

provides that the term of office of Directors starts at the first regular meeting of the Board held after January 1 following the annual election, and continues until their successors are duly elected and qualified, whereas the term of office of the Vice Chairman starts on the 3rd Friday in December of each year, assuming the incoming candidate is qualified on that date, and continues until his successor is duly chosen and qualified.

The proposed rule change also amends Constitution Section 6.3(b) to provide the later of 45 days or until the next regular Board meeting for a Director who fails to maintain qualifications for a designated category to requalify. During any period in which a Director fails to maintain qualifications for a designated category, the Director shall be deemed not to hold office and the seat formerly held by the Director shall be deemed vacant for all purposes.

With respect to Constitution provisions relating to the Exchange's Nominating Committee, the proposed rule change amends Section 4.1(b) to exempt members of the Nominating Committee who have not served a full 3-year term from the Constitutional provision that provides that "Elected members of the Nominating Committee shall be ineligible for reelection for a period of three years after their terms expire." This amendment will allow a member of the Nominating Committee who was elected to a short term as a result of a vacancy to stand for reelection.

The proposed rule change also amends Constitution Section 4.3 to delete the requirement that the Nominating Committee must hold three meetings in October, and also to require that the Nominating Committee announce its slate of candidates not later than October 10th or the first business day thereafter if the 10th is not a business day.

The proposed rule change also adopts new Constitution Section 4.8 to require that members of the Nominating Committee shall meet the eligibility criteria for the category to which they were elected (floor, firm, lessor or public member) continuously and not only during the time periods in which the Nominating Committee is in session. New Section 4.8 also specifies that the sole judge of whether a Nominating Committee member satisfies the qualification criteria for the category to which the committee member was elected is the Board of Directors. In addition, this new Section also provides that a member of the Nominating Committee who fails to maintain the

applicable qualifications has 45 days from the date the Board determines the member is not qualified to requalify.

The proposed rule change also adopts new Constitution Section 4.9 which specifies that the Board may remove Nominating Committee members in the event of the refusal, failure, neglect, or inability of any Nominating Committee member to discharge that person's duties, or for any cause affecting the best interests of the Exchange. This proposed new Section 4.9 is consistent with Constitution Section 6.3(c), which allows the Board to remove a Director for cause.

With respect to the election and voting procedures for membership votes, the proposed rule change adopts new Constitution Section 3.8 to authorize the Board to set a "record date" to determine those members who are entitled to receive notice and to vote in any Exchange election/vote. The record date would be the day preceding the date on which notice of the vote is given, if an alternate record date is not fixed by the Board. An individual or organization must be an effective, voting member on the record date to cast a ballot in an election or membership vote.

The proposed rule change also amends Constitution Section 5.2 to provide that the Exchange may allow voting members to electronically submit ballots and proxies. This amendment would also provide the flexibility to allow for a confidential electronic or on-line voting process in the future, if the Board determines to do so.

With respect to the communication methods by which the Exchange may provide notice to members, the proposed rule change amends Constitution Section 10.1 to allow the Exchange to give notice to members and associated persons by messenger, courier service, facsimile or electronic mail ("e-mail"), as well as in-person or by mail or telephone as is currently provided in Section 10.1. The proposed rule change deletes wireless, telegraph, and cable as available communication methods. In addition, the Board proposes to amend Constitution Section 10.2 to allow for waiver of notice by the same means as notice may be given. Amending these sections will modernize and make more flexible the Constitutional requirements with respect to notice and waiver of notice.³

³ Currently, the Constitution does not allow the Exchange to provide notice via e-mail or facsimile, unless a member submits a waiver of notice. For example, the Constitution and Rules, in certain specific instances, require the Exchange to provide notice to members. To satisfy these requirements, the Exchange gives notice to members via the

The proposed rule change also adopts new Constitution Section 10.1(b) which limits the types of notices that may be given via email to only those notices provided in the Exchange Bulletin and Regulatory Bulletin and any other types of notices designated by the Board. Constitution Section 10.1(b) specifically provides that the Exchange may provide the *Exchange Bulletin* and the *Regulatory Bulletin* (including the notices contained therein) by email. This section also allows the Exchange to permit members and associated persons to request delivery of the *Bulletins* (or such other notices as the Board may designate) by other means, in a form and manner prescribed by the Exchange.

The proposed rule change also deletes Constitution Section 11.4, which prohibits officers and employees of the Exchange (except the Vice Chairman of the Board) from trading any option listed on CBOE. Section 11.4 also requires officers and employees to report to the Exchange every purchase or sale of any security underlying an option listed on CBOE. The above trading restriction and reporting requirement are also set forth in the Exchange's Employee Conflict of Interest Policy. Upon the deletion of Section 11.4, the Exchange proposes to liberalize the securities transaction policies to allow employees (with certain restrictions applicable to Regulatory Services Division employees) to trade CBOE listed products and to require employees to report transactions in CBOE listed products to the Exchange. The securities transaction policy would be included solely in the Exchange Employee Handbook, rather than the Exchange's Constitution.⁴

In connection with the foregoing change, the Exchange also proposes to amend Exchange Rule 9.17 to delete the requirement that a member organization must obtain authorization from the CBOE before executing securities transactions for officers or employees of any national securities exchange that is a participant of the Clearing Corporation. The rule will continue to require member organizations to obtain such authorization from the CBOE before executing securities transactions for CBOE officers and employees.

Exchange Bulletin and the *Regulatory Bulletin*, which are mailed to all effective members unless a member submits a written consent to provision of the *Bulletins* by e-mail.

⁴ A copy of CBOE's securities transaction policies, as proposed to be amended in connection with the deletion of Constitution Section 11.4, was provided to the Commission for its information but is not a rule change and thus was not included as part of this rule filing.