of the Plan. As a result, the Amendment becomes effective upon filing and was submitted by the Chair of the Plan’s Operating Committee. The Commission is publishing this notice to solicit comments on the Amendment from interested persons. Set forth in Sections I and II is the statement of the purpose and summary of the Amendment, along with the information

required by Rules 608(a) and 601(a) under the Act, prepared and submitted by the Participants to the Commission.

**I. Rule 608(a)***A. Purpose of the Amendment*

The above-captioned Amendment adds MIAX PEARL as a Participant to the UTP Plan.

*B. Governing or Constituent Documents*

Not applicable.

*C. Implementation of Amendment*

Because the Amendment constitutes a “Ministerial Amendment” under Section XVI of the UTP Plan, the Chair of the UTP Plan’s Operating Committee may submit the Amendment to the Commission on behalf of the Participants in the UTP Plan. Because the Participants designate the Amendment as concerned solely with the administration of the UTP Plan, the Amendment becomes effective upon filing with the Commission.

*D. Development and Implementation Phases*

Not applicable.

*E. Analysis of Impact on Competition*

The Amendment does not impose any burden on competition because it simply adds MIAX PEARL as a Participant to the UTP Plan. MIAX PEARL has completed the required steps to be added to the UTP Plan.

*F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan*

Not applicable.

*G. Approval by Sponsors in Accordance With Plan*

See Item I.C. above.

*H. Description of Operation of Facility Contemplated by the Proposed Amendment*

Not applicable.

*I. Terms and Conditions of Access*

Not applicable.

*J. Method of Determination and Imposition, and Amount of, Fees and Charges*

Not applicable.

*K. Method and Frequency of Processor Evaluation*

Not applicable.

*L. Dispute Resolution*

Not applicable.

**II. Regulation NMS Rule 601(a)***A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan*

Not applicable.

*B. Reporting Requirements*

Not applicable.

*C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information*

Not applicable.

*D. Manner of Consolidation*

Not applicable.

*E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports*

Not applicable.

*F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination*

Not applicable.

*G. Terms of Access to Transaction Reports*

Not applicable.

*H. Identification of Marketplace of Execution*

Not applicable.

**III. Solicitation of Comments**

The Commission seeks comments on the Amendment. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendment 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](mailto:rule-comments@sec.gov). Please include File Number S7–24–89 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 S7–24–89. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all written statements with respect to the

<sup>1</sup> 15 U.S.C 78k–1(a)(3).

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> See Letter from Robert Books, Chairman, Operating Committee, UTP Plan, to Vanessa Countryman, Secretary, Commission, dated September 3, 2020.

<sup>4</sup> The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors’ Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the “Participants”).

<sup>5</sup> 17 CFR 242.608(b)(2).

proposed Amendment that are filed with the Commission, and all written communications relating to the proposed Amendment 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 20549-1090, 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 Plan. 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 S7-24-89 and should be submitted on or before October 29, 2020.

By the Commission.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90079; File No. SR-CBOE-2020-071]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Fifth Amended and Restated Bylaws of the Exchange's Parent Corporation, Cboe Global Markets, Inc.

October 2, 2020.

#### I. Introduction

On July 30, 2020, Cboe Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Fifth Amended and Restated Bylaws (the "Parent Bylaws") of its parent corporation, Cboe Global Markets, Inc. (the "Parent"). The proposed rule change was published for comment in the **Federal Register** on

August 19, 2020.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. On September 24, 2020, the Exchange filed Amendment No. 1 to the proposal.<sup>4</sup> The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description

The Exchange proposed certain amendments to the Parent Bylaws that, according to the Exchange, would "improve the governance processes" of the Parent and "make certain provisions more consistent with the Delaware General Corporation Law ("DGCL")."<sup>5</sup> According to the Exchange, many of the proposed changes reflect corporate governance best practices and, in some instances, provide clarity and flexibility to the Parent Bylaws.<sup>6</sup>

##### *Proposed Changes to Article 2—Stockholders*<sup>7</sup>

The majority of the proposed changes amend Section 2.11 (Nomination of Directors) and Section 2.12 (Notice of Business at Annual Meetings). According to the Exchange, the changes are designed to reflect the most up-to-

<sup>3</sup> See Securities Exchange Act Release No. 89543 (August 13, 2020), 85 FR 51093 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange provided additional detail and clarity on a few points without materially changing the proposal or the proposed rule text. Specifically, in Amendment No. 1, the Exchange: (i) Provided additional support for its proposed restrictions on the use of audio, video, and cell phones during stockholder meetings, including information on past practice by the Exchange, underlying authority for such restrictions in the current Parent Bylaws, and comparison to the practices of other Delaware-incorporated public companies; (ii) clarified that the provisions of proposed Section 3.15 are subject to existing Section 10.2, including a representation that emergency Bylaw amendments made pursuant to proposed Section 3.15(g) may need to be filed pursuant to Section 19 of the Exchange Act; (iii) clarified that proposed Section 3.15 is meant to provide short-term flexibility to continue operations during the initial stage of an emergency situation, and that proposed paragraph (f) makes clear that, as soon as it is practicable for a majority of the elected directors to reconvene, they would be expected to do so; and (iv) added further explanation of the provision in proposed Section 4.1 regarding the limitation of the power and authority vested in a Board committee in the management of the business and affairs of the Parent. To promote transparency of its proposed amendment, when the Exchange filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the filing, which then became publicly available on the Commission's website.

<sup>5</sup> See Notice, *supra* note 3, at 51093.

<sup>6</sup> See Notice, *supra* note 3.

<sup>7</sup> See Notice, *supra* note 3, for a discussion of the detailed proposed changes to Article 2 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

date practices under the DGCL and provide the Board with additional information and advance notice in connection with nominations and the conduct of business at annual and special meetings. In particular, the Exchange combines current Section 2.12 into Section 2.11 and amends provisions that govern notice requirements for annual and special meetings, as well as provisions that provide general procedures and practices in connection with notices. The proposed delineation does not alter the process or definition of either type of meeting, but instead provides for significantly more detailed written notice requirements as well as updates to the manner and timeliness of notices.

Additionally, as detailed further in the Notice, the proposed rule change relocates and expands text concerning nominees for directors and elections of directors, as well as amends provisions concerning the place of annual and special meetings and the adjournment of meetings.<sup>8</sup>

Further, the Exchange proposes to update provisions that govern the preparing of the voting list, the ability of the Board to appoint a director to preside over meetings in the absence of the Chairman of the Board, and provisions concerning the procedural authority of the presiding officer at any stockholder meeting.<sup>9</sup>

##### *Proposed Changes to Article 3—Directors*<sup>10</sup>

The proposed rule change amends provisions concerning director vacancies, notice for special meetings of the Board, and the routine filing of consents following an action by the Board.<sup>11</sup>

The proposed change also adds new Section 3.15 (Emergency Bylaws). In particular, that new section provides certain temporary emergency provisions that would apply at the outset of an emergency, disaster, or catastrophe, notwithstanding anything to the contrary in the Certificate of Incorporation or the Bylaws, only for so long as a quorum of the Board cannot

<sup>8</sup> See Notice, *supra* note 3, at 51096-97. See also Section 2.10 (Action at Meeting), 2.11 (Notice of Business and Nomination of Directors at Meetings of Stockholders), 2.1 (Place of Meetings), 2.2 (Annual Meeting), 2.3 (Special Meeting), and 2.7 (Adjournments).

<sup>9</sup> See also Amendment No. 1 (concerning restrictions on the use of audio, video, and cell phones during stockholder meetings).

<sup>10</sup> See Notice, *supra* note 3, for a discussion of the detailed proposed changes to Article 3 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

<sup>11</sup> See Section 3.5 (Vacancies), Section 3.10 (Special Meetings), and Section 3.13 (Action by Consent). See also Notice, *supra* note 3, at 51097.

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

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