

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63845; File No. SR-C2-2011-003)

February 4, 2011

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Bylaw and Related Rule Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or “Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 27, 2011, C2 Options Exchange, Incorporated (“C2”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I and II below, which Items have been prepared by C2. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

C2 proposes to (i) amend its Bylaws and rules to eliminate its office of Vice Chairman of the Board, (ii) amend its Bylaws to provide that the Board of Directors may establish an Advisory Board, and (iii) amend its Bylaws to eliminate its Audit Committee.

The text of the proposed amendments to C2’s Bylaws and the proposed amendments to C2’s rules is available on C2’s website at (<http://www.c2exchange.com/Legal>), at C2’s Office of the Secretary, on the Commission’s website at (www.sec.gov), and at the Commission’s Public Reference Room.

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

In its filing with the Commission, C2 included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

change. The text of these statements may be examined at the places specified in Item IV below. C2 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to eliminate the office of C2 Vice Chairman of the Board, to allow for a C2 Advisory Board, and to eliminate the C2 Audit Committee.

(a) Elimination of Office of Vice Chairman of the Board

Based on the Exchange's experience since its registration as a national securities exchange in December, 2009 and the launch of trading on the Exchange in October, 2010, the Exchange believes that it is no longer necessary to provide for an office of Vice Chairman of the Board (which is an office held by one of the Exchange's Industry Directors). It was originally contemplated that the Vice Chairman would take a lead role in facilitating communication between C2 and its Trading Permit Holders and in coordinating the activities of Trading Permit Holder committees. The Exchange now believes that C2 management is best able to take the lead role in this regard. The Exchange also believes that it will continue to be able to obtain input from Trading Permit Holders through, among other things, direct communication with individual Trading Permit Holders and the ability to establish Trading Permit Holder committees and an Advisory Board (as proposed by this rule filing).

The Exchange Bylaws will also continue to require that at least 30% of the directors on the C2 Board of Directors must be Industry Directors and that at least 20% of C2's directors must be Representative Directors. Representative Directors are Industry Directors nominated (or otherwise selected through a petition process) by the Industry-Director Subcommittee of the C2

Nominating and Governance Committee. The Industry-Director Subcommittee is composed of all of the Industry Directors serving on the Nominating and Governance Committee. C2 Trading Permit Holders may nominate alternative Representative Director candidates to those nominated by the Industry Director Subcommittee, in which case a Run-off Election is held in which C2's Trading Permit Holders vote to determine which candidates will be elected to the C2 Board of Directors to serve as Representative Directors. Thus, the Exchange will continue to provide for the fair representation of C2 Trading Permit Holders in the selection of directors and the administration of the Exchange consistent with Section 6(b)(3) of the Act.³

The specific proposed C2 Bylaw and rule changes related to the elimination of the office of Vice Chairman of Board include the following changes:

Section 3.7 of the Bylaws, which describes the selection, the term, and roles of the Vice Chairman, is proposed to be deleted. The current roles of the Vice Chairman listed in Section 3.7 of the Bylaws (and how those roles will be performed going forward) are (i) presiding over meetings of the Board of Directors in the event that the Chairman of the Board is absent or unable to do so (which will be addressed by Section 3.8(a) of the Bylaws to be re-numbered from Section 3.9(a), which is proposed to be amended to eliminate references to the Vice Chairman and which will continue to allow the Board to designate an Acting Chairman of the Board in the absence or inability to act of the Chairman, which could be the Lead Director or another director); (ii) unless otherwise provided in the rules or by Board resolution, appointing, subject to Board approval, the individuals to serve on Trading Permit Holder committees (which will be addressed by Section 4.1(b) of the Bylaws, which is proposed to be amended to vest this appointment authority, also subject to Board approval of such appointments, in the Chief

³ 15 U.S.C. 78f(b)(3).

Executive Officer or his or her designee); and (iii) exercising such other powers and performing such other duties as are delegated to the Vice Chairman by the Board (which is not an item that needs to be addressed since there are no such other powers of duties that the Board has delegated to the Vice Chairman).

Two additional current roles of the Vice Chairman are set forth in Section 5.3 of the Bylaws, which is also proposed to be deleted. Those roles are presiding at meetings of Trading Permit Holders and coordinating the activities of all Trading Permit Holder committees. The Exchange's expectation is that C2 management will perform these functions.

Section 2.3 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the parties that can call a special meeting of the stockholders. This Section will continue to permit special meetings of the stockholders to be called by either the Chairman of the Board or a majority of the Board.

Section 3.9(b) of the Bylaws is proposed to be re-numbered as Section 3.8(b) and to be amended to delete how the office of Vice Chairman is filled in the event of a vacancy in that office.

Section 3.12 of the Bylaws is proposed to be re-numbered as Section 3.11 and to be amended to delete the Vice Chairman as one of the parties that can call a special meeting of the Board of Directors. This Section will continue to permit special meetings of the Board to be called by either the Chairman of the Board or the Secretary upon the written request of any four directors.

In a related change, Section 4.1(b) of the Bylaws is proposed to be amended to vest the authority to remove a member of an Exchange committee (i.e., a non-Board committee) in the Chief Executive Officer or his or her designee, subject to the approval of the Board. This

authority was previously vested with the Board itself. The Exchange is proposing to vest this authority with the Chief Executive Officer or his or her designee in order to have consistency with the proposed Exchange committee appointment authority which, as is described above, is also proposed to be vested in the Chief Executive Officer or his or her designee, subject to the approval of the Board.

Section 4.2 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the required members of the C2 Executive Committee. Section 4.2 will continue to require that the Executive Committee include the Chairman of the Board, the Chief Executive Officer (if a director), the Lead Director (if any), at least one Representative Director, and such other number of directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose).⁴

Section 5.1 of the Bylaws is proposed to be amended to delete the Vice Chairman as one of the required officers of the Exchange.

The title of Chapter XVI of the Exchange's rules is proposed to be shortened from "Summary Suspension by Chairman of the Board or Vice Chairman of the Board" to "Summary

⁴ C2's Executive Committee generally does not make a decision unless there is a need for a C2 Board-level decision between C2 Board meetings due to the time sensitivity of the matter. In addition, in situations when the Executive Committee does make a decision between C2 Board meetings, the C2 Board is generally aware ahead of time of the potential that the Executive Committee may need to make the decision. The C2 Board is fully informed of any decision made by the Executive Committee at its next meeting and can always decide to review that decision and take a different action. C2's affiliate Chicago Board Options Exchange, Incorporated ("CBOE") previously noted the foregoing to the Commission with respect to CBOE's Executive Committee (see Footnote 87 of Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-88)) and the same is true with respect to C2's Executive Committee.

Suspension" in order to eliminate the reference to the Vice Chairman. The text of Chapter XVI is not proposed to be revised and would continue to incorporate by reference the summary suspension rules contained in Chapter XVI of the CBOE rules as they may be in effect from time to time.

(b) Addition of Advisory Board Provision

The Exchange proposes to provide in new proposed Section 6.1 of the Bylaws that the Board of Directors may establish an Advisory Board which shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. The Exchange believes that the ability to establish such a body is beneficial in that it allows the Exchange to establish an additional vehicle for Exchange management to receive advice from the perspective of Trading Permit Holders and regarding matters that impact Trading Permit Holders

Under proposed Section 6.1 of the Bylaws, it is proposed that the Board of Directors shall determine the number of members of an Advisory Board, that the Chief Executive Officer or his or her designee shall serve as the Chairman of an Advisory Board, and that the C2 Nominating and Governance Committee shall recommend the members of an Advisory Board for approval by the Board of Directors.

The Advisory Board would be completely advisory in nature and not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. Although proposed Section 6.1 of the Bylaws provides the Board of Directors with the discretion of whether or not to put in place an Advisory Board, it is the current intention of the Board of Directors to establish an Advisory Board.

(c) Elimination of Exchange Audit Committee

The Exchange proposes to eliminate its Audit Committee because its functions are duplicative of the functions of the Audit Committee of its parent company, CBOE Holdings, Inc. ("CBOE Holdings").

Under its charter, the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board of Directors in discharging its responsibilities relating to, among other things, (i) the qualifications, engagement, and oversight of CBOE Holdings' independent auditor, (ii) CBOE Holdings' financial statements and disclosure matters, (iii) CBOE Holdings' internal audit function and internal controls, and (iv) CBOE Holdings' oversight and risk management, including compliance with legal and regulatory requirements. Because CBOE Holdings' financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings' subsidiaries, including C2, the CBOE Holdings Audit Committee's purview necessarily includes C2. The CBOE Holdings Audit Committee is composed of at least three CBOE Holdings directors, all of whom must be independent within the meaning given to that term in the CBOE Holdings Bylaws and Corporate Governance Guidelines and Rule 10A-3 under the Act.⁵ All CBOE Holdings Audit Committee members must be financially literate (or become financially literate within a reasonable period of time after appointment to the Committee), and at least one member of the Committee must be an "audit committee financial expert" as defined by the Commission.

By contrast, the C2 Audit Committee has a more limited role, focused solely on C2. Under its charter, the primary functions of the C2 Audit Committee are focused on (i) C2's financial statements and disclosure matters and (ii) C2's oversight and risk management, including compliance with legal and regulatory requirements, in each case, only to the extent

⁵ 17 CFR 240.10A-3.

required in connection with C2's discharge of its obligations as a self-regulatory organization. However, to the extent that the C2 Audit Committee reviews financial statements and disclosure matters, its activities are duplicative of the activities of the CBOE Holdings Audit Committee, which is also charged with review of financial statements and disclosure matters. Similarly, the CBOE Holdings Audit Committee has general responsibility for oversight and risk management, including compliance with legal and regulatory requirements, for CBOE Holdings and all of its subsidiaries, including C2. Thus, the responsibilities of the C2 Audit Committee are fully duplicated by the responsibilities of the CBOE Holdings Audit Committee. Accordingly, C2 is proposing to delete Section 4.3 of the C2 Bylaws which provides for the C2 Audit Committee and to delete a reference to the C2 Audit Committee in Section 4.1(a) of the C2 Bylaws (which lists the required C2 Board committees).

Although the CBOE Holdings Audit Committee has and will continue to have overall responsibilities with respect to the internal audit function, the C2 Board of Directors will still maintain its own independent oversight over the internal audit function with respect to C2 regulatory functions through the C2 Regulatory Oversight Committee. Specifically, upon elimination of the C2 Audit Committee, the charter of the C2 Regulatory Oversight Committee will be amended to provide that the Regulatory Oversight Committee will review all internal audits relating to C2's regulatory functions and that the Regulatory Oversight Committee will have the authority to review the internal audit plan with respect to C2's regulatory functions and to request at any time that C2's internal auditor conduct an audit relating to those functions. These changes are in addition to the current C2 Regulatory Oversight Committee charter provision which provides that the Regulatory Oversight Committee shall meet regularly with

C2's internal auditor regarding regulatory functions and are consistent with the Regulatory Oversight Committee's existing practice of reviewing internal audits of C2's regulatory functions.

C2 believes that its proposal to eliminate its Audit Committee is substantially similar to prior actions by other securities exchanges with parent company audit committees to eliminate their exchange-level audit committees.⁶

(d) Miscellaneous Non-Substantive Bylaw Changes

In addition to the changes set forth above, the Exchange proposes to make the following non-substantive changes to the Bylaws.

First, the Exchange proposes to amend the title of the Bylaws from "Amended and Restated Bylaws of C2 Options Exchange, Incorporated" to "Second Amended and Restated Bylaws of C2 Options Exchange, Incorporated" since the Exchange is making the Bylaw changes proposed by this rule filing through as second amendment and restatement of its Bylaws.

Second, the Exchange is proposing to re-number various sections of the Bylaws to eliminate gaps in the numbering of the Bylaw sections resulting from the proposed deletion of certain of the Bylaw sections as described above.

Third, the Exchange proposes to make a clarifying change to Section 3.2 of the Bylaws to change a reference to the Industry-Director Subcommittee of the Nominating and Governance Committee from "committee" to "Subcommittee."

Fourth, the Exchange proposes to delete some out-dated provisions from the Bylaws. Specifically, the Exchange proposes to delete a paragraph of Section 3.2 of the Bylaws which describes the initial election process for Representative Directors following the commencement

⁶ See, e.g., Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (File No. NASDAQ-2009-042).

of trading on the Exchange and which has already been completed. Similarly, the Exchange proposes to delete provisions in Section 4.1 of the Bylaws and Section 4.4 of the Bylaws (to be re-numbered from Section 4.5) regarding the initial appointment of the Nominating and Governance Committee and the initial appointment of other Board committees since these appointments have already occurred.

(e) Effectiveness of Changes

The Exchange proposes to make effective the proposed Bylaw and rule changes related to the elimination of the Vice Chairman of the Board that are described in subsection (a)(1) of Item 3 of this rule filing on the date of the annual election of C2 directors in 2011 (which is anticipated to occur in May 2011). The Exchange proposes to make effective these changes at that time because the current term of the Vice Chairman expires on that date and this will permit the current Vice Chairman to serve out his current term of office.

The Exchange proposes to make effective all of the other changes proposed by this rule filing at the time that the Commission approves this rule filing. These changes include those relating to the addition of an Advisory Board provision and to the elimination of the C2 Audit Committee as well as the miscellaneous non-substantive Bylaw changes, all of which are described in subsections (a)(2) - (a)(4) of Item 3 of this rule filing.

2. Statutory Basis

For the reasons set forth above, C2 believes that this filing is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(1) of the Act⁸ and Section 6(b)(5) of the Act⁹ in particular, in that (i) it enables C2 to be so organized as to have the

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(1).

⁹ 15 U.S.C. 78f(b)(5).

capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Trading Permit Holders and persons associated with its Trading Permit Holders, with the provisions of the Act, the rules and regulations thereunder, and the rules of C2 and (ii) to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed changes will streamline, make more efficient, and improve C2's governance structure by eliminating the position of Vice Chairman of the Board which C2 no longer believes is necessary; by adding a Bylaw provision that the Board of Directors may establish an Advisory Board, which C2 views as a useful vehicle that the Board may utilize to receive input from the perspective of Trading Permit Holders and with respect to matters of interest to Trading Permit Holders; and by eliminating the C2 Audit Committee, which C2 believes is duplicative of the CBOE Holdings Audit Committee and which change will allow C2 directors to focus their attention on matters falling directly within the purview of the C2 Board of Directors.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-C2-2011-003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-1090.

All submissions should refer to File Number SR-C2-2011-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-C2-2011-003 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Cathy H. Ahn
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).