

With respect to CBOE rules relating to the MTS Committee, the proposed rule change proposes to amend Rule 8.82 to provide that the nine elected MTS Committee members will include: Three persons whose primary business is as a Market-Maker, three persons whose primary business is as a Market-Maker or as a DPM Designee, and three persons whose primary business is as a Floor Broker, at least two of whom represent public customer business in the course of their activities as a Floor Broker. The Vice Chairman of the Exchange and the Chairman of the Market Performance Committee will continue to serve on the MTS Committee.⁵ The amendment to Rule 8.82 also provides that one of the nine elected positions on the MTS Committee may be filled by a lessor whose primary business is not as a Market-Maker, DPM Designee, or Floor Broker, and whose primary residence is located within 80 miles of the Exchange's trading floor. This distance is equivalent to the distance requirement for certain off-floor Directors under Constitution Section 6.1. Because the MTS Committee meets frequently, it is important that its members reside locally to be available for regular and impromptu meetings.

Further, the proposed amendments to Rule 8.82 provide that: (i) No elected member of the MTS Committee may be affiliated with (as defined under CBOE Rule 1.1(j)) any other elected member of the MTS Committee; (ii) the term of office of elected MTS Committee members will commence at the time of the first regular Board meeting of the calendar year; (iii) the Board of Directors is the sole judge of whether or not an MTS Committee member no longer qualifies to serve on the Committee; (iv) the Board may remove MTS Committee members for cause; and (v) the Vice Chairman, with the approval of the Board, may fill vacancies on the MTS Committee until the first regular Board meeting of the calendar year following the next annual election.

The proposed rule change also amends CBOE Rule 2.1 to provide that the term of office for committee members who are appointed pursuant to that rule will continue until the first

regular Board meeting of the next calendar year and until their successors are appointed or until death, resignation or removal. The proposed rule change also amends Rule 2.1 to provide that a majority of the committee members voting, as opposed to present, at a meeting shall be the act of the committee.

Finally, the proposed rule change proposes to make several changes to the Exchange's Constitution and rules that are housekeeping in nature and designed to modernize and clarify the Exchange's Constitution and rules, and update the Constitution and rules to reflect current rules and practice. Specifically, the proposed rule change:

- Amends Constitution Sections 1.1(c) and 2.3 to include the concept of leased memberships, as well as owned memberships, in the definition of member organizations and the requirement that member organizations designate an individual nominee to be consistent with the Constitution's provisions and Exchange rules.
- Amends Constitution Sections 2.1(a) and 12.1 to add "voting" to the term "members" to clarify who may vote at a membership meeting.

• Amends Constitution Section 3.1 to specify that membership meetings will take place on the 4th floor of the Exchange (as opposed to on the trading floor), unless otherwise determined by the Secretary, to conform to current practice.

• Amends Constitution Section 3.2 to provide that the annual election meeting will be held on the 1st business day preceding the 3rd Friday in November (rather than on the 3rd Friday).

• Amends Constitution Sections 3.2 and 3.3 to specify that the Secretary, rather than the Board, will determine the time of the annual election and annual report meetings, because the Board does not generally become involved in this level of detail with respect to membership meetings.

• Amends Constitution Section 3.3 to clarify that the purpose of the annual report meeting is to present the Exchange's annual report.

• Amends Constitution Section 3.5 to specify that written notice of each membership meeting at which a vote will be taken shall be "given" (rather than "delivered") to each member entitled to vote not more than 60 days and at least 10 days before the date of the meeting to be consistent with Delaware law.

• Amends Constitution Sections 4.1 and 6.1 and Rule 8.82 to make it clear whether the term "member" in the eligibility criteria for the Board of Directors, the Nominating Committee,

and the MTS Committee is referring to a "member of the Exchange" or a "member of the Board or Committee," as applicable.

• Amends Constitution Sections 4.1 and 4.2 to clarify that a Nominating Committee member's term ends upon the expiration of his/her term or upon the Nominating Committee member's death, resignation or removal.

• Amends Constitution Sections 4.3, 4.6, 5.3 and 8.9 to clarify and make consistent references requiring the posting of information on the Exchange bulletin board.

• Amends Constitution Sections 5.2 and 5.3 to be consistent with the current procedures for the receipt, verification and counting of ballots.

• Amends Constitution Section 6.7 to allow the Exchange to provide notice of a special Board meeting to each Director either in person, by mail, messenger, overnight courier, facsimile machine, e-mail, telephone, or announcement on the Exchange trading floor. The amendment proposes to delete telegram and cablegram as methods of notice to directors for special Board meetings.

• Amends Constitution Section 8.1 to provide that the vote to elect a Vice Chairman of the Board (if any) will be held on the 1st business day preceding the 3rd Friday in December (rather than the 3rd Friday) and to clarify that the Board does not have to reappoint all officers at the beginning of each year.

• Amends Constitution Section 8.4 to clarify, consistent with Constitution Section 8.1(a), that if a vacancy occurs in the office of Chairman, the Board shall appoint a new Chairman by the affirmative vote of at least two-thirds of the Directors then in office.

• Amends Constitution Section 8.6 to specifically allow the Board to grant an exemption to the prohibition against the President engaging in any other business in the same manner that the Board may grant such an exemption to the Chairman of the Board pursuant to Constitution Section 8.2.

• Amends Constitution Sections 8.6, 8.7(b), 8.8, 8.9 and 8.10 to update the Constitution with respect to officer duties and responsibilities (*i.e.*, clarify that the President shall be required to approve all contracts on behalf of the Exchange but may delegate responsibility for executing contracts, specify when the Secretary must maintain records of meetings, specify that the Chairman of the Board and the President, as well as the Board, may remove any officer, clarify that the President may assign duties to officers, and move the duty to collect all monies due the Exchange from the Secretary to the Treasurer).

⁵ Currently, Rule 8.82 provides that the MTS Committee is comprised of the Vice Chairman, the Chairman of the Market Performance Committee, and nine elected members as follows: Four members whose primary business is as a Market-Maker, two members whose primary business is as a Market-Maker or as a DPM Designee, one member whose primary business is 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.