

whose primary business is as a Market-Maker or as a DPM Designee;[,] and three [one] members whose primary business is as a Floor Broker, at least two of whom represent public customer orders in the course of their activities as a Floor Broker[and who is not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. No more than two of the nine elected MTS Committee members may be associated with a DPM]. One of the nine elected positions on the MTS Committee may instead be filled by a person (i) who directly or indirectly owns and controls a membership with respect to which the person acts as a lessor, (ii) whose primary business is not as a Market-Maker, DPM Designee, or Floor Broker, and (iii) whose primary residence is located within 80 miles of the Exchange's trading floor. No elected member of the MTS Committee may be affiliated (as defined under Rule 1.1(j)) with any other elected member of the MTS Committee. The nine elected MTS Committee members shall have three-year terms, three of which shall expire each year.

(c) The election procedures for the nine elected MTS Committee members shall be the same as the election procedures for elected Directors that are set forth in Article IV and Article V of the Exchange Constitution. Accordingly, the following shall occur as part of these procedures: [During October of each year, the] The Nominating Committee shall select nominees to fill expiring terms and vacancies on the MTS Committee. Nominations may also be made by petition, signed by not less than 100 voting members and filed with the Secretary of the Exchange no later than 5:00 p.m. (Chicago time) on the Monday preceding the 1st Friday in November, or the first business day thereafter in the event that Monday occurs on a holiday. The election to fill the expiring terms and vacancies on the MTS Committee shall be held as part of the annual election. The term of office of each MTS Committee member elected at an annual election meeting shall commence at the time of the first regular Board of Directors meeting of the calendar year following that annual election meeting and shall continue until the first regular Board meeting of the third succeeding calendar year. Elected MTS Committee members shall hold office for the terms for which they are elected and until their successors are duly elected and qualified or until

their earlier death, resignation, or removal.

(d) Candidates for election to the MTS Committee, whether nominated by the Nominating Committee or by petition, shall be eligible for election in any of the categories for which they qualify both at the time of their nomination and at the time of their election. The sole judge of whether a candidate satisfies the applicable qualifications for election to the MTS Committee in a designated category shall be the Nominating Committee in the case of candidates nominated by the Nominating Committee, and shall be the Executive Committee in the case of candidates nominated by petition, and the decision of the respective committee shall be final. In the event a person's status changes following election to the MTS Committee, the sole judge of whether the person continues to satisfy the applicable qualifications for service on the MTS Committee shall be the Board of Directors.

(e) In the event of the refusal, failure, neglect, or inability of any MTS Committee member to discharge that person's duties, or for any cause affecting the best interests of the Exchange, the sufficiency of which the Board of Directors shall be the sole judge, the Board shall have the power, by the affirmative vote of at least two-thirds of the Directors then in office, to remove that MTS Committee member from the Committee.

(f) Any vacancy occurring among the members of the MTS Committee may be filled by a qualified person appointed by the Vice Chairman of the Board with the approval of the Board of Directors. The term of any MTS Committee member so chosen shall be from the date of appointment until the first regular Board meeting of the calendar year following the next annual election meeting and until the person's successor is duly elected and qualified, or until the person's earlier death, resignation, or removal. The remaining portion of the unexpired term of an MTS Committee member, if any, shall be served by a person elected at the next annual election meeting.

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Chapter IX—Doing Business With the Public

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Transactions of Certain Customers

RULE 9.17. No member organization shall execute any transaction in securities or carry a position in any security in which (a) an officer or employee of the Exchange, [or any other national securities exchange which is a

participant of the Clearing Corporation,] or an officer or employee of a corporation in which the Exchange [or such other exchange] owns the majority of the capital stock is directly or indirectly interested, without the prior written consent of the Exchange, or (b) a partner, officer, director, principal shareholder or employee of another member organization is directly or indirectly interested, without the consent of such other member organization. Where the required consent has been granted, duplicate reports of the transaction and position shall be promptly sent to the Exchange or member organization, as the case may be.

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¹ Prior to the 2002 annual election meeting, the three classes of Directors elected by the membership are composed as follows: Class I: one floor director, one at-large director, one lessor director, two off-floor directors, and two public directors; Class II: one floor director, one at-large director, two off-floor directors, and three public directors.

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

In its filing with the Commission, CBOE included statements concerning the 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

CBOE states that the purpose of the proposed rule change is to make certain revisions to provisions of the Exchange's Constitution and rules pertaining to the governance of the Exchange. These proposed changes are intended to further enhance the fair and efficient governance of the Exchange and modernize various provisions of the Exchange's governance structure.

With respect to Constitution provisions relating to the Board of Directors and the Vice Chairman of the Board, the proposed rule change amends Constitution Sections 6.1(b), 6.4, and 8.1 to specify that Directors and the Vice Chairman take office on January 1st. Currently, the Constitution