

certain that further changes in our architecture may not be warranted. In this regard, the Exchange notes that under the amended and restated Constitution the new Board will, for the first time, have authority concurrent with our member owners to change specific provisions pertaining to our governance architecture, which means that further changes can be effected in those provisions without another membership vote.

The Exchange believes that its new architecture empowers a Board of Directors with the independence to address issues objectively and the constituent input to address them intelligently. The Exchange believes that directors who have the degree of independence and experience that our governance architecture promises—as evidenced by the quality of our nominees—will assure that the Exchange's regulatory function is both independent and robust. Thus, the Exchange believes its architecture guarantees the independence of our regulatory function both from members and member organizations and from inappropriate linkage with our marketplace function, while assuring the function's sensitivity to the market.

Nevertheless, the Exchange notes that this proposed rule change does not ask the Commission to approve either the continuation of self-regulation in the United States or the continuation of the role of the specialist on the Exchange. Both issues should be addressed in the context of how well the new Board implements both the architecture and the programmatic changes that the Exchange has undertaken in response to the Commission (as well as other programmatic changes that the Board can be expected to initiate), all of which the Commission is carefully monitoring through the ongoing engagement of its market regulation, inspection and enforcement staffs with these matters.

Thus, while the Exchange does seek the Commission's approval of what it regards as a greatly improved architecture for self-regulation through the Exchange, and while the Exchange continues to believe that its specialist/auction market delivers high quality executions at low cost to investors, it does not at this time seek the Commission's premature decisions on this work-in-progress. Nor does the Exchange seek from the Commission at this time any action on the question of the separation of the trading rights from equity ownership, and thereby on the question of who should elect the Exchange Board over the longer term, which has far too many ramifications to be the subject of proposal by an interim

chairman. That issue, and the other issues described in the proxy statement that go beyond board and management architecture, must be taken up by an unconflicted Board in a way that takes into account the many public policy and practical issues that such a separation implies.

All the Exchange seeks at this time is the Commission's approval of a transitional structure that allows it to move from the current situation to one in which a Board of independent, distinguished and experienced men and women can take on the formidable challenges facing the Exchange.

A complete explanation of the purposes and details of the new architecture, and the reasons why the Exchange is desirous of making these changes, is contained in the proxy statement and related materials which have been furnished to the Exchange's membership in connection with the upcoming membership vote on the proposal. All of these materials are contained in Exhibit B hereto. Also contained in the proxy statement are the names of the eight persons whom the members are being asked to vote to elect as the new Board of Directors of the Exchange.

Clarifying changes to certain Constitutional provisions which will be added by Board action promptly following member approval of the amended and restated Constitution and election of the new Board are described in a supplementary letter contained in Exhibit C hereto. Upon approval by the Board, the additional changes to the Constitution will be filed with the Commission for approval.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(1)³ that an exchange be organized and have the capacity to be able to carry out the purposes of the Exchange Act, the requirement under section 6(b)(3)⁴ that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors, and the requirement under section 6(b)(5)⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and

open market and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The amended and restated Constitution is subject to the approval of the members of the Exchange, and a vote is currently scheduled for November 18, 2003. The Exchange hereby consents to an extension of the period of time specified in section 19(b)(2) of the Act⁶ until at least thirty-five days after the Exchange files an appropriate amendment to this filing setting forth the completion of all additional action required under the Certificate of Incorporation, Constitution and rules of the Exchange with respect to this proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements

³ 15 U.S.C. 78f(b)(1).

⁴ 15 U.S.C. 78f(b)(3).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).