

of the CEO, evaluating the CEO's performance in light of these goals and objectives, and, together with the other directors elected by the members, determining and approving such compensation; (b) reviewing and approving recommendations regarding compensation and personnel actions involving senior Exchange personnel, including recommendations received from the Regulatory Oversight & Regulatory Budget Committee regarding senior regulatory personnel; and (c) reporting annually to the members of the Exchange and the public on the compensation of the five most highly compensated officers of the Exchange, as well as director compensation, and on the compensation philosophy and methodology used to award the compensation, including information relating to appropriate comparisons, benchmarks, performance measures and evaluation processes consistent with the mission of the Exchange.

The Audit Committee would be responsible for assisting the Board in its oversight of the integrity of the Exchange's financial statements, the Exchange's compliance with legal and regulatory requirements, and the independent auditor's qualifications and independence. The Audit Committee would have direct responsibility for: (a) The hiring, firing and compensation of the independent auditor; (b) overseeing the independent auditor's engagement; (c) meeting regularly in executive session with the auditor; (d) reviewing the auditor's reports with respect to the Exchange's internal controls; (e) pre-approving all audit and non-audit services performed by the auditor; and (f) determining the budget and staffing for the Internal Audit Unit. The amended Constitution would state that the Audit Committee charter must contain additional duties and responsibilities comparable to those required of issuers listed on the Exchange.<sup>26</sup>

The Regulatory Oversight & Regulatory Budget Committee would be responsible for: (a) Assuring the effectiveness, vigor and professionalism of the Exchange's regulatory program; (b) determining the budget for the Exchange's Regulatory Group, Listings and Compliance Unit, Hearing Board, Arbitration Unit, and Regulatory Quality Review Unit; and (c) oversight of the Exchange's Regulation, Enforcement & Listing Standards Committee and Regulatory Quality Review Unit. The Regulatory Oversight & Regulatory Budget Committee also would determine annually the Exchange's

regulatory plan, budget, and staffing proposals, and would be responsible for assessing the Exchange's regulatory performance and recommending compensation and personnel actions involving senior regulatory personnel to the Board's Human Resources & Compensation Committee for action.

## 2. Joint Committees

The amended Constitution would provide for a Regulation, Enforcement & Listing Standards Committee, which would be a Joint Committee composed of both directors (other than the CEO) and members of the Board of Executives, including at least one Industry Member, as selected by the Board. A majority of the members of the committee voting on a matter subject to its vote, however, would be required to be Board directors.<sup>27</sup>

The Regulation, Enforcement & Listing Standards Committee would report to the Regulatory Oversight & Regulatory Budget Committee, and would: (a) review and provide general advice with respect to the Exchange's programs for market surveillance, member and member organization regulation and enforcement, and the listing and de-listing of securities; and (b) hear appeals of disciplinary determinations and determinations to de-list a listed company.<sup>28</sup>

Under the proposed changes to the Constitution, the Board could appoint additional Joint Committees from time to time, provided that each Joint Committee would consist of at least one director other than the CEO.<sup>29</sup>

## 3. Committees With Directors From the Board and the Board of Executives

The Proxy Statement noted that the Market Structure & Strategy, Quality of Markets/Public Policy and Finance Committees would be comprised of members of both the Board of Directors and Board of Executives, but there must be at least one independent director on such committees and all such committees would report to the Board.<sup>30</sup>

## E. Special Committees, Advisory Committees, and Other Bodies

The amended Constitution would provide for the appointment of special committees, subcommittees, advisory committees, boards, or councils from time to time in the Board's discretion, and could be comprised of individuals who are not Board directors or members of the Board of Executives.<sup>31</sup>

<sup>27</sup> NYSE Constitution, Article IV, section 12(b)(1).

<sup>28</sup> *Id.*

<sup>29</sup> NYSE Constitution, Article IV, section 12(b)(2).

<sup>30</sup> See Proxy Statement.

<sup>31</sup> NYSE Constitution, Article IV, section 13.

## F. Officers

The officers of the Exchange would include the Chairman of the Board; the CEO; the President, if there be one; the Chief Regulatory Officer; one or more Vice Presidents; a Secretary; a Treasurer; a Controller; and such other officers as the CEO may propose, subject to the approval of the Board.<sup>32</sup> The proposed amendments would permit any of these offices to be occupied by more than one individual.

The Board would appoint the Chairman, the CEO, and the Chief Regulatory Officer. If the Chairman is neither the CEO nor chosen from among the directors elected by the members, he or she must satisfy the independence criteria set forth in Article IV, Section 2 of the Constitution. The CEO would be authorized to appoint the President and the other officers of the Exchange, subject to the approval of the Board.<sup>33</sup>

No officer of the Exchange would have any authority to recommend candidates for the Board or for appointment by the Board to any committee. However, the Board or the Nominating & Governance Committee would be permitted to solicit the input of any Exchange officer at its own initiative and discretion.

## G. The Chairman

The Chairman of the Board would preside at all meetings of the Board and the Board of Executives. If the Chairman is also the CEO, however, he or she would not participate in executive sessions of the Board. The Chairman would also be required to make an Annual Report on the Exchange's activities to a Plenary Session.<sup>34</sup>

## H. The CEO

The CEO, subject to the authority of the Board, would be responsible for the management and administration of the affairs of the Exchange.<sup>35</sup>

<sup>32</sup> NYSE Constitution, Article VI, section 1. The amendments would remove the positions of Executive Vice Chairman and Vice Chairmen and add the positions of CEO and Chief Regulatory Officer to the list of the Exchange's officers.

<sup>33</sup> *Id.*

<sup>34</sup> NYSE Constitution, Article VI, section 2. The Board and Board of Executives must meet jointly in a Plenary Session at least twice a year. The Chairman would chair all Plenary Sessions. NYSE Constitution Article V, section 11.

<sup>35</sup> NYSE Constitution, Article VI, section 3. As noted above, the CEO would not appoint the Chief Regulatory Officer, and could not participate in executive sessions of the Board. In addition, as described in the Additional Amendments Letter, the reconstituted NYSE Board voted to further amend the Constitution, subject to Commission approval, to clarify that the CEO's responsibilities are subject to the specific provisions in the Constitution regarding the segregation of the

<sup>26</sup> NYSE Constitution, Article IV, Section 12.