

19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As noted above, the proposed amendments to NYSE American Rule 8.700E relating to Managed Trust Securities are substantially identical to amendments to NYSE Arca Rule 8.700E previously approved by the Commission. The proposal raises no new or novel issues. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2017-37 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-NYSEAMER-2017-37. 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 submissions should refer to File Number SR-NYSEAMER-2017-37 and should be submitted on or before January 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82337; File No. SR-CboeBYX-2017-001; SR-CboeBZX-2017-001; SR-CboeEDGA-2017-001; SR-CboeEDGX-2017-001]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Its Director Nomination and Committee Appointment Process and Its Nominating and Governance Committee

December 15, 2017.

#### I. Introduction

On November 14, 2017, each of Cboe BYX Exchange, Inc. ("Cboe BYX"), Cboe BZX Exchange, Inc. ("Cboe BZX"), Cboe EDGA Exchange, Inc. ("Cboe EDGA"), Cboe EDGX Exchange, Inc. ("Cboe 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to eliminate its Nominating and Governance Committee ("N&G Committee") and amend the process by which (i) directors are elected, (ii) committee appointments are made, and (iii) vacancies are filled.<sup>3</sup> The proposed rule changes were published for comment in the **Federal Register** on November 27, 2017.<sup>4</sup> The Commission received no comments on the proposals. This order approves the proposed rule changes on an accelerated basis.

#### II. Description of the Proposal

First, the Exchanges propose to eliminate their N&G Committees and provide that the sole stockholder of the Exchanges (Cboe Global Markets, Inc.) shall nominate and elect directors at the annual meetings of the sole stockholder,

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

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

<sup>3</sup> In addition, the Exchanges propose to make several formatting changes throughout the Bylaws as well as to change their names in the title and signature lines in their Certificates of Incorporation ("Certificates") to reflect recent changes to their legal names.

<sup>4</sup> See Securities Exchange Act Release Nos. 82122 (November 20, 2017), 82 FR 53076 (November 27, 2017) (SR-CboeBYX-2017-001) ("CboeBYX Notice"); 82123 (November 20, 2017), 82 FR 56065 (November 27, 2017) (SR-CboeBZX-2017-001) ("CboeBZX Notice"); 82125 (November 20, 2017), 82 FR 56079 (November 27, 2017) (SR-CboeEDGA-2017-001) ("CboeEDGA Notice"); 82126 (November 20, 2017), 82 FR 56072 (SR-CboeEDGX-2017-001) ("CboeEDGX Notice") (collectively, the "Notices").

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

except with respect to fair-representation directors (“Representative Directors”).<sup>5</sup> As a consequence of the elimination of the N&G Committee, the Exchanges propose conforming changes to reallocate its responsibility. Specifically, the Exchanges propose to amend the definition of “Representative Director Nominating Body” to provide that if an Exchange’s Board of Directors (“Board”) has two or more Industry Directors, excluding directors that are Exchange employees, those Industry Directors shall act as the Representative Director Nominating Body. If there are fewer than two Industry Directors on the Board (excluding directors that are employees of the Exchange), then the Exchange Member Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body. The Exchanges further propose to amend their Bylaws and Certificates to provide that the sole stockholder is bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Lastly, the Exchanges each propose to amend Section 3.1 of their Bylaws to provide that the Board is responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director.

Second, the Exchanges propose to transfer the N&G Committee’s current authority with respect to committee appointments to their Boards (or appropriate subcommittee of the Board).<sup>6</sup> Specifically, the Exchanges propose to amend Section 4.2 and 6.1 of their Bylaws to state that members of the Executive Committee and Advisory Board will now be appointed by the Board. The Exchanges also propose to amend Section 4.4 of their Bylaws to state that members of the Regulatory Oversight Committee (“ROC”) will be appointed by the Board on the recommendation of the Non-Industry Directors of the Board.

Third, the Exchanges propose to amend their Bylaws to alter the process for filling director vacancies.<sup>7</sup> Specifically, the Exchanges propose to amend Section 3.4 of their Bylaws to provide that in the event any Industry or Non-Industry Director fails to

maintain the required qualifications and the director’s term is accordingly terminated, the sole stockholder, instead of the Board, shall be able to fill the vacancy.<sup>8</sup> The Exchanges also propose to amend Section 3.5 of their Bylaws to provide the sole stockholder with authority to fill vacancies so long as the elected Director qualifies for the position. Additionally, with respect to vacancies among the Representative Directors, the Representative Director Nominating Body will recommend an individual, or provide a list of recommended individuals, to the sole stockholder who shall select and fill the position.

Finally, the Exchanges propose to change their names in the title and signature lines in their Certificates to reflect recent changes to their legal names.<sup>9</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of Section 6 of the Act<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule changes are consistent with Sections 6(b)(1) the Act,<sup>12</sup> which require a national securities exchange 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 rules of the Exchange. The Commission also finds that the proposed rule changes are consistent with Section 6(b)(3) of the Act,<sup>13</sup> which requires that the rules of a national securities exchange assure the 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

<sup>8</sup> Amended Section 3.4 would also provide that if such terminated director requalified, the sole stockholder would have discretion to reappoint such director, including by increasing the size of the Board, should that be necessary.

<sup>9</sup> Other technical formatting changes occur throughout the Bylaws as a result of the Exchanges proposed changes. See Notices, *supra* note 4 at 56077; 56066; 56081 and 56073, respectively.

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

<sup>11</sup> 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).

<sup>12</sup> 15 U.S.C. 78f(b)(1).

<sup>13</sup> 15 U.S.C. 78f(b)(3).

and not be associated with a member of the exchange, broker, or dealer.

The Commission believes that the Exchanges’ proposals to eliminate their N&G Committees and reassign the N&G Committees’ responsibilities are consistent with the Act. In particular, with respect to vesting the authority to nominate and elect directors in the sole stockholder, the Exchanges cite to the rules of another Exchange that similarly does not maintain an exchange-level nominating committee and instead provides that the sole stockholder of the Exchange nominates and elects their non-fair representation directors.<sup>14</sup> Importantly, the Commission notes that the proposed rule changes do not substantively impact the provisions concerning the nomination and selection of fair representation directors that currently apply to the Exchanges. The sole stockholder will continue to be bound to nominate and elect the Representative Director nominees recommended by the Representative Director Nominating Body and there are no other changes to the process for the nomination and selection of Representative Directors. Accordingly, the Commission believes that members of the Exchanges should continue to have a voice in the governance of the Exchanges through Board representation and thus will have a voice in the Exchanges’ exercise of their self-regulatory authority. The Exchanges represent that they are not proposing to amend any of the compositional requirements currently set forth in the Bylaws and that such existing compositional requirements must continue to be satisfied, including the provision relating to the fair representation of members.<sup>15</sup>

In addition, with respect to providing the Board, as opposed to the N&G Committee, with the authority to recommend and approve members of the Executive Committee, Advisory Board, and ROC, the Commission notes that other exchanges provide that their Boards, without input from a nominating committee, may appoint members to committees.<sup>16</sup> While the internal Exchange delegations of the authority relating to the (i) nomination and election of directors, (ii) nominating body for Representative Directors, (iii)

<sup>14</sup> See Section 3.02(f) of the Amended and Restated NYSE Arca, Inc. Bylaws. See also Notices, *supra* note 4 at 56078; 56066–67; 56081; and 56074, respectively.

<sup>15</sup> See Notices, *supra* note 4 at 56078; 56067; 56081 and 56074, respectively.

<sup>16</sup> See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5–3.

<sup>5</sup> See *id.* at 56077; 56065; 56080; and 56072, respectively.

<sup>6</sup> See *id.* at 56077; 56066; 56080; and 56073, respectively.

<sup>7</sup> See *id.* at 56077; 56066; 56080–81 and 56073, respectively.

filling of director vacancies and (iv) appointment of committees are being amended, the Exchanges represent that the substantive requirements of the Exchanges applicable to those items will remain the same.<sup>17</sup>

Finally, the Commission believes that the proposals to update the exchanges' names in their Certificates are consistent with the Act as they may also serve to reduce potential confusion by ensuring the Exchanges' corporate documents reflect their recent name changes.

#### IV. Accelerated Approval of the Proposal

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> for approving the proposed rule changes, prior to the 30th day after publication of the Notices in the **Federal Register**.<sup>19</sup> The Commission believes that the proposed rule changes do not raise novel regulatory issues and are substantively similar to the existing rules of other national securities exchanges.<sup>20</sup> In particular, the Commission notes that the proposed rule changes do not substantively impact the provisions concerning the nomination and selection of fair representation directors that currently apply to the Exchanges. Members of the Exchanges should continue to have an opportunity to participate in the selection of Board representation and have input into the Exchanges' exercise of self-regulatory authority. In addition, the Commission did not receive any comment on the proposed changes. Accordingly, the Commission finds that good cause exists to approve the proposed rule changes on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>21</sup> that the proposed rule changes (SR-CboeBYX-2017-001; SR-CboeBZX-2017-001; SR-CboeEDGA-2017-001; SR-CboeEDGX-2017-001), be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82341; File No. SR-Phlx-2017-79]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Amendment No. 2, Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Granting Accelerated Approval of Amendment No. 2, of a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program

December 15, 2017.

#### I. Introduction

On October 12, 2017, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish a Nonstandard Expirations Pilot Program. On October 26, 2017, the Exchange filed Amendment No.1 to the proposal to amend and replace the original filing in its entirety. The proposed rule change was published for comment in the **Federal Register** on November 2, 2017.<sup>3</sup> On December 6, 2017, the Exchange filed a partial amendment to the proposed rule change ("Amendment No. 2").<sup>4</sup> The Commission received no comments on the proposed rule change.

This order provides notice of filing of Amendment No. 2, approves the proposal, as modified by Amendment No. 1, and approves Amendment No. 2 on an accelerated basis, for a pilot period of twelve months.

<sup>22</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 81975 (Oct. 27, 2017), 82 FR 50921.

<sup>4</sup> In Amendment No. 2, the Exchange proposes to provide to the Commission, to the extent that data on other weekly or monthly p.m.-settled products from other exchanges is publicly available, a time series analysis of open interest in weekly expiration ("Weekly Expiration") and end of month ("EOM") series compared to open interest in weekly or monthly p.m.-settled products of other exchanges in order to determine whether users are shifting positions from other weekly or monthly p.m.-settled products to the Weekly Expiration and EOM series.

## II. Description of the Amended Proposal

The Exchange proposes to permit the listing and trading, on a pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expiration dates for a period of twelve months (the "Nonstandard Expirations Pilot Program" or "Pilot Program") from the date of approval of this proposed rule change. The Pilot Program would permit both Weekly Expirations and EOM expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value will be based on the index value derived from the closing prices of component stocks. The proposal is substantially similar to Chicago Board Options Exchange ("CBOE") Rule 24.9(e), Nonstandard Expirations Pilot Program.<sup>5</sup>

#### A. Weekly Expirations

The Exchange proposes to add new subsection (b)(vii)(1), Weekly Expirations, to Rule 1101A, Terms of Options Contracts. Under the proposed new rule the Exchange would be permitted to open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations would be subject to all provisions of Rule 1101A and would be treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations would be p.m.-settled. New series in Weekly Expirations could be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that could be listed for each Weekly Expiration (*i.e.*, a Monday expiration, Wednesday expiration, or Friday expiration, as applicable) in a given class would be the same as the maximum number of expirations permitted for standard options on the same broad-based index. Weekly Expirations would not need to be for consecutive Monday, Wednesday, or

<sup>5</sup> See Securities Exchange Act Release Nos. 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR-CBOE-2016-046) (Order approving expansion of CBOE's Nonstandard Expirations Pilot Program to include Monday Expirations); 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (SR-CBOE-2015-106) (Order approving expansion of CBOE's Nonstandard Expirations Pilot Program to include Wednesday Expirations); 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR-CBOE-2009-075) (Order approving CBOE's Nonstandard Expirations Pilot Program).

<sup>17</sup> See Notices, *supra* note 4 at 56078; 56067; 56081 and 56074, respectively.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> As noted above, the Notices were published for comment in the **Federal Register** on November 27, 2017 and the comment period closed on December 12, 2017. Accordingly, the 30th day after publication of the Notices is December 27, 2017.

<sup>20</sup> See notes 15 and 17, *supra*.

<sup>21</sup> 15 U.S.C. 78s(b)(2).