

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81496; File No. SR-BatsEDGA-2017-22)

August 30, 2017

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, to Harmonize the Corporate Governance Framework with that of Chicago Board Options Exchange, Incorporated and C2 Options Exchange Incorporated

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 23, 2017, Bats EDGA Exchange, Inc. (“Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On August 25, 2017, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange filed a proposal to amend and restate its certificate of incorporation and bylaws, as well as amend its Rules.

The text of the proposed rule change is available at the Exchange’s website at www.bats.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

EDGA submits this rule filing to the Securities and Exchange Commission (the “Commission”) in connection with a corporate transaction (the “Transaction”) involving, among other things, the recent acquisition of EDGA along with Bats BYX Exchange, Inc. (“Bats BYX”), Bats BZX Exchange, Inc. (“Bats BZX”) and Bats EDGX Exchange, Inc. (“Bats EDGX” and, together with Bats BYX, Bats BZX, and Bats EDGA, the “Bats Exchanges”) by CBOE Holdings, Inc. (“CBOE Holdings”). CBOE Holdings is also the parent of Chicago Board Options Exchange, Incorporated (“CBOE”) and C2 Options Exchange, Incorporated (“C2”). This filing proposes to amend and restate the bylaws (and amend the rules, accordingly) and the certificate of incorporation of the Exchange based on the bylaws and certificates of incorporation of CBOE and C2.

Specifically, the Exchange proposes to replace the certificate of incorporation of Bats EDGA Exchange, Inc., (the “current Certificate”) in its entirety with the Second Amended and Restated Certificate of Incorporation of Bats EDGA Exchange, Inc. (the “proposed Certificate”). Additionally, the Exchange proposes to replace the Sixth Amended and Restated Bylaws of Bats EDGA Exchange, Inc. (the “current Bylaws”) in its entirety with the Seventh Amended and Restated Bylaws of Bats EDGA Exchange, Inc. (the “proposed Bylaws”). The Exchange believes that it is important for each of CBOE Holdings’ six U.S. securities exchanges to have a

consistent, uniform approach to corporate governance. Therefore, to simplify and unify the governance and corporate practices of these six exchanges, the Exchange proposes to revise the current Certificate and current Bylaws to conform them to the certificates of incorporation and bylaws of the CBOE and C2 exchanges (i.e., the Third Amended and Restated Certificate of Incorporation of Chicago Board Options Exchange, Incorporated and the Fourth Amended and Restated Certificate of C2 Options Exchange, Incorporated (collectively referred to herein as the “CBOE Certificate”) and the Eighth Amended and Restated Bylaws of Chicago Board Options Exchange, Incorporated and the Eighth Amended and Restated Bylaws of C2 Options Exchange, Incorporated (collectively referred to herein as the “CBOE Bylaws”). The proposed Certificate and proposed Bylaws reflect the expectation that the Exchange will be operated with governance structures similar to those of CBOE and C2. Accordingly, the Exchange proposes to adopt corporate documents that set forth a substantially similar corporate governance framework and related processes as those contained in the CBOE Certificate and CBOE Bylaws. The Exchange believes the proposed changes to the current Certificate and current Bylaws are consistent with the requirements of the Securities Exchange Act of 1934, as amended (the “Act”).

(a) Changes to the Certificate

In connection with the Transaction, the Exchange proposes to amend and restate the current Certificate to conform to the certificates of incorporation of CBOE and C2. The proposed Certificate is set forth in Exhibit 5B. Specifically, the Exchange proposes to make the following substantive amendments to the current Certificate.

- Adopt an introductory section.
- Amend Article Third to provide further details as to the nature of the business of the Exchange. Specifically, the proposed Certificate will further specify that the nature of

the Exchange is (i) to conduct and carry on the function of an “exchange” within the meaning of that term in the Act and (ii) to provide a securities market place with high standards of honor and integrity among its Exchange Members and other persons holding rights to access the Exchange’s facilities and to promote and maintain just and equitable principles of trade and business.

- Article Fourth of the proposed Certificate specifies that Direct Edge LLC will be the sole owner of the Common Stock and that any sale, transfer or assignment by Direct Edge LLC of any shares of Common Stock will be subject to prior approval by the SEC pursuant to a rule filing. The Exchange notes that Article IV, Section 7 of the current Bylaws similarly precludes the stockholder from transferring or assigning, in whole or in part, its ownership interest(s) in the Exchange.
- Article Fifth of the proposed Certificate is the same as Article Fifth of the CBOE Certificate. Specifically, Article Fifth, subparagraph (a) provides that the governing body of the Exchange shall be its Board. Article Fifth, subparagraph (b) provides that the Board shall consist of not less than five (5) Directors and subparagraph (c) includes language regarding the nomination of directors, which information is substantially similar as is provided in the CBOE Bylaws and the proposed Bylaws.³ Article Fifth, subparagraph (d) of the proposed Certificate provides that 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

³ See Article III of the CBOE Bylaws and proposed Bylaws.

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 such 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. The Exchange notes that similar language is included in the current Bylaws.⁴

- Article Sixth of the proposed Certificate governs the indemnification of Directors of the Board. The Exchange notes that its indemnification provision is currently contained in Article VIII of the current Bylaws. In order to conform governance documents across all CBOE Holdings' exchanges and conform indemnification practices, the Exchange is eliminating its indemnification in the bylaws and adopting the same indemnification language that is currently contained in Article Sixth of the CBOE Certificate.
- Article Seventh of the proposed Certificate is the same as Article Seventh of the CBOE Certificate and provides that the Exchange reserves the right to amend, change or repeal any provision of the certificate. It also provides that before any amendment or repeal of any provision of the certificate shall be effective, the changes must be submitted to the Board, and if such amendment or repeal must be filed with or filed with and approved by

⁴ See Article III, Section 1(d) and Section 1(e) of the current Bylaws.

the Commission, it won't be effective until filed with or filed with and approved by the Commission.

- Article Eighth of the proposed Certificate is the same as Article Eighth of the CBOE Certificate. Proposed Article Eighth provides that a Director of the Exchange shall not be liable to the Exchange or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation is not permitted under Delaware Corporate law.
- Article Ninth of the proposed Certificate is the same as Article Ninth of the CBOE Certificate. Specifically it provides that unless and except to the extent that the Exchange's bylaws require, election of Directors of the Exchange need not be by written ballot.
- Article Tenth of the proposed Certificate is the same as Article Tenth of the CBOE Certificate and provides that in furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to make, alter and repeal the Exchange's bylaws, which is already provided for in both the current Bylaws and proposed Bylaws.⁵
- Article Eleventh of the proposed Certificate is the same as Article Eleventh of the CBOE Certificate and is similar to Article XI, Section 3 of the current Bylaws. Particularly, Article Eleventh provides that 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

⁵ See Article IX, Section 1 of the current Bylaws and Article IX, Section 9.1 of the proposed Bylaws.

Exchange shall: (i) 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; (ii) be retained in confidence by the Exchange and the officers, directors, employees and agents of the Exchange; and (iii) not be used for any commercial purposes. Additionally, Article Eleventh of the proposed Certificate further provides that nothing in Article Eleventh shall 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 to limit or impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission.

(b) Substantive Changes to the Bylaws

In connection with the Transaction, the Exchange also proposes to amend and restate the current Bylaws to conform to the Bylaws of CBOE and C2. The proposed Bylaws is set forth in Exhibit 5D. Specifically, the Exchange proposes to make the following substantive amendments to the current Bylaws:

Definitions

The Exchange first notes that Section 1.1 of the proposed Bylaws, titled “Definitions,” contains key definitions of terms used in the proposed Bylaws, and are based on the defined terms used in Section 1.1 of the CBOE Bylaws. The Exchange notes that certain differences in terminology in the proposed Bylaws and CBOE Bylaws will exist (e.g., use of the term “Exchange Member” instead of “Trading Permit Holder”). The Exchange proposes to eliminate from the current Bylaws certain definitions that would be obsolete under the proposed Bylaws (e.g., references to “Member Representative Directors” and “Member Nominating Committee”)

and also proposes to move certain defined terms located in the current Bylaws to the EDGA Rules (i.e., “Industry member” and “Member Representative member”)⁶. Additionally, the Exchange proposes to define certain terms in the current Bylaws in places other than Section 1.1, so as to match the CBOE Bylaws (e.g., the definition of “Industry Director” is being relocated to Article III, Section 3.1 of the proposed Bylaws and the definition of “Record Date” is being relocated to Article II, Section 2.7 of the proposed Bylaws)⁷.

Office and Agent

The Exchange notes that the information in Article II (Office and Agent) of the current Bylaws is not included in the proposed Bylaws. The Exchange notes that the language contained in Section 2 and 3 of Article II is already located in the current Certificate and will continue to be located in the proposed Certificate.⁸ The Exchange does not believe the information contained in

⁶ See Proposed EDGA Rules, Rule 8.6. The Exchange notes that the definition of a Member Representative member is being revised to eliminate the reference to a Stockholder Exchange Member. Currently, a Stockholder Exchange Member means an Exchange Member that also maintains, directly or indirectly, an ownership interest in the Company. The exchange notes that the sole stockholder of EDGA is Direct Edge LLC, which is a wholly owned subsidiary of CBOE Holdings and is not an Exchange member, and as such, the concept of a Stockholder Exchange Member need not be referenced.

⁷ The Exchange notes a few differences between the definitions of Industry Director and Record Date in the current Bylaws and the proposed Bylaws. Specifically, the definition of “Industry Director” in Article I, subparagraph (o) of the current Bylaws contains references to specific percentages in order to determine whether a Director qualifies as an Industry Director, whereas the definition of “Industry Director” in Article III, Section 3.1, of the proposed Bylaws uses the term “material portion” in making those same determinations. The definition of “Record Date” in Article I, subparagraph (z) of the current Bylaws means a date at least thirty-five (35) days before the date of the annual meeting of stockholders, whereas Article II, Section 2.7 of the proposed Bylaws provides that the Record Date shall be at least 10 days before the date of the annual meeting of stockholders and not more than 60 days before the annual meeting.

⁸ See Article Second of the current and proposed Certificates.

Section 1 of Article II is necessary to include in the proposed Bylaws and notes that the CBOE Bylaws do not contain information relating to the principal business office.

Nomination and Election Process

Article III of the proposed Bylaws, titled “Board of Directors”, mirrors the language in Article III of the CBOE Bylaws and contains key provisions regarding the processes for nominating and electing Representative Directors.

General Nomination and Election

Under the Exchange’s current director nomination and election process, the Nominating Committee (which is not a Board committee, but rather is composed of Exchange member representatives)⁹ nominates Directors for each Director position standing for election for that year. Additionally, for Member Representative Director positions¹⁰, the Nominating Committee must nominate the Directors that have been approved and submitted by the Member Nominating Committee (which is also not a Board committee, but rather is composed of Member Representative members)¹¹. Additionally, pursuant to Article III, Section 3(b) of the current Bylaws, the Exchange Directors are divided into three classes, designated as Class I, Class II and Class III. Directors other than the Chief Executive Officer of the Exchange (“CEO”) serve staggered three-year terms. The Exchange proposes to adopt a nomination and election process identical to CBOE and C2 as set forth in Article III of the proposed Bylaws. As such, the tiered

⁹ See Current Bylaws, Article III, Section 4 (“Nomination and Election”) and Article VI, Section 2 (“Nominating Committee”).

¹⁰ See Current Bylaws, Article I, (s), which defines a “Member Representative Director”. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member.

¹¹ See Current Bylaws Article I, subparagraph (t) (“Member Representative member”). See also, Article III, Section [sic] (“Nomination and Election”) and Article VI, Section 3 (“Member Nominating Committee”) of the current Bylaws.

class system will be eliminated, Directors will serve one-year terms ending on the annual meeting following the meeting at which Directors were elected or at such time as their successors are elected or appointed and the newly established Nominating and Governance Committee will be responsible for nominating each Director.¹²

Nomination and Election of Representative Directors

Currently, pursuant to Article III, Section 4(b) of the current Bylaws, for Member Representative Directors, the Member Nominating Committee consults with the Nominating Committee, the Chairman of the Board and the CEO, and also solicits comments from Exchange Members for purposes of approving and submitting the names of candidates for election as a Member Representative Director. The initial nominees for Member Representative Directors must be reported to the Nominating Committee and Secretary no later than sixty (60) days prior to the annual or special stockholders' meeting, at which point the Secretary will promptly notify Exchange Members. Exchange Members may then identify other candidates by delivering to the Secretary, at least thirty-five (35) days before the annual or special stockholders' meeting, a written petition, identifying the alternative candidate and signed by Executive Representatives¹³ of 10% or more of Exchange Members. No Exchange Member, together with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate. If no valid petitions from Exchange Members are received by the Record Date, the initial nominees approved and submitted by the Member Nominating Committee shall be nominated as Member

¹² See Article III, Section 3.1 and Article IV, Section 4.3 of the proposed Bylaws.

¹³ The term "Executive Representative" as defined in the current Bylaws, Article I, means the person identified to the Company by an Exchange Member as the individual authorized to represent, vote, and act on behalf of the Exchange Member. An Executive Representative of an Exchange Member or a substitute shall be a member of senior management of the Exchange Member.

Representative Directors by the Nominating Committee. If one or more valid petitions are received by the Record Date, the Secretary shall include such additional nominees, along with the initial nominees nominated by the Member Nominating Committee, on a list of nominees (the “List of Candidates”) that is sent to all Exchange Members, accompanied by a notice regarding the time and date of an election to be held at least twenty (20) days prior to the annual or special stockholders’ meeting. Each Exchange Member has the right to cast one (1) vote for each available Member Representative Director nomination (the vote must be cast for a person on the List of Candidates and no Exchange Member, together with its affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate). The persons on the List of Candidates who receive the most votes shall be selected as the nominees for the Member Representative Director positions.

For purposes of harmonizing the governance structure and process across all of CBOE Holdings’ U.S. securities exchanges, the Exchange proposes to eliminate the Nominating Committee and Member Nominating Committee and adopt a nomination and election process substantially similar to CBOE and C2 for Member Representative Directors (to be renamed “Representative Directors”)¹⁴. The Exchange notes that unlike the current Bylaws, the proposed Bylaws will not require Representative Directors to be an officer, director, employee, or agent of an Exchange Member that is not a Stockholder Exchange Member, as neither CBOE nor C2 maintain such a requirement. The new process will provide that the “Representative Director

¹⁴ Article III, Section 3.1. of the proposed Bylaws requires that at all times, at least 20% of Directors serving on the Board shall be Representative Directors, which is the same percentage required under the current Bylaws (see Article III, Section 2(b)(ii) of the current Bylaws). Article III, Section 3.2 of the proposed Bylaws further clarifies that if 20% of the Directors then serving on the Board is not a whole number, the number of required Representative Directors shall be rounded up to the next whole number.

Nominating Body” shall be responsible for nominating Representative Directors. The Representative Director Nominating Body (“Nominating Body”) is either (i) the Industry-Director Subcommittee of the Nominating and Governance Committee if there are at least two (2) Industry Directors on the Nominating and Governance Committee, or (ii) if the Nominating and Governance Committee has less than two (2) Industry Directors, then the Nominating Body shall mean the Exchange Member Subcommittee of the Advisory Board¹⁵. The Nominating and Governance Committee shall be bound to accept and nominate the Representative Director nominees recommended by the 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. Any person nominated by the Nominating Body and any petition candidate must satisfy the compositional requirements determined by the Board, pursuant to a resolution adopted by the Board, designating the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any). Not earlier than December 1 and not later than January 15th (or the first business day thereafter if January 15th is not a business day), the Nominating Body shall issue a circular to Exchange Members identifying the Representative Director nominees. As is the case under the current Bylaws, Exchange Members may nominate alternative candidates for election to the Representative Director positions to be elected in a given year by submitting a petition signed by individuals representing not less than ten percent (10%) of the Exchange Members at that time. Petitions must be filed with the Secretary no later than 5:00 p.m. (Chicago time) on the 10th business day following the issuance of the circular to the Exchange Members identifying the Representative Director nominees (the “Petition Deadline”). The names of all

¹⁵ The Exchange notes that if there are less than two (2) Industry Directors on the Nominating and Governance Committee, it would institute an Advisory Board, if not already established.

Representative Director nominees recommended by the Nominating Body and those selected pursuant to a valid and timely petition shall, immediately following their selection, be given to the Secretary who shall promptly issue a circular to all of the Exchange Members identifying all such Representative Director candidates.

If one or more valid petitions are received, the Secretary shall issue a circular to all of the Exchange Members identifying those individuals nominated for Representative Director by the Nominating Body and those individuals nominated for Representative Director through the petition process, as well as of the time and date of a run-off election to determine which individuals will be nominated as Representative Director(s) by the Nominating and Governance Committee (the “Run-off Election”). The Run-off Election will be held not more than forty-five (45) days after the Petition Deadline. In any Run-off Election, each Exchange Member shall have one (1) 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 twenty percent (20%) of the votes cast for a candidate.¹⁶ The Secretary shall issue a circular to all of the Exchange Members setting forth the results of the Run-off Election. The number of individual Representative Director nominees equal to the number of Representative Director positions to be filled that year receiving the largest number of votes in the Run-off Election will be the persons approved by the Exchange Members to be nominated as the Representative

¹⁶ Article III, Section 3.2 of the CBOE Bylaws provides that in any Run-off Election, a holder of a Trading Permit shall have one vote with respect to each Trading Permit held by such Trading Permit Holder for each Representative Director position to be filled. The Exchange notes that because no “Trading Permits” or similar concept exist on the Exchange, it is deviating from this practice and providing instead that each Exchange Member shall have one (1) vote for each Representative Director position to be filled, which the Exchange does not believe is a significant change. The Exchange also notes that other Exchanges have similar practices. See e.g., Amended and Restated By-Laws of Miami International Securities Exchange, LLC, Article II, Section 2.4(f).

Director(s) by the Nominating and Governance Committee for that year. The Exchange believes that, under the proposed Board structure, the Representative Directors serve the same function as the Member Representative Directors in that both directorships give Exchange members a voice in the Exchange's use of self-regulatory authority.

Vacancies

Article III, Section 6 of the current Bylaws provides that during a vacancy of any Director other than a Member Representative Director, the Nominating Committee shall nominate an individual Director and the stockholders of EDGA shall elect the new Director.¹⁷ In the event of a vacancy of a Member Representative Director, the Member Nominating Committee shall either (i) recommend an individual to the stockholders to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the stockholders from which the stockholders shall elect the individual to fill such vacancy. The current Bylaws provide that Directors elected to fill a vacancy are to hold office until the expiration of the remaining term.

The Exchange proposes to adopt the same process to fill vacancies as CBOE and C2. Specifically, Article III, Section 3.5 of the proposed Bylaws, which is substantially similar to Article III, Section 3.5 of the CBOE Bylaws, will provide that a vacancy on the Board 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. Additionally, for vacancies of Representative Directors, the Nominating Body will recommend an individual to be elected, or provide a list of recommended individuals, and the position shall be filled by the vote of a

¹⁷ The sole stockholder of EDGA is Direct Edge LLC, a wholly owned subsidiary of CBOE Holdings.

majority of the Directors then in office. Under the proposed Bylaws, Directors elected to fill a vacancy will serve until the next annual meeting of stockholders.

Removals and Resignation

Article III, Section 7 of the current Bylaws provides that any Director may be removed with or without cause by a majority vote of stockholders and may be removed by the Board, provided however, that any Member Representative Director may only be removed for cause, which includes such Director being subject to a Statutory Disqualification. Additionally, a Director shall be immediately removed upon a determination by the Board, by a majority vote of remaining Directors that (a) the Director no longer satisfies the classification for which the Director was elected and (b) the Director's continued service would violate the compositional requirements of the Board. Article III, Section 7 of the current Bylaws also provides that any Director may resign at any time upon notice of resignation to the Chairman of the Board, the President or Secretary. Resignation shall take effect at the time specified, or if no time is specified, upon receipt of the notice.

Under Article III, Section 3.4 of the proposed Bylaws, which is the same as Article III, Section 3.4, of the CBOE Bylaws, a Director who fails to maintain the applicable Industry or Non-Industry qualifications required under the proposed Bylaws, of which the Board shall be the sole judge, will cease being a Director. The Exchange notes that while the current Bylaws do not address the requalification of a Director, Section 3.4 of the proposed Bylaws permits a Director that fails to maintain the applicable qualifications to requalify within the later of forty-five (45) days from the date when the Board determines the Director is unqualified or until the next regular Board meeting following the date when the Board makes such determination. The Director shall be deemed not to hold office (i.e., the Director's seat is considered vacant)

following the date when the Board determines the Director is unqualified. Further, the Board shall be the sole judge of whether the Director has requalified. If a Director is determined to have requalified, the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such Director to the Board; provided, however, that the Board shall be under no obligation to return such Director to the Board.

Similar to the current Bylaws, Section 3.4 of the proposed Bylaws provides that Representative Directors may only be removed for cause. In addition to specifying that cause includes being subject to a Statutory Disqualification, the proposed Bylaws further lists additional examples of cause in Section 3.4 (e.g., breach of a Representative Director's duty of loyalty to the Exchange or its stockholders and transactions from which a Representative Director derived an improper personal benefit). Lastly, the Exchange notes that under the proposed Bylaws, resignation must be written and must be given to either the Chairman of the Board or the Secretary.

Board Composition

Pursuant to Article III, Section 2 of the current Bylaws, the Board must consist of four (4) or more Directors, and consist at all times of one (1) Director who is the CEO and a sufficient number of Industry, Non-Industry and Member Representative Directors to ensure that the number of Non-Industry Directors, including at least one Independent Director, shall equal or exceed the sum of Industry and Member Representative Directors. Additionally, the number of Member Representative Directors must be at least twenty (20) percent of the Board. The Exchange proposes to replace the Board composition and structure with that of CBOE and C2. As is the case with CBOE and C2, pursuant to Article III, Section 3.1, of the proposed Bylaws, the Board must consist of at least five (5) directors (which is the minimum number of Directors

required for the Nominating and Governance Committee), instead of 4 as required by the current Bylaws. Additionally, the following would apply to the new Board structure:

- The number of Non-Industry Directors, Industry Directors and the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any) will be determined by the Board pursuant to resolution adopted by the Board.¹⁸
- The proposed Bylaws provide that the number of Non-Industry Directors cannot be less than the number of Industry Directors, whereas the current Bylaws, as noted above, provide that the number of Non-Industry Directors, including at least one Independent Director, shall equal or exceed the sum of Industry and Member Representative Directors.¹⁹ Unlike the current Bylaws, the proposed Bylaws provide that the CEO is excluded from the calculation of Industry Directors, as is the practice under CBOE Bylaws.²⁰ Additionally, the Exchange notes that the CBOE Bylaws do not contain the term or concept of “Independent Directors” and in order to conform the proposed Bylaws to the CBOE Bylaws, the proposed Bylaws also do not reference “Independent Directors” with respect to composition.

¹⁸ See Proposed Bylaws and CBOE Bylaws, Article III, Section 3.1.

¹⁹ See Current Bylaws, Article III, Section 2.

²⁰ Id.

- The Board or the Nominating and Governance Committee will make all materiality determinations regarding who qualifies as an Industry Director and Non-Industry Director.²¹
- Unlike the current Bylaws which provide that the CEO shall be the Chairman of the Board²², the proposed Bylaws, provide that the Chairman will be appointed by the Board and further provides that the Board may designate an Acting Chairman in the event the Chairman is absent or fails to act.²³
- Unlike the current Bylaws which provide that a Lead Director must be designated by the Board among the Board’s Independent Directors²⁴, the proposed Bylaws provide that the Board may, but does not have to, appoint a Lead Director, who if appointed, must be a Non-Industry Director, which is the same practice under CBOE’s Bylaws.²⁵
- The number of Representative Directors must be at least twenty (20) percent of the Board²⁶, which is the same requirement under the current Bylaws as noted above.

Meetings

Annual Meeting of the Stockholders

21

Id.

22

See Current Bylaws, Article III, Section 5.

23

See Proposed Bylaws and CBOE Bylaws, Article III, Sections 3.6 and 3.8.

24

See Current Bylaws, Article III, Section 5.

25

See Proposed Bylaws and CBOE Bylaws, Article III, Section 3.7.

26

See Proposed Bylaws and CBOE Bylaws, Article III, Section 3.2.

Article IV, Section 1 of the current Bylaws provides that the annual meeting of the stockholders shall be held at such place and time as determined by the Board. The Exchange notes that Article II, Section 2.2 of the proposed Bylaws is being amended to conform to Article II, Section 2.2 of the CBOE Bylaws, which provides as a default that if required by applicable law, an annual meeting of stockholders shall be held on the third Tuesday in May of each year or such other date as may be fixed by the Board, at such time as may be designated by the Secretary prior to the giving of notice of the meeting. Section 2.2 of the proposed Bylaws also provides that in no event shall the annual meeting be held prior to the completion of the process for the nomination of Representative Directors. The proposed Bylaws also provide in Article II, Section 2.1 that in addition to the Board, the Chairman (or CEO if there is no Chairman) may designate the location of the annual meeting. The Exchange notes that it is not including the information contained in Article IV, Section 3 of the current Bylaws. Specifically, Section 3 provides that the Secretary of the Exchange (or designee), shall prepare at least ten (10) days before every meeting of stockholders, a complete list of stockholder entitled to vote at the meeting. The Exchange does not believe this provision is necessary given that EDGA's sole stockholder is Direct Edge LLC, a wholly owned subsidiary of CBOE Holdings (and also notes that neither CBOE nor C2 follow this practice).

Special Meetings of the Stockholders

Article IV, Section 2 of the current Bylaws provides that special meetings of the stockholders may be called by the Chairman, the Board or the President, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Exchange entitled to vote. In order to streamline the rules under which special meetings can be called, the Exchange proposes to adopt the same

special meeting provision as Article II, Section 2.3 of the CBOE Bylaws. Particularly, under Article II, Section 2.3 of the proposed Bylaws, special meetings of stockholders may only be called by the Chairman or by a majority of the Board. The CBOE Bylaws do not include the ability of stockholders to request a special meeting. The Exchange does not believe this provision is necessary given that EDGA's sole stockholder is Direct Edge LLC, a wholly owned subsidiary of CBOE Holdings.

Quorum and Vote Required for Action at a Stockholder Meeting

Article IV, Section 4 of the current Bylaws provides, among other things, that the holders of a majority of the capital stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders. The provision also provides that if there is no quorum at any meeting of the stockholders, the stockholders, present in person or represented by proxy, shall have power to adjourn the meeting until a quorum is present or represented. Additionally, if an adjournment of a meeting of the stockholders is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. Additionally, Article IV, Section 4 provides that when a quorum is present at any meeting, the vote of the holders of a majority of the capital stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question.

The Exchange proposes to adopt Article II, Sections 2.5 and 2.6 of the proposed Bylaws which are the same as Article II, Sections 2.5 and 2.6 of the CBOE Bylaws and similar to Article

IV, Section 4 of the current Bylaws. The Exchange notes that unlike the current Bylaws, Article II, Section 2.5 of the proposed Bylaws and CBOE Bylaws do not require notice of an adjourned meeting to be given to each stockholder of record entitled to vote at the meeting if an adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting. The Exchange does not believe this requirement is necessary given that EDGA's sole stockholder is Direct Edge LLC, a wholly owned subsidiary of CBOE Holdings. Additionally, in order to conform Article II, Section 2.6 of the proposed Bylaws to the CBOE Bylaws, the Exchange also proposes to explicitly provide that a plurality of votes properly cast shall elect the directors, notwithstanding the language in Article II, 2.6 that provides that when a quorum is present, a majority of the votes properly cast will decide any question brought before a meeting unless a different vote is required by express provision of statute or the Certificate of Incorporation.

Regular Meetings of the Board

Article III, Sections 8 and 9 of the current Bylaws provide that, with or without notice, a resolution adopted by the Board determines the time and place of the regular meeting and that if no designation as to place is made, then the meeting will be held at the principal business office of the Exchange. Article III, Section 3.10 of the proposed Bylaws, which is the same as Article III, Section 3.10 of the CBOE Bylaws, provides that regular meetings shall be held at such time and place as is determined by the Chairman with notice provided to the full Board.

Special Meetings of the Board

Article III, Section 10 of the current Bylaws provides that special meetings of the Board may be called on a minimum of two (2) days' notice to each Director by the Chairman or the President and shall be called by the Secretary upon written request of three (3) Directors. Article

III, Section 3.11 of the proposed Bylaws, which is the same as Article III, Section 3.11 of the CBOE Bylaws, however, provides that special meetings of the Board may be called by the Chairman and shall be called by the Secretary upon written request of any four (4) directors. Additionally, under the proposed Bylaws, the Secretary shall give at least twenty-four (24) hours' notice of such meeting.

Board Quorum

Article III, Section 12 of the current Bylaws provides that a majority of the number of Directors then in office shall constitute a quorum, whereas Article III, Section 3.9 of the proposed Bylaws, which is the same as Article III, Section 3.9 of the CBOE Bylaws, provides that two-thirds of the Directors then in office shall constitute a quorum. Increasing the quorum requirement from a majority to two-thirds will ensure that more Directors are present at meetings of the Board in order to transact business for the Exchange.

Committees of the Board

The current bylaws provide for the following standing committees of the Board: a Compensation Committee, an Audit Committee, a Regulatory Oversight Committee, and an Appeals Committee, each to be comprised of at least three (3) members.²⁷ The current Bylaws also provide that the Exchange may establish an Executive Committee and a Finance Committee.²⁸ The Exchange proposes to modify the committees of the Board to eliminate the Audit Committee, Appeals Committee, and Compensation Committee, as well as eliminate the provision relating to a Finance Committee. Additionally, the Exchange proposes to require a mandatory Executive Committee and Nominating and Governance Committee, as well as make

²⁷ See Current Bylaws, Article V, Section 1 and Section 2(a).

²⁸ See Current Bylaws, Article V, Sections 6(e) and (f), respectively.

several amendments to the Regulatory Oversight Committee provision. The Exchange notes that CBOE and C2 have eliminated their Audit and Compensation Committees and do not maintain an Appeals Committee at the Board level. As previously noted, CBOE and C2 do maintain a Board-level Nominating and Governance Committee, which performs the functions of EDGA's current Nominating and Member Nominating Committees, which the Exchange proposes to eliminate.

Elimination of Compensation Committee

The Exchange seeks to eliminate the Compensation Committee because it believes that the Compensation Committee's functions are duplicative of the functions of the Compensation Committee of its parent company, CBOE Holdings. Specifically, under its committee charter, the CBOE Holdings Compensation Committee has authority to assist the CBOE Holdings Board of Directors in carrying out its overall responsibilities relating to executive compensation and also, among other things, (i) recommending the compensation of the CBOE Holdings' CEO and certain other executive officers and (ii) approving and administering all cash and equity-based incentive compensation plans of CBOE Holdings that affect employees of the CBOE Holdings and its subsidiaries. Similarly, under its committee charter, the EDGA Compensation Committee has authority to fix the compensation of EDGA's CEO and to consider and recommend compensation policies, programs, and practices to the EDGA CEO in connection with the EDGA CEO's fixing of the salaries of other officers and agents of the Exchange.²⁹ As such, other than to the extent that the EDGA Compensation Committee recommends the

²⁹ The Exchange notes that the Regulatory Oversight Committee ("ROC") of the EDGA Board recommends to the Board compensation for the Chief Regulatory Officer. The Exchange also notes that currently not all executive officers of EDGA are required to have their compensation determined by the Compensation Committee.

compensation of executive officers whose compensation is not already determined by the CBOE Holdings Compensation Committee, its activities are duplicative of the activities of the CBOE Holdings Compensation Committee. Indeed, the Exchange notes that currently the EDGA Compensation Committee only fixes the compensation amount of the EDGA CEO. The Exchange notes that currently the Exchange's CEO is the CEO (i.e., an executive officer) of CBOE Holdings, and as such, the CBOE Holdings Compensation Committee already performs this function. To the extent that compensation need be determined for any EDGA officer who is not also a CBOE Holdings officer in the future, the 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 (which is identical to Article V, Section 5.11 of the CBOE Bylaws). Thus, the responsibilities of the EDGA Compensation Committee are duplicated by the responsibilities of the CBOE Holdings Compensation Committee. The Exchange believes that its proposal to eliminate its Compensation Committee is substantially similar to prior actions taken by other securities exchanges with parent company compensation committees to eliminate their exchange-level compensation committees, including CBOE and C2.³⁰

Elimination of Audit Committee

The Exchange also proposes to eliminate its Audit Committee because its functions are duplicative of the functions of the Audit Committee of its parent company, CBOE Holdings. Under its committee charter, the CBOE Holdings Audit Committee has broad authority to assist

³⁰ See e.g., Securities Exchange Act Release No. 80523 (April 25, 2017), 82 FR 20399 (May 1, 2017) (SR-CBOE-2017-017) and Securities Exchange Act Release No. 80522 (April 25, 2017), 82 FR 20409 (May 1, 2017) (SR-C2-2017-009). See also Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR-NASDAQ-2009-042) and Securities Exchange Act Release No. 62304 (June 16, 2010), 75 FR 36136 (June 24, 2010) (SR-NYSEArca-2010-31).

the CBOE Holdings Board in fulfilling its oversight responsibilities in assessing controls that mitigate the regulatory and operational risks associated with operating the Exchange and assist the CBOE Holdings Board of Directors in discharging its responsibilities relating to, among other things, (i) the qualifications, engagement, and oversight of CBOE Holdings' independent auditor, (ii) CBOE Holdings' financial statements and disclosure matters, (iii) CBOE Holdings' internal audit function and internal controls, and (iv) CBOE Holdings' oversight and risk management, including compliance with legal and regulatory requirements. Because CBOE Holdings' financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings' subsidiaries, including EDGA, the CBOE Holdings Audit Committee's purview necessarily includes EDGA. The Exchange notes that unconsolidated financial statements of the Exchange will still be prepared for each fiscal year in accordance with the requirements set forth in its application for registration as a national securities exchange. The CBOE Holdings Audit Committee is composed of at least three (3) 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.³¹ All CBOE Holdings Audit Committee members must be financially literate (or become financially literate within a reasonable period of time after appointment to the Committee), and at least one (1) member of the Committee must be an "audit committee financial expert" as defined by the Securities and Exchange Commission ("SEC"). By contrast, the EDGA Audit Committee has a more limited role, focused on EDGA. Under its charter, the primary functions of the EDGA Audit Committee are focused on (i) EDGA's financial statements and disclosure matters and (ii) EDGA's oversight and risk management, including compliance with legal and regulatory

³¹ 17 CFR 240.10A-3.

requirements, in each case, only to the extent required in connection with EDGA's discharge of its obligations as a self-regulatory organization. However, to the extent that the EDGA Audit Committee reviews financial statements and disclosure matters, its activities are duplicative of the activities of the CBOE Holdings Audit Committee, which is also charged with review of financial statements and disclosure matters. Similarly, the CBOE Holdings Audit Committee has general responsibility for oversight and risk management, including compliance with legal and regulatory requirements, for CBOE Holdings and all of its subsidiaries, including EDGA. Thus, the responsibilities of the EDGA Audit Committee are fully duplicated by the responsibilities of the CBOE Holdings Audit Committee. The Exchange believes that its proposal to eliminate its Audit Committee is substantially similar to prior actions by other securities exchanges with parent company audit committees to eliminate their exchange-level audit committees, including CBOE and C2.³²

Elimination of Appeals Committee

The Exchange next proposes to eliminate the Appeals Committee. Pursuant to Article V, Section 6(d) of the current Bylaws, the Chairman, with the approval of the Board, shall appoint an Appeals Committee. The Appeals Committee shall consist of one (1) Independent Director, one (1) Industry Director, and one (1) Member Representative Director and presides over all appeals related to disciplinary and adverse action determinations in accordance with the Rules. The Exchange notes that neither CBOE nor C2 maintain a Board-level Appeals Committee.

³² See, e.g., Securities Exchange Act Release No. 64127 (March 25, 2011), 76 FR 17974 (March 31, 2011) (SR-CBOE-2011-010) and Securities Exchange Act Release No. 64128 (March 25, 2011), 76 FR 17973 (March 31, 2011) (SR-C2-2011-003). See also, Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR- NASDAQ-2009-042).

Rather, CBOE and C2 currently maintain an Exchange-level Appeals Committee.³³ The Exchange notes that although it is proposing to eliminate the Appeals Committee as a specified Board-level committee at this time, the Exchange will still have the ability to appoint either a Board-level or exchange-level Appeals Committee pursuant to its powers under Article IV, Section 4.1 of the proposed Bylaws. Although, CBOE and C2 have a standing exchange-level Appeals Committee, the Exchange prefers not to have to maintain and staff a standing Appeals Committee, but rather provide its Board the flexibility to determine whether to establish a Board-level or exchange-level Appeals Committee, as needed or desired. The Exchange also notes that other Exchanges similarly do not require standing Appeals Committees.³⁴ The elimination of the requirement in the bylaws to maintain a standing Appeals Committee would provide consistency among the Bylaws for all of CBOE Holdings' U.S. securities exchanges, while still providing the Board the authority to appoint an Appeals Committee in the future as needed.

Elimination of Finance Committee

Pursuant to Article V, Section 6(f) of the current Bylaws, the Chairman, with the approval of the Board, may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for the Exchange's annual operating and capital budgets. The Exchange notes that it does not currently have a Finance Committee and that, similarly, CBOE and C2 do not have an exchange-level Finance Committee. As the Exchange currently does not maintain, and has no current intention of establishing, an exchange-level Finance

³³ See e.g., CBOE Rule 2.1 and C2 Chapter 19, which incorporates by reference CBOE Chapter XIX (Hearings and Review), which references the Appeals Committee.

³⁴ For example, neither the Bylaws nor Rules of BOX Options Exchange, LLC mandate an Appeals Committee. See Bylaws of Box Options Exchange LLC and Rules of Box Options Exchange, LLC.

Committee, it does not believe it is necessary to maintain this provision. The Exchange notes that should it desire to establish a Finance Committee in the future, it still maintains the authority to do so under Article IV, Section 4.1 of the proposed Bylaws.

Changes to the Regulatory Oversight Committee

Article V, Section 6(c) of the current Bylaws relates to the Regulatory Oversight Committee (“ROC”), which oversees the adequacy and effectiveness of the Exchange’s regulatory and self-regulatory organization responsibilities. The Exchange proposes to adopt Article IV, Section 4.4, which amends the ROC provision to conform to Article IV, Section 4.4 of the CBOE Bylaws.³⁵ First, the Exchange proposes to specify that the ROC shall consist of at least three (3) directors, all of whom are Non-Industry Directors who are appointed by the Board on the recommendation of the Non-Industry Directors serving on the Nominating and Governance Committee (including the designation of the Chairman of the ROC). While the current Bylaws also require all ROC members to be Non-Industry Directors, it does not specify a minimum number of directors. The current Bylaws also provide that the Chairman of the Board (instead of a Nominating and Governance Committee), with approval of the Board, appoints the ROC members.

Next, while the current Bylaws explicitly delineate some of the ROC’s responsibilities, the Exchange proposes to provide more broadly that the ROC shall have the duties and may exercise such authority as may be prescribed by resolution of the Board, the Bylaws or the Rules of the Exchange. Particularly, Article V, Section 6(c) of the current Bylaws provide that the ROC shall oversee the adequacy and effectiveness of the Exchange’s regulatory and self-

³⁵ The Exchange does not intend at this time to rename the ROC the “Regulatory Oversight and Compliance Committee” (“ROCC”), which is the name of the equivalent committee of CBOE and C2.

regulatory organization responsibilities, assess the Exchange’s regulatory performance, assist the Board and Board committees in reviewing the regulatory plan and the overall effectiveness of Exchange’s regulatory functions and, in consultation with the CEO, establish the goals, assess the performance, and fix the compensation of the Chief Regulatory Officer (“CRO”). The Exchange notes that the ROC will continue to have the foregoing duties and authority, with the exception that the ROC will no longer consult the CEO with respect to establishing the goals, assessing the performance and fixing compensation of the CRO. The proposed change to eliminate the CEO’s involvement in establishing the goals, assessing the performance and fixing compensation of the CRO is consistent with the Exchange’s desire to maintain the independence of the regulatory functions of the Exchange. The Exchange notes that each of the abovementioned proposed changes provide for the same language and appointment process used by CBOE and C2 with respect to the ROC, which provides consistency among the CBOE Holdings U.S. securities exchanges.³⁶

Creation of a Mandatory Executive Committee

Article V, Section 6(e) of the current Bylaws provides that the Chairman, with approval of the Board, may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange between meetings of the Board.³⁷ The current Bylaws provide that the number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. In addition, the percentage of Independent Directors on the Executive

³⁶ See CBOE Bylaws Article IV, Section 4.4.

³⁷ The Exchange does not presently have an Executive Committee.

Committee shall be at least as great as the percentage of Independent Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board.

Under the proposed Bylaws, the Exchange proposes to require that the Exchange maintain an Executive Committee and delineates its composition and functions in Article IV, Section 4.2 of the proposed Bylaws. Similar to the current Bylaw provisions relating to the Executive Committee, the proposed Executive Committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange. Unlike the current Executive Committee provisions, however, the proposed Executive Committee shall not have the power and authority of the Board to (i) approve or adopt or recommend to the stockholders any action or matter (other than the election or removal of Directors) expressly required by Delaware law to be submitted to stockholders for approval, including without limitation, amending the certificate of incorporation, adopting an agreement of merger or consolidation, approving a sale, lease or exchange of all or substantially all of the Exchange's property and assets, or approval of a dissolution of the Exchange or revocation of a dissolution, or (ii) adopt, alter, amend or repeal any bylaw of the Exchange. Additionally, Section 4.2 of the proposed Bylaws provides that the Executive Committee shall consist of the Chairman, the CEO (if a Director), the Lead Director, if any, at least one (1) Representative Director and such other number of Directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee (excluding the CEO from the calculation of Industry Directors for this purpose). The Directors (other than the Chairman, CEO and Lead

Director, if any) serving on the Executive Committee shall be appointed by the Board on the recommendation of the Nominating and Governance Committee of the Board. Directors serving on the Executive Committee may be removed by the Board in accordance with the bylaws. The Chairman of the Board shall be the Chairman of the Executive Committee. Each member of the Executive Committee shall be a voting member and shall serve for a term of one (1) year expiring at the first regular meeting of Directors following the annual meeting of stockholders each year or until their successors are appointed. The Exchange notes that CBOE and C2 have an Executive Committee and that the proposed composition requirements and functions are the same as CBOE and C2.³⁸

Elimination of Nominating and Member Nominating Committees and Creation of Nominating and Governance Committee

The Exchange also proposes to eliminate the current Nominating and Member Nominating Committees, and to prescribe that their duties be performed by the new Nominating and Governance Committee of the Board (as discussed below). The Nominating Committee is a non-Board committee and is elected on an annual basis by vote of the Exchange's sole stockholder, Direct Edge LLC³⁹ The Nominating Committee is primarily charged with nominating candidates for election to the Board at the annual stockholder meeting and all other vacant or new Director positions on the Board and ensuring, in making such nominations, that candidates meet the compositional requirements set forth in the bylaws. The Member

³⁸ See CBOE Bylaws, Article IV, Section 4.2.

³⁹ See Article VI, Sections 1 and 2. A Nominating Committee member may simultaneously serve on the Nominating Committee and the Board, unless the Nominating Committee is nominating Director candidates for the Director's class. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee.

Nominating Committee is also a non-Board committee and elected on an annual basis by vote of the Exchange's sole stockholder, Direct Edge LLC.⁴⁰ Each Member Nominating Committee member must be a Member Representative member (i.e., an officer, director, employee or agent of an Exchange Member that is not a Stockholder Exchange Member).⁴¹ The Member Nominating Committee is primarily charged with nominating candidates for each Member Representative Director position on the Board.

The Exchange proposes to adopt a Nominating and Governance Committee which would have the same responsibilities currently delegated to the CBOE and C2 Nominating and Governance Committees. Specifically, the Exchange proposes to adopt Article IV, Section 4.3, which is the same as Article IV, Section 4.3 of the CBOE Bylaws, which would provide that the Nominating and Governance Committee shall consist of at least five (5) directors and shall at all times have a majority of Non-Industry Directors. Members of the committee would be recommended by the Nominating and Governance Committee for approval by the Board and shall not be subject to removal except by the Board. The Chairman of the Nominating and Governance Committee shall be recommended by the Nominating and Governance Committee for approval by the Board. The Nominating and Governance Committee would be primarily charged with the authority to nominate individuals for election as Directors of the Exchange. The Nominating and Governance Committee would also have such other duties and may exercise such other authority as may be prescribed by resolution of the Board and the Nominating and Governance Committee charter as adopted by resolution of the Board. If the Nominating and Governance Committee has two (2) or more Industry Directors, there shall be an

⁴⁰ See Article VI, Sections 1 and 3.

⁴¹ See Article VI, Section 3.

Industry-Director Subcommittee consisting of all of the Industry Directors then serving on the Nominating and Governance Committee, which shall act as the Representative Director Nominating Body (as previously discussed) if and to the extent required by the proposed Bylaws. The Exchange believes that the duties and functions of the eliminated Nominating and Member Nominating Committees would continue to be performed and covered in the new corporate governance structure under the proposed Bylaws.

Creation of an Advisory Board

The Exchange proposes to adopt Article VI, Section 6.1, which provides that the Board may establish an Advisory Board which shall advise the Board and management regarding matters of interest to Exchange Members. The Exchange believes the 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. Under Article VI, Section 6.1 of the proposed Bylaws, the Board would determine the number of members of an Advisory Board, if established, including at least two members who are Exchange Members or persons associated with Exchange Members. Additionally, the CEO or his or her designee would serve as the Chairman of an Advisory Board and the Nominating and Governance Committee would recommend the members of an Advisory Board for approval by the Board. There would also be an Exchange Member Subcommittee of the Advisory Board consisting of all members of the Advisory Board who are Exchange Members or persons associated with Exchange Members, which shall act as the Representative Director Nominating Body if and to the extent required by the proposed Bylaws. An Advisory Board would be completely advisory in nature and not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. The Exchange notes that CBOE and C2 currently maintain an Advisory Board, with

the same proposed compositional requirements and functions.⁴² The Exchange also notes, however, that while for CBOE and C2 an Advisory Board is mandatory, an Advisory Board for the Exchange would be permissive as the Exchange desires flexibility to determine if an Advisory Board should be established in the future. The Exchange notes that there is no statutory requirement to maintain an Advisory Board or Advisory Committee and indeed, other Exchanges, including EDGA itself, do not require the establishment of an Advisory Board.⁴³

Officers, Agents and Employees

General

Article VII, Section 1 of the current Bylaws provides that that an individual may not hold office as both the President and Secretary, whereas the CBOE Bylaws provide an individual may not hold office as both the CEO and President and that the CEO and President may not hold office as either the Secretary or Assistant Secretary.⁴⁴ As these requirements are similar, if not more restrictive under the CBOE Bylaws, the Exchange proposes to include the same provisions in the CBOE Bylaws in Article V, Section 5.1 of the proposed Bylaws.

Resignation and Removal

Article VII, Section 3 of the current Bylaws provides that any officer may resign at any time upon notice of resignation to the Chairman and CEO, the President or the Secretary. The Exchange proposes to amend the provision relating to officer resignations to provide that any officer may resign at any time upon delivering written notice to the Exchange at its principal

⁴² See Article VI, Section 6.1 of CBOE Bylaws.

⁴³ For example, BOX Options Exchange, LLC does not require an advisory committee.

⁴⁴ See Article V, Section 5.1 of CBOE Bylaws.

office, or to the CEO or Secretary.⁴⁵ Article VII, Section 3 of the current Bylaws also provides that any officer may be removed, with or without cause, by the Board. The Exchange proposes to provide that, in addition to being removed by the Board, an officer may be removed at any time by the CEO or President (provided that the CEO can only be removed by the Board).⁴⁶ Provisions relating to resignation and removal of officers in the proposed Bylaws will be identical to the relevant provisions of the CBOE Bylaws.⁴⁷

Compensation

Article VII, Section 4 of the current Bylaws provides that the CEO, after consultation of the Compensation Committee, shall fix the salaries of officers of the Exchange and also states that the CEO's compensation shall be fixed by the Compensation Committee. In order to conform compensation practices to those of CBOE and C2, the Exchange proposes to modify these provisions to provide that in lieu of the CEO, the Board, unless otherwise delegated to a committee of the Board or to members of senior management, may fix the salaries of officers of the Exchange.⁴⁸ Additionally, in conjunction with the proposed change to eliminate the EDGA Compensation Committee, the Exchange proposes to eliminate language providing that the CEO's compensation is fixed by the Compensation Committee.

Chief Executive Officer and President

Article VII, Section 6 of the current Bylaws pertains to the CEO. The current Bylaws provide that the CEO shall be the Chairman of the Board. CBOE and C2, however, do not require that the CEO be Chairman of the Board. The Exchange desires similar flexibility in

⁴⁵ See Proposed Bylaws, Article V, Section 5.9.

⁴⁶ See Proposed Bylaws, Article V, Section 5.8.

⁴⁷ See Article V, Sections 5.8 and 5.9 of the CBOE Bylaws.

⁴⁸ See Proposed Bylaws, Article V, Section 5.11.

appointing its Chairman and, therefore, this requirement is not carried over in the proposed Bylaws.⁴⁹ Instead, Article V, Section 5.1 of the proposed Bylaws provides that the CEO shall be appointed by an affirmative vote of the majority of the Board, and may but need not be, the Chairman of the Board. The Exchange notes that to conform the language to the CBOE Bylaws, Article V, Section 5.2 of the proposed Bylaws also states that the CEO shall be the official representative of the Exchange in all public matters and provides that the CEO shall not engage in another business during his incumbency except with approval of the Board. Additionally, the Exchange proposes not to carry over language in the current Bylaws that provides that the CEO shall not participate in executive sessions of the Board, as CBOE Bylaws do not contain a similar restriction.

Article V, Section 5.3 of the proposed Bylaws proposes to provide that the President shall be the chief operating officer of the Exchange. The Exchange notes that the current Bylaws do not address appointing a chief operating officer. Additionally, while Article VII, Section 7 of the current Bylaws provides that the President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board, and shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board, Article V, Section 5.3 of the proposed Bylaws further states that in the event that the CEO does not act, the President shall perform the officer duties of the CEO, which is consistent with the language in the CBOE Bylaws.

Other Officers

The Exchange notes the following modifications relating to officer provisions in the proposed Bylaws, which are intended to conform the proposed Bylaws to the CBOE Bylaws:

⁴⁹ The Exchange notes that currently the CEO of EDGA is also Chairman of the Board.

- Article V, Sections 5.1 and 5.4 of the proposed Bylaws, which is identical to Article V, Sections 5.1 and 5.4 of the CBOE Bylaws, will provide that the Chief Financial Officer (“CFO”) is designated as an officer of the Exchange and that the Board and CEO may assign the CFO powers and duties as they see fit. The Exchange notes that the role of a CFO is not referenced in the current Bylaws.
- The proposed Bylaws eliminate the requirement in the current Bylaws that the Chief Regulatory Officer (“CRO”) is a designated officer of the Exchange.⁵⁰ As noted above, the Exchange desires to conform its Bylaws to the Bylaws of CBOE and the CBOE Bylaws do not reference the role of the CRO. The Exchange notes that notwithstanding the proposed elimination of the CRO provision, there is no intention to eliminate the role of the CRO.
- Article VII, Section 10 of the current Bylaws requires the Secretary to keep official records of Board meetings. The Exchange proposes to add to Article V, Section 5.6 of the proposed Bylaws, which is similar to the current Bylaws and based on Article V, Section 5.6 of the CBOE Bylaws, which requires that in addition to all meetings of the Board, the Secretary must keep official records of all meetings of stockholders and of Exchange Members at which action is taken.
- Article V, Section 5.7 of the proposed Bylaws, which is based on Article 5.7 of the CBOE Bylaws, would provide that the Treasurer perform such duties and powers as the Board, the CEO or CFO proscribes (whereas Article VII, Section 12 of the current Bylaws provides that such duties and powers may be proscribed by the Board, CEO or President).

⁵⁰ See Current Bylaws, Article VII, Section 9.

- While the current Bylaws contain separate provisions relating to an Assistant Secretary and an Assistant Treasurer, the proposed Bylaws do not, as CBOE Bylaws similarly do not contain such provisions.⁵¹

Amendments

Article IX, Section 1 of the current Bylaws provides that the bylaws may be altered, amended, or repealed, or new bylaws adopted, (i) by written consent of the stockholders of the Exchange or (ii) at any meeting of the Board by resolution. The proposed Bylaws, however, eliminate the ability of stockholders to act by written consent and instead provides that in order for the stockholders of the Exchange to alter, amend, repeal or adopt new bylaws, there must be an affirmative vote of the stockholders present at any annual meeting at which a quorum is present.⁵² Additionally, unlike the current Bylaws, the Exchange proposes to explicitly provide that changes to the bylaws shall not become effective until filed with or filed with and approved by the SEC, to avoid confusion as to when proposed amendments to the Bylaws can take effect.⁵³ The proposed provisions are the same as the corresponding provisions in the CBOE Bylaws.⁵⁴

General Provisions

The Exchange proposes to add Article VIII, Section 8.1 of the proposed Bylaws, which is the same as Article VIII, Section 8.1 of the CBOE Bylaws, that unless otherwise determined by the Board, the fiscal year of the Exchange ends on the close of business December 31 each year, as compared to Article XI, Section 1 of the current Bylaws, which provides that the fiscal year of

⁵¹ See Article VII, Sections 11 and 13 of the current Bylaws.

⁵² See Proposed Bylaws, Article IX, Section 9.2.

⁵³ See Proposed Bylaws, Article IX, Section 9.3.

⁵⁴ See Article IX, Sections 9.2 and 9.3 of the CBOE Bylaws.

the Exchange shall be as determined from time to time by the Board. Note that the Exchange's fiscal year currently ends on the close of business December 31 each year.

The Exchange also proposes to add Article VIII, Section 8.2 of the proposed Bylaws, which is the same as Article VIII, Section 8.2 of the CBOE Bylaws, which governs the execution of instruments such as checks, drafts and bills of exchange and contracts and which is similar to Article XI, Section 6 of the current Bylaws.

Next, the Exchange proposes to adopt Article VIII, Section 8.4, which provides that, except as the Board may otherwise designate, the Chairman of the Board, CEO, CFO or Treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for the Exchange (with or without power of substitution) at, any meeting of stockholders or shareholders of any other corporation or organization, the securities of which may be held by the Exchange. The proposed provision is the same as Article VIII, Section 8.4 of the CBOE Bylaws and similar to Article XI, Section 7 of the current Bylaws, which provides generally that the CEO has the power and authority to act on behalf of the Company at any meeting of stockholders, partners or equity holders of any other corporation or organization, the securities of which may be held by the Exchange.

The Exchange proposes to adopt Article VIII, Section 8.7, which governs transactions with interested parties. Proposed Article VIII, Section 8.7 is the same as Article VIII, Section 8.7 of the CBOE Bylaws and substantially similar to language contained in Article III, Section 18 of the current Bylaws. Similarly, the Exchange proposes to adopt Article VIII, Section 8.8 which governs severability and is the same as Article VIII, Section 8.8 of CBOE Bylaws and substantially similar to Article XI, Section 8 of the current Bylaws.

The Exchange proposes to adopt Article VIII, Section 8.10 which provides that the board may authorize any officer or agent of the Corporation to enter into any contract, or execute and deliver any instrument in the name of, or on behalf of the Corporation. The proposed language is the same as the language in Article VIII, Section 8.10 of the CBOE Bylaws and similar to related language in Article XI, Section 6 of the current Bylaws.

The Exchange proposes to adopt Article VIII, Section 8.12, relating to books and records and which is the same as Article VIII, Section 8.12 of CBOE Bylaws and which is similar to language contained in Article XI, Section 3 of the current Bylaws.

New Bylaw Provisions

The Exchange proposes to add provisions to the proposed Bylaws that are not included in the current Bylaws in order to conform the Exchange's bylaws to those of CBOE and C2 and provide consistency among the CBOE Holdings' U.S. securities exchanges. Specifically, the Exchange proposes to add the following to the proposed Bylaws:

- Article VII, which addresses notice requirements for any notice required to be given by the bylaws or Rules, including Article VII, Section 7.2, which provides whenever any notice to any stockholder is required, such notice may be given by a form of electronic transmission if the stockholder to whom such notice is given has previously consented to the receipt of notice by electronic transmission. The language mirrors the language set forth in Article VII, Section 7.2 of the CBOE Bylaws.
- Article VIII, Section 8.3 which is identical to Article VIII, Section 8.3 of the CBOE Bylaws, which provides that the corporate seal, if any, shall be in such form as approved by the board or officer of the Corporation.

- Article VIII, Section 8.5, which provides that a certificate by the Secretary, or Assistant Secretary, if any, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Exchange shall, as to all persons who rely on the certificate in good faith, be conclusive evidence of such action. This language is identical to the language contained in Article VIII, Section 8.5 of the CBOE Bylaws.
- Article VIII, Section 8.6., which is identical to Article VIII, Section 8.6 of the CBOE Bylaws, which provides all references to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended, altered or restated and in effect from time to time.
- Article VIII, Section 8.11, which provides that the Exchange may lend money or assist an employee of the Exchange when the loan, guarantee or assistance may reasonably benefit the Exchange. This language is identical to the language contained in Article VIII, Section 8.11 of the CBOE Bylaws.

Eliminated Bylaw Provisions

The Exchange notes that the following provisions in the current Bylaws are not carried over in either the proposed Bylaws or proposed Certificate in order to conform the Exchange's bylaws to those of CBOE and C2 and provide consistency among the CBOE Holdings' U.S. securities exchanges:

- Article III, Sections 13 and 17. Section 13 provides that a director who is present at a Board or Board Committee meeting at which action is taken is conclusively presumed to have assented to action being taken unless his or her dissent or election to abstain is entered into the minutes or filed. Section 17 provides that the Board has the power to interpret the Bylaws and any interpretations made shall be final and conclusive. The

Exchange does not wish to include these provisions in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws and the Exchange wishes to have uniformity across the bylaws of the CBOE Holdings' exchanges.

- Article IX, Section 2, which relates to the Board's authority to adopt emergency Bylaws to be operative during any emergency resulting from, among other things, any nuclear or atomic disaster or attack on the United States, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee cannot readily be convened for action. Similarly, Article IX, Section 3, provides that the Board, or Board's designee, in the event of extraordinary market conditions, has the authority to take certain actions. The Exchange does not wish to include these provisions in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws and the Exchange wishes to have uniformity across the bylaws of the CBOE Holdings' exchanges.
- Article X, Section 2, which relates to disciplinary proceedings and provides that the Board is authorized to establish procedures relating to disciplinary proceedings involving Exchange Members and their associated persons, as well as impose various sanctions applicable to Exchange Members and persons associated with Exchange Members. The Exchange does not wish to include this provision in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws. Additionally, the Exchange notes that Article III, Section 3.3 of the proposed Bylaws grants the Board broad powers to adopt such procedures and/or rules if necessary or desirable.⁵⁵

⁵⁵ The Exchange notes that the language in proposed Article III, Section 3.3 is similar to language provided for in Article X, Section 1 of the current Bylaws.

- Article X, Section 3, which relates to membership qualifications and provides, among other things, that the Board has authority to adopt rules and regulations applicable to Exchange Members and Exchange Member applicants, as well as establish specified and appropriate standards with respect to the training, experience, competence, financial responsibility, operational capability, and other qualifications. The Exchange does not wish to include this provision in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws. The Exchange again notes that Article III, Section 3.3 of the proposed Bylaws grants the Board broad powers to adopt such rules and regulations if necessary or desirable.
- Article X, Section 4, which relates to fees, provides that the Board has authority to fix and charge fees, dues, assessments, and other charges to be paid by Exchange Members and issuers and any other persons using any facility or system that the Company operates or controls; provided that such fees, dues, assessments, and other charges shall be equitably allocated among Exchange Members and issuers and any other persons using any facility or system that the Company operates or controls. The Exchange does not wish to include this section of the provision in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws. To the extent the Board wishes to adopt such fees and dues, it has the authority pursuant to Article III, Section 3.3 of the proposed Bylaws. The Exchange notes that with respect to the language in Article X, Section 4 of the current Bylaws relating to the prohibition of using revenues received from fees derived from its regulatory function or penalties for non-regulatory purposes, similar language exists within CBOE Rules, particularly, CBOE Rule 2.51. In order to conform the Bylaws, the Exchange wishes to similarly, relocate this language to its rules, instead of

maintaining it in its Bylaws. Specifically, the Exchange proposes to adopt new Rule 15.2, which language is based off CBOE Rule 2.51. The Exchange notes that this provision is designed to preclude the Exchange from using its authority to raise regulatory funds for the purpose of benefitting its Stockholder. Unlike CBOE Rule 2.51 however, proposed Rule 15.2 explicitly provides that regulatory funds may not be distributed to the stockholder. The Exchange notes that this language is currently contained in Article X, section 4 of the current Bylaws. Additionally, while not explicit in CBOE Rule 2.51, the Exchange notes that the rule filing that adopted Rule 2.51 does similarly state that regulatory funds may be not distributed to CBOE's stockholder.⁵⁶ Although proposed Rule 15.2 will differ slightly from CBOE Rule 2.51, the Exchange wishes to make this point clear to avoid potential confusion. Lastly, the Exchange notes that unlike Article X, Section 4 of the current Bylaws, proposed Rule 15.2, like CBOE Rule 2.51, will provide that notwithstanding the preclusion to use regulatory revenue for non-regulatory purposes, in the event of liquidation of the Exchange, Direct Edge LLC will be entitled to the distribution of the remaining assets of the Exchange.

- Certain sections in Article XI, including Section 2 (“Participation in Board and Committee Meetings”), Section 4 (“Dividends”) and Section 5 (“Reserves”). More specifically, Article XI, Section 2 governs who may attend Board and Board committee meetings pertaining to the self-regulatory function of the Exchange and particularly, provides among other things, that Board and Board Committee meetings relating to the self-regulatory function of the Company are closed to all persons other than members of

⁵⁶ See Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-088).

the Boards, officers, staff and counsel or other advisors whose participation is necessary or appropriate.⁵⁷ Article XI, Section 4 provides that dividends may be declared upon the capital stock of the Exchange by the Board. Article XI, Section 5 provides that before any dividends are paid out, there must be set aside funds that the Board determines is proper as a reserves. The Exchange does not wish to include these provisions in the proposed Bylaws as no equivalent provisions exist in the CBOE Bylaws and the Exchange wishes to have uniformity across the bylaws of the CBOE Holdings' U.S. securities exchanges.

(c) Changes to Rules

The Exchange will also amend its rules in conjunction with the proposed changes to its bylaws. The proposed rule changes are set forth in Exhibit 5E. First, the Exchange proposes to update the reference to the bylaws in Rule 1.1. Next, the Exchange notes that in order to keep the governance documents uniform, it proposes to eliminate the definitions of “Industry member”, “Member Representative member” and “Director” from Article I of the current Bylaws. The Exchange notes that Industry members and Member Representative members are still used for Hearing Panels pursuant to Rule 8.6. As such, the Exchange proposes to relocate these definitions to the rules (specifically, Rule 8.6) and proposes to update the reference to the location of the definitions in Rule 8.6 accordingly (i.e., refer to the definition in Rule 8.6 as opposed to the definition in the bylaws). The Exchange also proposes to eliminate language in

⁵⁷ Article XI, Section 2 also provides that in no event shall members of the Board of Directors of CBOE Holdings, Inc., CBOE V, LLC or Direct Edge LLC who are not also members of the Board, or any officers, staff, counsel or advisors of CBOE Holdings, Inc., CBOE V, LLC or Direct Edge LLC who are not also officers, staff, counsel or advisors of the Company (or any committees of the Board), be allowed to participate in any meetings of the Board (or any committee of the Board) pertaining to the self-regulatory function of the Company (including disciplinary matters).

Rule 2.10 that, in connection with a reference to “Director”, states “as such term is defined in the Bylaws of the Exchange”. As the definition of Director is being eliminated in the Bylaws, the Exchange is seeking to remove the obsolete language in Rule 2.10.

Lastly, as discussed above, the Exchange proposes to add new Rule 15.2, which will provide that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the Stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or be used to pay restitution and disgorgement of funds intended for customers (except in the event of liquidation of the Exchange, which case Direct Edge LLC will be entitled to the distribution of the remaining assets of the Exchange). As more fully discussed above in the “Eliminated Bylaw Provisions” section, the proposed change is similar to Article X, Section 4 of the current Bylaws and based on Rule 2.51 of CBOE Rules.

The Exchange believes that the proposed changes to the current Bylaws and current Certificate would align its governance documents with the governance documents of each of CBOE and C2, which preserves governance continuity across each of CBOE Holdings’ six U.S. securities exchanges. The Exchange also notes that the Exchange 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 Rules, as required by Section 6(b)(1) of the Act.⁵⁸

2. Statutory Basis

⁵⁸ 15 U.S.C. 78f(b)(1).

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶⁰ requirements that the rules of an 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, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(1) of the Act in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange also believes that its proposal to adopt the Board and committee structure and related nomination and election processes set forth in the proposed Bylaws are consistent with the Act, including Section 6(b)(1) of the Act, which requires, among other things, that a

⁵⁹ 15 U.S.C. 78f(b).

⁶⁰ 15 U.S.C. 78f(b)(5).

⁶¹ Id.

national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. In general, the proposed changes would make the Board and committee composition requirements, and related nomination and election processes, more consistent with those of its affiliates, CBOE and C2. The Exchange therefore believes that the proposed changes would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and comply with the provisions of the Act by its members and persons associated with members. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3)⁶² and (b)(5) of the Act in particular, in that it is designed to assure a fair representation of Exchange Members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer; and is designed to promote just and equitable principles of trade, 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. For example, the number of Non-Industry Directors must not be less than the number of Industry Directors. Additionally, the Exchange believes that the 20% requirement for Representative Directors and the proposed method for selecting Representative Directors ensures fair representation and allows members to have a voice in the Exchange's use of its self-regulatory authority. For instance, the proposed Bylaws includes a process by which Exchange members can directly petition and vote for representation on the Board.

Additionally, the Exchange believes the proposed Certificate, Bylaws and rules support a corporate governance framework, including the proposed Board and Board Committee structure

⁶² 15 U.S.C. 78f(b)(3).

that preserves the independence of the Exchange's self-regulatory function and insulates the Exchange's regulatory functions from its market and other commercial interests so that the Exchange can continue to carry out its regulatory obligations. Particularly, the proposed governance documents provide that Directors must take into consideration the effect that his or her actions would have on the ability of the Company to carry out its regulatory responsibilities under the Act and the proposed changes to the rules includes the restriction on using revenues derived from the Exchange's regulatory function for non-regulatory purposes, which further underscores the independence of the Exchange's regulatory function. The Exchange also believes that requiring that the number of Non-Industry Directors not be less than the number of Industry Directors and requiring that all Directors serving on the ROC be Non-Industry Directors would help to ensure that no single group of market participants will have the ability to systematically disadvantage other market participants through the exchange governance process, and would foster the integrity of the Exchange by providing unique, unbiased perspectives.

Moreover, the Exchange believes that the new corporate governance framework and related processes being proposed are consistent with Section 6(b)(5) of the Act because they are substantially similar to the framework and processes used by CBOE and C2, which have been well-established as fair and designed to protect investors and the public interest.⁶³ The Exchange believes that conforming its governance documents based on the documents of the CBOE and C2 exchanges would streamline the CBOE Holdings' U.S. securities exchanges' governance

⁶³ See e.g., Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-088); Securities Exchange Act Release No. 64127 (March 25, 2011), 76 FR 17974 (March 31, 2011) (SR-CBOE-2011-010); and Securities Exchange Act Release No. 80523 (April 25, 2017), 82 FR 20399 (May 1, 2017) (SR-CBOE-2017-017).

process, create equivalent governing standards among the exchanges and also provide clarity to its members, which is beneficial to both investors and the public interest.

To the extent there are differences between the current CBOE and C2 framework and the proposed Exchange framework, the Exchange believes the differences are reasonable. First, the Exchange believes it's reasonable to provide that in Run-Off Elections, each Exchange Member shall have one (1) vote for each Representative Director position to be filled that year instead of one vote per Trading Permit held, because the Exchange, unlike CBOE and C2, does not have Trading Permits and because other exchanges have similar practices.⁶⁴ The Exchange believes it's also reasonable not to require the establishment of an Advisory Board, as the Exchange desires flexibility in maintaining such a Committee, and is not statutorily required to maintain such a committee. Additionally, the Exchange notes that it currently does not have an Advisory Board. Lastly, the Exchange notes that it is reasonable to not require a standing exchange-level Appeals Committee because the Board still has the authority to appoint an Appeals Committee in the future as needed pursuant to its powers under Article IV, Section 4.1 of the proposed Bylaws and because an Appeals Committee is not statutorily required.

Finally, the proposed amendments to the rules as discussed above are non-substantive changes meant to merely update the Rules in light of the proposed changes to the current Bylaws and to relocate certain provisions to better conform the Exchange's governance documents to those of CBOE and C2.

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

⁶⁴ See e.g., Amended and Restated By-Laws of Miami International Securities Exchange, LLC, Article II, Section 2.4(f).

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of EDGA and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BatsEDGA-2017-22 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 No. SR-BatsEDGA-2017-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 am and 3:00 pm. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. 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 No. SR-BatsEDGA-2017-22 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁵

Eduardo A. Aleman
Assistant Secretary

⁶⁵ 17 CFR 200.30-3(a)(12).