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 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 Web site 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 DTC and on DTCC’s Web site (http://dtcc.com/legal/sec-rule-filings.aspx). 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–DTC–2017–019 and should be submitted on or before November 7, 2017.

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

Eduardo A. Aleman, Assistant Secretary.

[FR Doc. 2017–22391 Filed 10–16–17; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


October 11, 2017.

On August 8, 2017, NYSE Arca, Inc. filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to list and trade shares of the U.S. Equity Cumulative Dividends Fund—Series 2027 and the U.S. Equity Ex-Dividend Fund—Series 2027 under NYSE Arca Equities Rule 8.200, Commentary .02. The proposed rule change was published for comment in the Federal Register on August 28, 2017.3 The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act4 provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 12, 2017. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,5 designates November 26, 2017 as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2017–88).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.6

Eduardo A. Aleman, Assistant Secretary.

[FR Doc. 2017–22386 Filed 10–16–17; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; Order Granting Approval of Proposed Rule Changes, as Modified by Amendments No. 1, To Harmonize the Corporate Governance Framework of Each Exchange With That of Chicago Board Options Exchange, Incorporated and C2 Options Exchange, Incorporated

October 11, 2017.

I. Introduction

On August 23, 2017, each of Bats BYX Exchange, Inc. (“BYX”), Bats BZX Exchange, Inc. (“BZX”), Bats EDGA Exchange, Inc. (“EDGA”), and Bats EDGX Exchange, Inc. (“EDGX”) (each, an “Exchange” and collectively, “Exchanges”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to align its corporate governance framework to the structure of other U.S. securities exchanges owned by its ultimate parent company, CBOE Holdings, Inc. (“CBOE Holdings”). On August 25, 2017, each of BYX, BZX, EDGA, and EDGX filed Amendment No. 1 to its respective proposed rule change. The proposed rule changes, as modified by Amendments No. 1, were published for comment in the Federal Register on September 6, 2017.3 The Commission received no comments on the proposed rule changes. This order grants approval of the proposed rule changes, each as modified by its respective Amendment No. 1.

II. Background

On December 16, 2016, the Commission approved proposed rule changes relating to a corporate transaction (“Transaction”) in which CBOE Holdings became the ultimate


parent of BYX, BZX, EDGA, and EDGX.\textsuperscript{4} CBOE Holdings is also the parent of Chicago Board Options Exchange, Incorporated ("CBOE") and C2 Options Exchange, Incorporated ("C2"). In connection with the Transaction, each of BYX, BZX, EDGA, and EDGX proposes to amend and restate its certificate of incorporation and bylaws\textsuperscript{5} to conform to the certificates of incorporation and bylaws of CBOE and C2.\textsuperscript{6} In addition, each Exchange proposes to amend its rules to reflect the Proposed Bylaws, as well as to address regulatory revenues in the rules (rather than the bylaws), similar to the treatment of this provision by CBOE.\textsuperscript{7} Each Exchange represents that its Proposed Certificate and Proposed Bylaws reflect the expectation that the Exchange will be operated with a governance structure similar to that of CBOE and C2.\textsuperscript{8} Each Exchange states that aligning its governance documents with the governance documents of CBOE and C2 will preserve governance continuity across each of CBOE Holdings’ six U.S. securities exchanges.\textsuperscript{9} Each Exchange further states that it will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange’s rules, as required by Section 6(b)(1) of the Act.\textsuperscript{10}

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes, as modified by Amendments No. 1, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.\textsuperscript{11} In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(1) of the Act,\textsuperscript{12} which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The Commission also finds that the proposed rule changes are consistent with Section 6(b)(3) of the Act,\textsuperscript{13} which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and the administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission further finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,\textsuperscript{14} which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission notes that the Proposed Certificates and Proposed Bylaws are substantially similar to the CBOE Certificate and CBOE Bylaws, with limited exceptions as discussed below. The Commission further notes that it received no comments on the proposed rule changes.

#### A. Ownership

BYX’s and BZX’s Proposed Certificates each specify that Bats Global Markets Holdings, Inc. (“Bats Global Markets Holdings”) will be the sole owner of the common stock of the Exchange and that any sale, transfer, or assignment by Bats Global Markets Holdings of any shares of common stock of the Exchange will be subject to prior approval by the Commission pursuant to a rule filing.\textsuperscript{15} EDGA’s and EDGX’s Proposed Certificates each include a similar provision reflecting Direct Edge LLC (“Direct Edge”) as sole owner of the common stock of the Exchange and prohibiting any sale, transfer, or assignment by Direct Edge of the Exchange’s common stock without prior approval by the Commission pursuant to a rule filing.\textsuperscript{16}

The Commission believes that specifying the sole owner of each Exchange as either Bats Global Markets Holdings or Direct Edge and the

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\textsuperscript{5} See BYX Notice, 82 FR at 42128; BZX Notice, 82 FR at 42181–82; EDGA Notice, 82 FR at 42206–07; EDGX Notice, 82 FR at 42154. Specifically, BYX proposes to replace the certificate of incorporation of BYX ("BYX Current Certificate") in its entirety with the Amended and Restated Certificate of Incorporation of BYX ("BYX Proposed Certificate") and to replace the Fifth Amended and Restated Bylaws of BYX ("BYX Current Bylaws") in its entirety with the Sixth Amended and Restated Bylaws of BYX ("BYX Proposed Bylaws"). See BYX Notice, 82 FR at 42118–19. Similarly, BZX proposes to replace the certificate of incorporation of BZX ("BZX Current Certificate") in its entirety with the Amended and Restated Certificate of Incorporation of BZX ("BZX Proposed Certificate") and to replace the Fifth Amended and Restated Bylaws of BZX ("BZX Current Bylaws") in its entirety with the Sixth Amended and Restated Bylaws of BZX ("BZX Proposed Bylaws"). See BZX Notice, 82 FR at 42181. EDGA proposes to replace the certificate of incorporation of EDGA ("EDGA Current Certificate") in its entirety with the Second Amended and Restated Certificate of Incorporation of EDGA ("EDGA Proposed Certificate") and to replace the Sixth Amended and Restated Bylaws of EDGA ("EDGA Current Bylaws") in its entirety with the Second Amended and Restated Bylaws of EDGA ("EDGA Proposed Bylaws"). See EDGA Notice, 82 FR at 42207. EDGX proposes to replace the certificate of incorporation of EDGX ("EDGX Current Certificate") and together with the BZX Current Certificate, BZX Current Bylaws, and EDGA Current Certificate, "Current Certificates") in its entirety with the Second Amended and Restated Certificate of Incorporation of EDGX ("EDGX Proposed Certificate") and together with the BZX Proposed Certificate, BZX Proposed Bylaws, and EDGA Proposed Certificate, "Proposed Certificates" and to replace the Sixth Amended and Restated Bylaws of EDGX ("EDGX Current Bylaws") in its entirety with the Sixth Amended and Restated Bylaws of EDGX ("EDGX Proposed Bylaws") and together with the BYX Proposed Certificate, BZX Proposed Certificate, and EDGA Proposed Certificate, "Proposed Certificates") and to replace the Sixth Amended and Restated Bylaws of BZX ("BZX Current Bylaws" and Current Bylaws") in its entirety with the Seventh Amended and Restated Bylaws of BZX ("BZX Proposed Bylaws") and together with the BYX Proposed Bylaws, BZX Proposed Bylaws, and EDGA Proposed Bylaws, "Proposed Bylaws"). See BZX Notice, 82 FR at 42154.

\textsuperscript{6} The current certificates of incorporation of CBOE and C2 are the Third Amended and Restated Certificate of Incorporation of CBOE and the Fourth Amended and Restated Certificate of C2, respectively (collectively, "CBOE Certificate") and the Eighth Amended and Restated Bylaws of CBOE and the Eighth Amended and Restated Bylaws of C2, respectively (collectively, "CBOE Bylaws"). See Notices, supra note 3.

\textsuperscript{7} See BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42192–93; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165. For a further description of the proposed changes to the certificates of incorporation, bylaws, and rules of the Exchanges, see Notices, supra note 3.

\textsuperscript{8} See BYX Notice, 82 FR at 42128; BZX Notice, 82 FR at 42182; EDGA Notice, 82 FR at 42207; EDGX Notice, 82 FR at 42154.

\textsuperscript{9} See BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42193; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165.

\textsuperscript{10} See BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42193; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165.

\textsuperscript{11} In approving these proposed rule changes, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

\textsuperscript{12} 15 U.S.C. 78b(b)(1).

\textsuperscript{13} 15 U.S.C. 78b(b)(3).

\textsuperscript{14} 15 U.S.C. 78d(b)(5).

\textsuperscript{15} See BYX Proposed Certificate, Article Fourth; BZX Proposed Certificate, Article Fourth.

\textsuperscript{16} See EDGA Proposed Certificate, Article Fourth; EDGX Proposed Certificate, Article Fourth. Bats Global Markets Holdings and Direct Edge are each wholly-owned subsidiaries of CBOE V, LLC ("CBOE V") and CBOE V is a wholly-owned subsidiary of CBOE Holdings. Any change in CBOE’s status as sole stockholder of Bats Global Markets Holdings or sole member of Direct Edge, or of CBOE Holdings’ status a sole member of CBOE V, must be approved by the Commission pursuant to a rule filing. See Transaction Order, 81 FR at 93990.
proposed restrictions on Bats Global Market Holdings and Direct Edge that prevent these entities from selling, transferring, or assigning their common stock in BYX and BZX, and EDGA and EDGX, respectively, without the Commission’s approval, taken together with the voting restrictions and ownership limitations in the governing documents of CBOE Holdings and the restrictions on CBOE V previously approved by the Commission, are designed to minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchanges to effectively carry out their regulatory oversight responsibilities under the Act.17 The Commission also notes that the restrictions on transfer of ownership interest in the Exchanges will be similar to those currently in place.18 In this regard, the Commission believes that the proposed rule changes are consistent with Section 6(b)(1) of the Act.19 In particular, which requires that an exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

B. Governance

In connection with the proposal to adopt the Proposed Certificates and Proposed Bylaws, each Exchange is proposing to replace certain provisions pertaining to the Board of Directors with related provisions that are based on provisions currently in the CBOE Certificate and CBOE Bylaws. For each Exchange, these changes include, among others, provisions governing: the composition of the Exchange’s board of directors (“Board” and each member of the Board, a “Director”); the process for nominating, electing, removing, and filling vacancies of Directors; the Board committee structure; the authorization to create an Advisory Board; and the regulatory independence of the Exchange.20

1. Board of Directors

Under the Proposed Bylaws, each Exchange’s Board will consist of at least five Directors. Each Exchange’s Board will determine, by resolution, the total number of Directors and the number of Non-Industry Directors and Industry Directors, if any.21 The number of Non-Industry Directors will not constitute less than the number of Industry Directors, excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose. At all times at least 20% of the Directors will be Representative Directors as nominated or otherwise selected through the Representative Director Nominating Body, and the Board will determine the number of Representative Directors that are Non-Industry Directors and Industry Directors, if any.22

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.23 The Board will be the sole judge of whether an Industry Director or Non-Industry Director fails to maintain the requisite qualifications, in which event the Director will be terminated. A Representative Director may only be removed for cause by a vote of the stockholders.24 A vacancy on the Board

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17 See Transaction Order, 81 FR at 93889–91. In addition to the restrictions on CBOE Holdings and CBOE V discussed above, see supra note 16, CBOE Holdings’ governing documents place restrictions on the ability to own and vote shares of the capital stock of CBOE Holdings. Specifically, unless the CBOE Holdings Board of Directors waives such restrictions for a permissible reason, no person, alone or together with its related persons; (i) shall be entitled to the voting of shares of stock of CBOE Holdings to the extent that such shares represent more than 20% of the then outstanding votes entitled to be cast; or (ii) shall be party to any agreement, plan, or other arrangement under circumstances that would result in the shares of CBOE Holdings stock not being voted, or the withholding of any related proxy, where the effect of such agreement, plan, or other arrangement would be to enable any person, alone or together with its related persons, to vote, possess the right to vote, or cause the voting of shares of stock of CBOE Holdings to be such that the number of the then outstanding votes entitled to be cast; or (iii) shall be permitted to beneficially own directly or indirectly shares of stock of CBOE Holdings representing more than 20% of the shares then outstanding. See Transaction Order, 81 FR at 93899–90. See also Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082, 30084–85 (May 26, 2010) (SR-CBOEDemutualization—proposing proposed rule change relating to demutualization of CBOE) (“CBOE Demutualization Order”).

18 See BYX Current Bylaws, Article IV, Section 7; BZX Current Bylaws, Article IV, Section 7; EDGA Current Bylaws, Article IV, Section 7; and EDGX Current Bylaws, Article IV, Section 7 (providing that stockholder may not transfer or assign, in whole or in part, its ownership interest).


21 Under the Proposed Bylaws, an “Industry Director” is defined, subject to limited exclusions, as any director who (i) is an Exchange Member or otherwise subject to regulation by the Exchange; (ii) is a broker-dealer or an officer, director, 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 or the revenues received by the director’s firm or partnership. Under the Proposed Bylaws, a “Non-Industry Director” is defined as a person who is not an Industry Director. At all times, at least one Non-Industry Director will be a Non-Industry Director exclusive of the exceptions provided and will have no material business relationship with a broker or dealer or the Exchange or any of its affiliates. See BYX Proposed Bylaws, Article III, Section 3.1; BZX Proposed Bylaws, Article III, Section 3.1; EDGA Proposed Bylaws, Article III, Section 3.1; EDGX Proposed Bylaws, Article III, Section 3.1. “Exchange Member” will have the same meaning as the term “Member” in the rules of the Exchange. See BYX Proposed Bylaws, Article I, Section 1.1(f); BZX Proposed Bylaws, Article I, Section 1.1(f); EDGA Proposed Bylaws, Article I, Section 1.1(f); EDGX Proposed Bylaws, Article I, Section 1.1(f).

22 See BYX Proposed Bylaws, Article III, Section 3.1; BZX Proposed Bylaws, Article III, Section 3.1; EDGA Proposed Bylaws, Article III, Section 3.1; EDGX Proposed Bylaws, Article III, Section 3.1. See also BYX Notice, 82 FR at 42184 n. 15; EDGA Notice, 82 FR at 42242 n. 15; EDGX Notice, 82 FR at 42156 n. 15. For a description of the proposed “Representative Director,” see infra notes 60–62 and accompanying text.

23 See BYX Proposed Bylaws, Article III, Section 3.1; BZX Proposed Bylaws, Article III, Section 3.1; EDGA Proposed Bylaws, Article III, Section 3.1; EDGX Proposed Bylaws, Article III, Section 3.1. See also BYX Notice, 82 FR at 42184 n. 15; EDGA Notice, 82 FR at 42242 n. 15; EDGX Notice, 82 FR at 42156 n. 15. For a description of the proposed “Representative Director,” see infra notes 60–62 and accompanying text.

24 See BYX Proposed Bylaws, Article III, Section 3.4; BZX Proposed Bylaws, Article III, Section 3.4; EDGA Proposed Bylaws; Article III, Section 3.4; EDGX Proposed Bylaws, Article III, Section 3.4.
may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. For vacancies of Representative Directors, the Representative Director Nominating Body will recommend an individual to be elected or provide a list of recommended individuals, and the position will be filled by the vote of a majority of the Directors.25

The Representative Director Nominating Body will provide a mechanism for Exchange Members to provide input with respect to nominees for the Representative Directors. The Representative Director Nominating Body will issue a circular to Exchange Members identifying nominees selected by the Representative Director Nominating Body. Exchange Members may nominate alternative candidates for election to be Representative Directors by submitting a petition signed by individuals representing not less than 10% of the Exchange Members at the time, with a run-off election held if one or more valid petitions are received.26

In any run-off election, each Exchange Member will have one vote for each Representative Director position to be filled that year; provided, however, that no Exchange Member, either alone or together with its affiliates, may account for more than 20% of the votes cast for a candidate.27 Each Exchange’s Nominating and Governance Committee will be bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body or, in the case of a run-off election, the Representative Director nominees who receive the most votes.28 Subject to the specific provisions pertaining to nomination of Representative Directors and filling of vacancies, each Exchange’s Nominating and Governance Committee will have the authority to nominate individuals for election as Directors.29

The Commission believes that the proposed composition of each Exchange’s Board satisfies the requirements in Section 6(b)(3) of the Act,30 which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.31 In particular, at least one Non-Industry Director would be a Non-Industry Director exclusive of any exceptions and would have no material business relationship with a broker or dealer or the Exchange or any of its affiliates. The Commission previously has stated that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange’s ability to protect the public interest,32 and that they can help to ensure that no single group of market participants has the ability to systematically disadvantage others through the exchange governance process.33 As it has previously stated, the Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of each Exchange’s Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.34

The Commission also believes that the proposed requirement that at least 20% of the Directors be Representative Directors, and the means by which they will be chosen by Exchange Members, is consistent with Section 6(b)(3) of the Act because it provides for the fair representation of members in the selection of directors and the administration of each Exchange. Section 6(b)(3) of the Act requires that “the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.” As the Commission previously has noted, this statutory requirement helps to ensure that members of each Exchange have a voice in the Exchange’s use of its self-regulatory authority, and that each Exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.37

2. Exchange Committees

Under the Proposed Bylaws, each Exchange will establish certain committees that consist solely of Directors. These Board committees will include an Executive Committee, a Regulatory Oversight Committee, a Nominating and Governance Committee, and such other standing and

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25 See BYX Proposed Bylaws, Article III, Section 3.5; BZX Proposed Bylaws, Article III, Section 3.5; EDGA Proposed Bylaws, Article III, Section 3.5.

26 See BYX Proposed Bylaws, Article III, Section 3.5; BZX Proposed Bylaws, Article III, Section 3.2; EDGA Proposed Bylaws, Article III, Section 3.2.

27 See BYX Proposed Bylaws, Article III, Section 3.5; BZX Proposed Bylaws, Article III, Section 3.2; EDGA Proposed Bylaws, Article III, Section 3.2.

28 See BYX Proposed Bylaws, Article III, Section 3.1; BZX Proposed Bylaws, Article III, Section 3.1; EDGA Proposed Bylaws, Article III, Section 3.1.

29 See BYX Proposed Bylaws, Article IV, Section 4.3; BZX Proposed Bylaws, Article IV, Section 4.3; EDGA Proposed Bylaws, Article IV, Section 4.3.


34 Id.

35 Id.

special committees as may be approved by the Board. In addition, each Exchange will have committees that are not comprised solely of Directors that may be provided for in the Exchange’s bylaws or rules or created by the Board.48 The Proposed Bylaws require that each Exchange maintain an Executive Committee.39 The Executive Committee will include the Chairman of the Board; the Chief Executive Officer, if a Director; the Lead Director;40 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, excluding the Chief Executive Officer from the calculation of Industry Directors for this purpose. Members of the Executive Committee, except for those specified above, will be recommended by the Nominating and Governance Committee for approval by the Board and committee members will not be subject to removal except by the Board. The Executive Committee will have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange, with limited exceptions.41 Each Exchange proposes to eliminate its current Nominating and Member Nominating Committees and prescribe that their duties be performed by its newly formed Nominating and Governance Committee.42 The Nominating and Governance Committee will consist of at least five Directors, with a majority of Directors that are Non-Industry Directors. Members of the committee will be recommended by the Nominating and Governance Committee for approval by the Board and will not be subject to removal except by the Board. The Nominating and Governance Committee will have the authority to nominate individuals for election as Directors and have such other duties or exercise such other authority as may be prescribed by resolution of the Board. If the Nominating and Governance Committee has two or more Industry Directors, there shall be an Industry-Director Subcommittee consisting of all such Directors, which will act as the Representative Director Nominating Body.43 Each Exchange proposes to modify the required composition, appointment procedures, and duties of its Regulatory Oversight Committee.44 Under the Proposed Bylaws, the Regulatory Oversight Committee of each Exchange will consist of at least three Directors, all of whom will be Non-Industry Directors. Members of the Regulatory Oversight Committee will be recommended by the Non-Industry Directors on the Nominating and Governance Committee for approval by the Board and will not be subject to removal except by the Board. The Regulatory Oversight Committee will have such duties and exercise such authority as may be prescribed by resolution of the Board, bylaws, or Exchange rules.45

Each Exchange proposes to eliminate its Compensation Committee. The Exchanges explain that the responsibilities of their Compensation Committees largely are duplicative of those of the Compensation Committee of their parent company, CBOE Holdings, other than to the extent that the Compensation Committee recommends the compensation of executive officers whose compensation is not already determined by the CBOE Holdings Compensation Committee.46 The Exchanges represent that currently, each of the executive officers whose compensation would need to be determined by the Exchange-level Compensation Committee are officers of both the Exchange and CBOE Holdings, but should compensation need to be determined in the future for any Exchange officer who is not also a CBOE Holdings officer, the Exchange Board or senior management will perform such action without the use of a compensation committee, as provided for in Article V, Section 5.11 of the Proposed Bylaws.47 Each Exchange also proposes to eliminate its Audit Committee because the Audit Committees’ functions are duplicative of the functions of the Audit Committee of CBOE Holdings. The Exchanges state that 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.48 The Exchanges also state that the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board in fulfilling its oversight responsibilities in assessing controls that mitigate the regulatory and operational risks associated with operating each Exchange and to assist the CBOE Holdings Board in discharging its responsibilities relating to, among other things, CBOE Holdings’ financial statements and disclosure matters, internal controls, and oversight and risk management.49 The Exchanges notwithstanding the proposed elimination of this provision, the Exchange has no intention to eliminate the role of the Chief Regulatory Officer. See BYX Notice, 82 FR at 42137; BZX Notice, 82 FR at 42190; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42161; BYX Proposed Bylaws, Article IV, Section 4.3; BZX Proposed Bylaws, Article IV, Section 4.3; EDGA Proposed Bylaws, Article IV, Section 4.3; EDGX Proposed Bylaws, Article IV, Section 4.3. See also supra note 22.

See BYX Notice, 82 FR at 42134–35; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42161. See also BYX Proposed Bylaws, Article IV, Sections 4.1 and 4.2; BZX Proposed Bylaws, Article IV, Sections 4.1 and 4.2; EDGA Proposed Bylaws, Article IV, Sections 4.1 and 4.2; EDGX Proposed Bylaws, Article IV, Sections 4.1 and 4.2.

Under the Proposed Bylaws, the Board of each Exchange may appoint one of the Non-Industry Directors to serve as the Lead Director and perform such duties and possess such powers as the Board prescribes. See BYX Proposed Bylaws, Article III, Section 3.7; BZX Proposed Bylaws, Article III, Section 3.7; EDGA Proposed Bylaws, Article III, Section 3.7; EDGX Proposed Bylaws, Article III, Section 3.7.

See BYX Proposed Bylaws, Article IV, Section 4.2; BZX Proposed Bylaws, Article IV, Section 4.2; EDGA Proposed Bylaws, Article IV, Section 4.2; EDGX Proposed Bylaws, Article IV, Section 4.2.

See BYX Notice, 82 FR at 42189; EDGA Notice, 82 FR at 42214; EDGX Notice, 82 FR at 42161.

For purposes of this provision, the Exchange does not mean an employer, broker, dealer, investment adviser, investment bank, commodity pool operator, commodity trading advisor, or any other person that is subject to the jurisdiction of the Commodity Futures Trading Commission. See BYX Notice, 82 FR at 42189; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42161. In addition, the Proposed Bylaws eliminate the requirement in the Current Bylaws that the Chief Regulatory Officer is a designated officer of the Exchange. See BYX Current Bylaws, Article VII, Section 9; BZX Current Bylaws, Article VII, Section 9; EDGA Current Bylaws, Article VII, Section 9; EDGX Current Bylaws, Article VII, Section 9. The Exchanges represent that each Exchange proposes to eliminate its Compensation Committee. The Exchanges explain that the responsibilities of their Compensation Committees largely are duplicative of those of the Compensation Committee of their parent company, CBOE Holdings, other than to the extent that the Exchange Compensation Committees recommend the compensation of executive officers whose compensation is not already determined by the CBOE Holdings Compensation Committee. The Exchanges represent that currently, each of the executive officers whose compensation would need to be determined by the Exchange-level Compensation Committee are officers of both the Exchange and CBOE Holdings, but should compensation need to be determined in the future for any Exchange officer who is not also a CBOE Holdings officer, the Exchange Board or senior management will perform such action without the use of a compensation committee, as provided for in Article V, Section 5.11 of the Proposed Bylaws. Each Exchange also proposes to eliminate its Audit Committee because the Audit Committees’ functions are duplicative of the functions of the Audit Committee of CBOE Holdings. The Exchanges state that 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. The Exchanges also state that the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board in fulfilling its oversight responsibilities in assessing controls that mitigate the regulatory and operational risks associated with operating each Exchange and to assist the CBOE Holdings Board in discharging its responsibilities relating to, among other things, CBOE Holdings’ financial statements and disclosure matters, internal controls, and oversight and risk management. Notwithstanding the proposed elimination of this provision, the Exchange has no intention to eliminate the role of the Chief Regulatory Officer. See BYX Notice, 82 FR at 42137; BZX Notice, 82 FR at 42190; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42161; BYX Proposed Bylaws, Article IV, Section 4.3; BZX Proposed Bylaws, Article IV, Section 4.3; EDGA Proposed Bylaws, Article IV, Section 4.3; EDGX Proposed Bylaws, Article IV, Section 4.3. See also supra note 22.

See BYX Notice, 82 FR at 42189; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42161. In addition, the Proposed Bylaws eliminate the requirement in the Current Bylaws that the Chief Regulatory Officer is a designated officer of the Exchange. See BYX Current Bylaws, Article VII, Section 9; BZX Current Bylaws, Article VII, Section 9; EDGA Current Bylaws, Article VII, Section 9; EDGX Current Bylaws, Article VII, Section 9. The Exchanges represent that each Exchange proposes to eliminate its Compensation Committee. The Exchanges explain that the responsibilities of their Compensation Committees largely are duplicative of those of the Compensation Committee of their parent company, CBOE Holdings, other than to the extent that the Exchange Compensation Committees recommend the compensation of executive officers whose compensation is not already determined by the CBOE Holdings Compensation Committee. The Exchanges represent that currently, each of the executive officers whose compensation would need to be determined by the Exchange-level Compensation Committee are officers of both the Exchange and CBOE Holdings, but should compensation need to be determined in the future for any Exchange officer who is not also a CBOE Holdings officer, the Exchange Board or senior management will perform such action without the use of a compensation committee, as provided for in Article V, Section 5.11 of the Proposed Bylaws. Each Exchange also proposes to eliminate its Audit Committee because the Audit Committees’ functions are duplicative of the functions of the Audit Committee of CBOE Holdings. The Exchanges state that 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. The Exchanges also state that the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board in fulfilling its oversight responsibilities in assessing controls that mitigate the regulatory and operational risks associated with operating each Exchange and to assist the CBOE Holdings Board in discharging its responsibilities relating to, among other things, CBOE Holdings’ financial statements and disclosure matters, internal controls, and oversight and risk management. Notwithstanding the proposed elimination of this provision, the Exchange has no intention to eliminate the role of the Chief Regulatory Officer. See BYX Notice, 82 FR at 42137; BZX Notice, 82 FR at 42190; EDGA Notice, 82 FR at 42213–16; EDGX Notice, 82 FR at 42163.

See BYX Notice, 82 FR at 42133; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42159.

See BYX Notice, 82 FR at 42133; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42159.


See BYX Notice, 82 FR at 42133–34; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212–13; EDGX Notice, 82 FR at 42159–60.
further state that CBOE Holdings’ financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings’ subsidiaries, including each Exchange, and therefore the CBOE Holdings Audit Committee’s purview necessarily includes each Exchange.50 Finally, the Exchanges note that despite the elimination of Exchange-level Audit Committees, unconsolidated financial statements of each Exchange will still be prepared for each fiscal year.51 Each Exchange proposes to eliminate its Appeals Committee, which is a Board-level committee that presides over all appeals related to disciplinary and adverse action determinations in accordance with Exchange rules. The Exchanges state that while they are proposing to eliminate the Appeals Committee as a specified Board-level committee, each Exchange would have the ability to appoint a Board-level or an Exchange-level Appeals Committee pursuant to Article IV, Section 4.1 of the Proposed Bylaws. According to the Exchanges, they would prefer not to have to maintain and staff a standing Appeals Committee, but rather would like to provide their Boards with the flexibility to determine whether to establish a Board-level or Exchange-level Appeals Committee.52 The Exchanges note that CBOE and C2 maintain an exchange-level Appeals Committee rather than a Board-level Appeals Committee and that other exchanges do not require standing Appeals Committees.53 Further, each Exchange proposes to eliminate a provision of its Current Bylaws that allows the Chairman, with approval of the Board, to appoint a Finance Committee to advise the Board with respect to the oversight of the financial operations and conditions of the Exchange.54 The Exchanges note that they do not currently maintain, and have no intention of establishing, Finance Committees and that CBOE and C2 do not have exchange-level Finance Committees. The Exchanges state that they will retain the authority, under Article IV, Section 4.1 of the Proposed Bylaws, to establish a Finance Committee in the future if so desired.55

The Commission believes that each Exchange’s proposed committees, which are similar to the committees maintained by CBOE and C2,56 are designed to help enable the Exchange to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.57 The Commission further believes that each Exchange’s proposed committees, including their composition and the means by which committee members will be chosen, are consistent with Section 6(b)(3) of the Act because relevant committees provide for the fair representation of members in the administration of that Exchange’s affairs.58

With respect to the proposal to eliminate each Exchange’s Compensation Committee and Audit Committee, the Commission notes that this change is duplicative of the governing structures of other exchanges, including CBOE and C2, which the Commission has previously approved.59 As more fully set forth in the Notices, the Exchanges state that their respective Compensation Committees’ and Audit Committees’ responsibilities largely are duplicative of those of the Compensation Committee and Audit Committee of CBOE Holdings. With respect to the proposal to eliminate each Exchange’s Appeals Committee and the specific provision permitting a Finance Committee, the Commission notes that the Act does not require the Exchanges to maintain such committees and each Exchange will have the ability, under the Proposed Bylaws, to establish an Appeals Committee or Finance Committee in the future, if desired.

3. Advisory Board

Each Exchange proposes to adopt Article VI, Section 6.1 of the Proposed Bylaws, which provides that the Board may establish an Advisory Board which will advise the Board and management regarding matters of interest to Exchange Members. If established, the Board would set the number of members of the Advisory Board, and at least two members would be Exchange Members or persons associated with Exchange Members. The Nominating and Governance Committee would recommend members of the Advisory Board for approval by the Board.60 Each Exchange states that it believes an Advisory Board could provide a vehicle for Exchange management to receive advice from the perspective of Exchange Members and regarding matters that impact Exchange Members.61 Each Exchange further explains that an Advisory Board would be completely advisory in nature and would not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. The Exchanges note that while under the CBOE Bylaws an Advisory Board is mandatory, the Exchanges would like the flexibility to determine if an Advisory Board should be established in the future.62 The Commission believes that each Exchange’s proposal to authorize an Advisory Board to advise the Board and management with respect to matters of interest to Exchange Members is consistent with the Act. The Commission notes that the Advisory Board will be advisory in nature and will not be vested with decision-making authority or the authority to act on behalf of the Exchange. Nevertheless, if established, the Advisory Board could serve as a supplementary adjunct advisory body that can provide an additional forum for Exchange Members to be heard and provide input to Exchange management above and beyond the formal role played by Representative Directors, as discussed.

50 See BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42160.
51 See BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42160.
52 See BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42160.
53 See BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42160. For example, BOX Options Exchange, LLC does not mandate an Appeals Committee in its bylaws or exchange rules. See bylaws of BOX Options Exchange, LLC, rules of BOX Options Exchange, LLC.
54 See BYX Notice, 82 FR at 42134 (citing BYX Current Bylaws, Article V, Section 6(f)(i)); BZX Notice, 82 FR at 42128 (citing BZX Current Bylaws, Article V, Section 6(f)(i)); EDGA Notice, 82 FR at 42213 (citing EDGA Current Bylaws, Article V, Section 6(f)(i)); EDGX Notice, 82 FR at 42160 (citing EDGX Current Bylaws, Article V, Section 6(f)(i)).
above. The Commission further notes that the composition and function of the Advisory Board is the same as that for CBOE and C2, and that, while the CBOE Bylaws currently mandate the establishment of an Advisory Board, the Commission previously approved a proposal for a permissive Advisory Board by CBOE and C2.63

4. Regulatory Independence

The Proposed Certificates and Proposed Bylaws, as well as proposed Exchange rules, include provisions designed to help maintain the independence of the regulatory functions of each Exchange,64 which provisions are substantially similar to those included in the governing documents of other exchanges.65

Specifically:

• In discharging his or her responsibilities as a member of the Board, each Director shall take into consideration the effect that his or her actions would have on the ability of the Exchange to carry out the Exchange’s responsibilities under the Act and on the ability of the Exchange: To engage in conduct that fosters and does not interfere with the Exchange’s ability to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board or as an officer or employee of the Exchange, each Director, officer or employee shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission, and the Exchange pursuant to its regulatory authority.66

• All confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of the Exchange shall: (1) Not be made available to any persons other than to those officers, Directors, employees, and agents of the Exchange that have a reasonable need to know the contents thereof; (2) be retained in confidence by the Exchange and its officers, Directors, employees, and agents; and (3) be used only for any commercial purposes.67

• Under the Proposed Bylaws, as is the case under the Current Bylaws, the books and records of each Exchange must be maintained in the United States.68

• Under the Proposed Certificates and Proposed Bylaws, any amendments to those documents will not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Act and the rules promulgated thereunder.69

Current Bylaws, Article III, Sections 1(d) and (e); EDGA Notice, 82 FR at 42154 and 42157 (citing EDGA Current Bylaws, Article III, Sections 1(d) and (e)); EDGX Notice, 82 FR at 42147 and 42154 (citing EDGX Current Bylaws, Article III, Sections 1(d) and (e)).

67 See BYX Proposed Certificate, Article Eleventh; BZX Proposed Certificate, Article Eleventh; EDGA Proposed Certificate, Article Eleventh; EDGX Proposed Certificate, Article Eleventh. The Commission notes that, as is currently the case, the requirement to keep information confidential will not be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or limit or impede the ability of any officers, Directors, employees, or agents of the Exchange to disclose such confidential information to the Commission. See BYX Proposed Certificate, Article Eleventh Certificate, Article Seventh; EDGA Proposed Certificate, Article Eleventh; EDGX Proposed Certificate, Article Eleventh. See also BYX Current Bylaws, Article XI, Section 3; BZX Current Bylaws, Article XI, Section 3; EDGA Current Bylaws, Article XI, Section 3; EDGX Current Bylaws, Article XI, Section 3.

68 See BYX Proposed Bylaws, Article VIII, Section 8.12; BZX Proposed Bylaws, Article VIII, Section 8.12; EDGA Proposed Bylaws, Article VIII, Section 8.12; EDGX Proposed Bylaws, Article VIII, Section 8.12. See also BYX Current Bylaws, Article XI, Section 3; BZX Current Bylaws, Article XI, Section 3; EDGA Current Bylaws, Article XI, Section 3; EDGX Current Bylaws, Article XI, Section 3. The Commission notes that such books and records would be subject to examination by the Commission pursuant to the federal securities laws and the rules and regulations thereunder.

69 See BYX Proposed Certificate. Article Seventh; BZX Proposed Certificate, Article Seventh; EDGA Proposed Certificate, Article Seventh; EDGX Proposed Certificate, Article Seventh; EDGX Proposed Certificate, Article Seventh; BYX Proposed Bylaws, Article IX, Section 9.3; BZX Proposed Bylaws, Article IX, Section 9.3; EDGA Proposed Bylaws, Article IX, Section 9.3; EDGX Proposed Bylaws, Article IX, Section 9.3. The Commission notes that, although the Current Certificates and Current Bylaws do not include a similar, explicit requirement regarding the filing of amendments pursuant to Section 19 of the Act, the Current Certificates and Current Bylaws, as rules of the Exchange, are nonetheless subject to the requirements of Section 19 of the Act and the rules and regulations thereunder.

Additionally, each Exchange proposes a rule that would prohibit the Exchange from using any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines for non-regulatory purposes or to make distributions to the stockholder.70

The Commission believes that the provisions discussed in this section, which are designed to help ensure the independence of each Exchange’s regulatory function and facilitate the ability of each Exchange to carry out its responsibilities and operate in a manner consistent with the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.71

The Commission believes that the proposed provisions relating to the books and records of each Exchange are designed to maintain the independence of the Exchanges’ self-regulatory function, and are consistent with the Act. The Commission notes that these provisions are substantially similar to those the Commission has previously found to be consistent with the Act in the context of the corporate governance structures of other exchanges.72 The Commission also notes that the governing documents of CBOE Holdings and CBOE V previously approved by the Commission provide that all books and records of the Exchanges reflecting confidential information pertaining to the self-regulatory function of the exchanges.
Exchanges will be subject to confidentiality restrictions.73 The Commission finds that the proposed process regarding amendments to the Proposed Certificates and Proposed Bylaws is consistent with Section 6(b)(1) of the Act, because it reflects the obligation of the Board to ensure compliance with the rule filing requirements under the Act. Additionally, the Commission finds these changes to be consistent with Section 19(b)(1) of the Act and Rule 19b–4 thereunder,74 which require that a self-regulatory organization file with the Commission all proposed rules, as well as all proposed changes in, additions to, and deletions of its existing rules. These provisions clarify that amendments to the Proposed Certificates and Proposed Bylaws constitute proposed rule changes within the meaning of Section 19(b)(2) of the Act and Rule 19b–4 thereunder, and are subject to the filing requirements of Section 19 of the Act and the rules and regulations thereunder.

The Commission also finds that the prohibition on the use of regulatory fees or fines to fund non-regulatory purposes or to make distributions to the stockholder is consistent with Section 6(b)(1) of the Act,75 because it is designed to further each Exchange’s ability to effectively comply with its statutory obligations and is designed to ensure that the regulatory authority of the Exchange is not improperly used.76 This restriction on the use of regulatory funds is intended to preclude each Exchange from using its authority to raise regulatory funds for the purpose of benefitting its stockholder.77

C. Related Rule Amendments

Each Exchange proposes to amend its rules in conjunction with the changes in the Proposed Bylaws.78 Specifically, each Exchange proposes to update certain cross-references to the bylaws in its rules and to move certain definitions from the bylaws to the rules.79

The Commission finds that these proposed rule changes are consistent with the Act in that they are necessary to update cross-references and certain defined terms in the rules and would assist Exchange Members and the public in understanding the Exchanges’ rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,80 that the proposed rule changes (SR–BatsBYX–2017–19; SR–BatsBZX–2017–55; SR–BatsEDGA–2017–22; and SR–BatsEDGX–2017–35), each as modified by its respective Amendment No. 1, be, and hereby are, approved.

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

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; New York Stock Exchange LLC; 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 Listed Company Manual To Adopt Initial and Continued Listing Standards for Subscription Receipts

October 11, 2017.

I. Introduction

On June 26, 2017, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to amend the NYSE Listed Company Manual (the “Manual”) to adopt initial and continued listing standards for Subscription Receipts. The proposed rule change was published for comment in the Federal Register on July 13, 2017.3 On October 3, 2017, the Exchange submitted Amendment No. 1 to the proposed rule change.4 The Commission is publishing this notice of Amendment No. 1 and approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange has proposed to adopt initial and continued listing standards for the listing of Subscription Receipts. In its proposal, NYSE generally described the structure of Subscription Receipts and noted that Subscriptions Receipts have been used as a financing technique by Canadian public companies.5 According to the Exchange, Canadian companies typically use Subscription Receipts as a means of providing cash consideration in merger or acquisition transactions.6 Subscription Receipts are sold in a public offering that occurs after the execution of an acquisition agreement. The proceeds of the Subscription Receipt offering are held in a custody account and, if the related acquisition closes, the Subscription Receipt holders will have their Subscription Receipts converted into a specified number of shares of the primary listed class of common stock of the issuer.7 If the acquisition does not close, the Subscription Receipts are redeemed for their original purchase price plus any interest accrued on the custody account.

The Exchange stated in its proposal that Subscription Receipts provide a contingent form of financing for an issuer that only becomes permanent if the specified acquisition is completed.8 In contrast, the Exchange noted that a company financing the cash consideration for an acquisition by means of a traditional equity or debt

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73 See Transaction Order, 81 FR at 93991–92.
76 See, e.g., ISE Order, 82 FR at 36505 (approving a prohibition on the use of regulatory fees, fines, or penalties to pay dividends). See also CBOE Demutualization Order, 75 FR at 30089 (approving CBOE Rule 2.51).
77 See BYX Notice, 82 FR at 42138; BZX Notice, 82 FR at 42192; EDGA Notice, 82 FR at 42177; EDGX Notice, 82 FR at 42164.
78 See BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42192–93; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165.
79 See proposed BYX Rules 1.1, 2.10, and 8.6; proposed BZX Rules 1.1, 2.10, and 8.6; proposed EDGA Rules 1.1, 2.10, and 8.6; proposed EDGX Rules 1.1, 2.10, and 8.6. The Exchanges also propose to move the prohibition on the use of regulatory revenues for non-regulatory purposes from the Current Bylaws to the rules. See supra note 70 and accompanying text.