

I. The Chief Regulatory Officer

The Chief Regulatory Officer would be responsible for the management and administration of the regulatory functions of the Exchange. The Chief Regulatory Officer would be subject to the authority of the Board and the Regulatory Oversight & Regulatory Budget Committee, and to the administrative standards and policies established by the CEO made applicable to the Chief Regulatory Officer by the Regulatory Oversight & Regulatory Budget Committee.³⁶

J. Other Officers

The President and other officers would have such functions and responsibilities as the CEO assigns, subject to the approval of the Board, and, in the case of senior regulatory personnel, subject to the specific oversight and control of the Regulatory Oversight & Regulatory Budget Committee.³⁷

K. Delegation Authority

The amended NYSE Constitution would provide that the Board may delegate such of its powers as it may determine to the Board of Executives, to such officers of and employees of the Exchange, and to such committees, composed either of directors or otherwise, as the Board may authorize.³⁸ Notwithstanding the foregoing, however, the Board would not be permitted to delegate, and no committee would be permitted to re-delegate, to the Board of Executives or to any committee not consisting solely of directors, authority to adopt rules under Section 1 of Article VIII (dealing with rulemaking), or Section 1 of Article IX (dealing with disciplinary rules). Moreover, the Board would not be permitted to delegate, and no committee would be permitted to re-delegate, to the Board of Executives or to any committee not consisting solely of directors, authority to act on any subject matter described in the Constitutional

provisions concerning the responsibilities of the Nominating & Governance Committee; the Human Resources & Compensation Committee; the Audit Committee; the Regulatory Oversight & Budget Committee; and the Regulation, Enforcement & Listing Standards Committee.³⁹ Any exception to these delegation provisions would require a rule change filed with the Commission within the meaning of section 19(b)(1) of the Act.⁴⁰

The proposed amendments also would provide that the Board could continue to exercise any and all powers that it has delegated notwithstanding such delegation, and that the Board could exercise such review and oversight over the exercise of (or omission to exercise) any delegated authority as it might at any time determine.⁴¹

L. Amendments to the Constitution

Under the proposed amendments, the Board would be permitted to amend or repeal specified provisions of the Constitution, or adopt new provisions, by the affirmative vote of a majority of the entire Board in favor of the amendment or repeal, or by the members of the Exchange who are entitled to vote thereon.⁴² The specified provisions include Articles of the Constitution relating to: the Board of Directors (excluding the provision relating to the limitation on the delegation of authority); the Board of Executives (excluding that provision which requires the Board of Executives to be a reasonably balanced representation of Exchange communities); the officers of the Exchange; and the indemnification of

Exchange directors, officers or employees. The remaining provisions of the Constitution may be amended or repealed, and new provisions may be adopted, only by the members of the Exchange who are entitled to vote thereon.

However, no Constitutional amendment approved by the majority of the entire Board would be permitted to take effect without the vote of members until the expiration of two weeks from the date the proposed Constitutional amendment was first furnished to members.⁴³

M. Transition

The proposed amendments also would add a new Article XVI to the Constitution, to provide for a "Transition Period" that commences on the date that the amended and restated Constitution is approved by members and ending on the date of the next annual meeting of the Exchange and that is intended to allow for continuity of the Exchange's governance during the interim period.⁴⁴ Upon expiration of the Transition Period, Article XVI would have no further force and effect. Article XVI further would note that the extraordinary circumstances under which the restated and amended Constitution was proposed and the initial Board of Directors was constituted caused the Exchange to dispense with certain requirements, including: (a) Use of the Nominating Committee to nominate directors; (b) the opportunity for members to petition to nominate additional director candidates; and (c) approval of the proposed amendments by the Board in accordance with the prescribed time frames. The amended Constitution would state that all such requirements are waived and the actions taken in contravention of all such requirements are ratified.⁴⁵

N. Other Governance Changes Proposed by the NYSE

The NYSE has directly implemented other governance changes that are in

regulatory functions of the Exchange. See Additional Amendments Letter, *supra* note 4.

³⁶ NYSE Constitution, Article VI, section 4(a). As described in the Additional Amendments Letter, the reconstituted NYSE Board voted to further amend the Constitution to clarify that the President could not appoint any regulatory officers. See Additional Amendments Letter, *supra* note 4.

³⁷ NYSE Constitution, Article VI, section 4(b).

³⁸ NYSE Constitution, Article IV, section 14. The amended Constitution would also provide that any committee of directors to which authority is delegated to adopt rules under Article VIII, section 1 (dealing with the operation and administration of the Exchange) and Article IX, section 1 (dealing with the discipline of members, member organizations and others) must include at least one director nominated by the Industry Members of the Board of Executives.

³⁹ The Commission notes that the reconstituted NYSE Board recently voted to amend this proposed provision to allow the Board to delegate rulemaking authority on the subjects normally confined to the Board or Standing Committees consisting solely of directors to an Exchange officer in between Board meetings, as necessary, subject to informing the Board at its next meeting and, in the case of regulatory matters, subject to the approval of the Chief Regulatory Officer. See Additional Amendments Letter, *supra* note 4.

⁴⁰ NYSE Constitution, Article IV, section 14. The Commission notes that the reconstituted Board recently voted to further amend the Constitution to add officers and employees of the Exchange to the provision prohibiting the Board to delegate, and a committee to redelegate, authority to adopt rules under Article VIII, section 1 or Article IX, section 1 of the Constitution, or to act on any subject matter described in Article IV, section 12(a) or (b)(1), except by effecting a proposed rule change within the meaning of section 19(b) of the Act. See Additional Amendments Letter, *supra* note 4.

⁴¹ NYSE Constitution, Article IV, section 14(b).

⁴² NYSE Constitution, Article XIV, section 1. The Commission notes that any further changes to the NYSE Constitution would be required to be filed with the Commission pursuant to section 19(b) of the Act.

⁴³ The NYSE also proposes that the Board may make such changes to a proposed amendment approved by the affirmative vote of a majority of the entire Board as it may deem necessary or appropriate to carry out the intention of such proposed amendment without the need for a further waiting period. As noted above, changes to the NYSE Constitution would be required to be filed with the Commission pursuant to section 19(b) of the Act.

⁴⁴ The amended and restated Constitution was approved by NYSE members on November 18, 2003. See Amendment No. 1, *supra* note 5.

⁴⁵ The Commission notes that the revisions to the NYSE Constitution set forth in the proposed rule change are effective upon Commission approval of the proposed rule change.