

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76281; File No. SR-C2-2015-026)

October 27, 2015

Self-Regulatory Organizations; C2 Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Certificate of Incorporation and Bylaws of its Parent Company

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on October 23, 2015, C2 Options Exchange, Incorporated (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

The Exchange proposes to amend the certificate of incorporation and bylaws of its parent Company, CBOE Holdings, Inc. (“CBOE Holdings”). The text of the proposed rule change is available on the Exchange’s website

(<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, 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, the Exchange 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Item IV below. The Exchange 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 Holdings is proposing to make certain amendments to its Certificate and Bylaws.

Proposed Amendments to the Certificate

CBOE Holdings proposes to make various amendments to its Certificate. First, CBOE Holdings proposes to eliminate references that are applicable only in connection with the CBOE demutualization and CBOE Holdings initial public offering ("IPO") in 2010. Currently, the Certificate provides for the designation, preferences and rights related to Class A-1 and Class A-2 common stock that had been authorized by the Board and CBOE Holdings' stockholders prior to the IPO. No shares of Class A-1 or Class A-2 common stock are currently outstanding, nor would CBOE Holdings be able to issue such shares at any time in the future as the current Certificate limits their use to the conversion of Class A and Class B common stock, which was issued in connection with the IPO and has been retired. Accordingly, CBOE Holdings proposes to delete obsolete provisions related to the designation, rights and preferences of these series of common stock. The Exchange also proposes to remove references to the 10% ownership concentration limitation applicable before the IPO. This change would not change the current ownership concentration limitation, which is 20%. CBOE Holdings also proposes other non-substantive changes to the Certificate include referring to the "Second" Amended and Restated Certificate of Incorporation, clarifying that any stockholder votes on the Bylaws would be in addition to any votes required by law, and updating references to the Common Stock, as only one

class of common stock will be outstanding. The Exchange notes that the proposed changes will not have any effect on the rights of a stockholder.<sup>3</sup>

#### Proposed Amendments to the Bylaws

CBOE Holdings also proposes to make various amendments to its Bylaws. First, CBOE Holdings proposes to adopt an Exclusive Forum Provision. Specifically, CBOE Holdings seeks to adopt Article 11 – Forum for Adjudication of Disputes. Proposed Article 11 provides that Delaware would be the exclusive forum for any shareholder litigation against the Company. CBOE Holdings notes that the proposed adoption of Article 11 alleviates the risk of multi-forum shareholder litigation in which the same claims are litigated in different courts, which can potentially drain corporate resources, increase the distraction and hassle of litigation, and risk inconsistent rulings and judgments. CBOE Holdings also notes that exclusive forum provisions have been upheld by the Delaware Court of Chancery and that legislative amendments to the General Corporation Law of the State of Delaware (“DGCL”) related to exclusive forum provisions were recently signed into law by the Delaware governor and became effective August 1, 2015.<sup>4</sup>

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<sup>3</sup> For example, the Exchange notes that the proposed change in Article Fourth, subparagraph (c)(x) from “Voting Common Stock” to “stock of the Corporation entitled to vote thereon” is not intended to affect the rights of a stockholder or change which class of shares are entitled to vote to increase or decrease the number of authorized shares of Preferred Stock. Specifically, the Exchange notes that, as is currently the case, for any proposal to increase or decrease the number of authorized shares of Preferred Stock, common stock would continue to vote together with any series of Preferred Stock that is allowed to vote on such a proposal pursuant to its terms. The Exchange also notes that the provisions in Article Sixth of the Certificate which limit ownership and voting concentration continue to apply and as such, any proposal to increase or decrease the number of authorized shares of Preferred Stock, if any, would be subject to those limitations.

<sup>4</sup> See e.g., *Boilermakers Local 154 Retirement Fund v. Chevron Corporation*, 73 A.3d 934 (Del. Ch. 2013). The Chancery Court ruled that boards are statutorily empowered to

Next, CBOE Holdings proposes to amend various sections in Article 2 to delete obsolete and/or unnecessary language, as well as reflect current best practices among Delaware corporations in the drafting of their governing documents, including changes with respect to the scheduling, notice and action at meetings and the nomination of directors. For example, Section 2.2 of the Bylaws is proposed to be amended to delete language requiring the annual meeting of stockholders to be held on the third Tuesday in May of each year, as the Exchange does not believe such requirement is necessary. Additionally, Section 2.2 is proposed to be amended to eliminate now outdated language which provides that such requirement starts the year immediately following the year in which the restructuring of CBOE is consummated. Section 2.4 of the Bylaws is proposed to be amended to add language providing that certain notice requirements of each meeting of stockholders apply except as otherwise provided by the Certificate of Incorporation or CBOE Holdings Bylaws. CBOE Holdings also proposes to add language to Section 2.4 to explicitly provide that notices of all meetings shall state the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting. CBOE Holdings notes that Section 2.1 already contemplates remote communications.<sup>5</sup> Section 2.7 of the Bylaws is being amended to make the Bylaw language consistent with DGCL Section 222 (c) (Notice of meetings and adjourned meetings). Section 2.10 is being proposed to be amended to make certain clarifications relating to actions at meetings. For example, CBOE Holdings proposes to clarify that a majority of the votes properly cast upon any question other than an election of directors shall decide the

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adopt such bylaws so long as the specific corporate articles of organization permit director amendment of bylaws, which is generally the case. See also DGCL Section 115.

<sup>5</sup> See CBOE Holdings Bylaws, Section 2.1 which provides that “all meetings of stockholders shall be held at such place, if any, within or without the State of Delaware...”

question, except when a “different” (rather than “larger”) vote is required by the Bylaws, rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities. Additionally, CBOE Holdings proposes to explicitly clarify that “abstentions” and “broker nonvotes” are not counted as a vote case either “for” or “against” a director’s election. Section 2.11 is being proposed to be amended to (i) eliminate outdated language and (ii) make minor changes related to the nomination process for election of Board of Directors in a manner similar to the practices of other Delaware corporations. For example, Section 2.11 is being amended with regards to notice requirements for director nominations in the event the annual meeting is not conducted within a certain period of time. Specifically, Section 2.11 currently provides that if the annual meeting is not held within thirty (30) days before or after the anniversary date of the preceding year’s annual meeting of stockholders, the nominations must be delivered or mailed and received by the Secretary not later than the close of business on the 10<sup>th</sup> day following the date on which public announcement of the annual meeting date was made. CBOE Holdings seeks to amend Section 2.11 to permit the annual meeting to be held up to seventy (70) days after the anniversary date of the immediately preceding annual meeting without altering the deadlines regarding when the nominations must be delivered or mailed and received by apply and to also confirm that an adjournment or postponement of an annual meeting does not commence a new time period or extend any time period for a stockholder’s notice. CBOE Holdings notes that the proposed change provides CBOE Holdings more flexibility with regards to scheduling the annual meeting date without altering the time periods for stockholder notices for director nominations. CBOE Holdings additionally proposes to amend Section 2.11 to clarify that stockholder notices for director nominations shall also set forth any other information relating to the stockholder and

beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies, as well and also explicitly provide that CBOE Holdings may require any proposed nominee to furnish any other information that CBOE Holdings may reasonable require to determine eligibility of the proposed nominee to serve as director of the Corporation.

CBOE Holdings also proposes to amend the Bylaws to make other non-substantive changes. For example, CBOE Holdings proposes to amend Section 3.4 of the Bylaws to provide that a director may resign by giving either written or electronic notice as well as proposes to delete an unnecessary sentence related to the term of the Executive Committee members in Article 4, Section 4.2.<sup>6</sup> Additionally, CBOE Holdings proposes to make non-substantive, clarifying changes to Section 9.3 of the Bylaws including adding the term “equity owners” (in addition to the current terms of “stockholders” and “shareholders”). CBOE Holdings also proposes to amend Section 10.1 of the Bylaws. Specifically, Section 10.1 currently provides that stockholders of CBOE Holdings may amend the Bylaws, provided that notice of the proposed change was given in the notice of the stockholders meeting at which such action is to be taken. CBOE Holdings proposes to eliminate this requirement as it does not believe it is substantive or necessary. Particularly, CBOE Holdings notes that this requirement is already provided for in Section 2.12 of the Bylaws.<sup>7</sup> Additionally, CBOE Holdings notes that Article Twelfth of the

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<sup>6</sup> The Exchange notes that pursuant to Section 3.2 of the Bylaws, directors are to be elected annually and thus the term for any Board committee composed exclusively of directors would be for no longer than one year. The Exchange also notes that the terms for members of other Board committees are also not explicitly referenced or included in CBOE Holdings’ Bylaws. See Article 4, Sections 4.3 (The Audit Committee), 4.4 (The Compensation Committee) and 4.5 (The Nominating and Governance Committee).

<sup>7</sup> See Section 2.12 of the Bylaws which provides “To be in proper written form, a stockholder’s notice to the Secretary shall set forth...the text of any resolutions proposed

Certificate, which governs amendments of the Bylaws by stockholders of CBOE Holdings, does not include this requirement. Accordingly, and in order to conform Section 10.1 of the Bylaws to Article Twelfth of the Certificate, CBOE Holdings proposes to remove this language from Section 10.1. CBOE Holdings also proposes to amend Section 10.2 of the Bylaws to replace the reference of “CBOE” to “Chicago Board Options Exchange, Incorporated” to avoid any potential confusion as to what CBOE refers to.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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for consideration and, in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment...”

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> Id.

In particular, CBOE Holdings believes that eliminating references in the Certificate that are applicable only in connection with the 2010 IPO removes obsolete language and alleviates potential confusion. Additionally, CBOE Holdings believes the remaining changes to the Certificate are non-substantive and clarifying in nature, which makes the Certificate easier to read and also alleviates potential confusion. The alleviation of potential confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes adopting Article 11 governing the forum for adjudication of disputes alleviates the risk of multi-forum shareholder litigation in which the same claims are litigated in different courts, which can potentially drain corporate resources, increase the distraction and hassle of litigation, and risk inconsistent rulings and judgments. The Exchange believes alleviating potential drain on corporate resources allows the Exchange to direct such resources in administration of the Exchange, enhancing investor protection.

CBOE Holdings believes the remaining changes are either clarifying in nature or reflect current best practices among Delaware corporations in the drafting of their governing documents and thus enhance investor protection by making CBOE Holdings governance documents clearer and easier to understand and in line with current governance best practices.

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

Because the proposed rule change relates to the governance of CBOE Holdings and not to the operations of the Exchange, the Exchange does not believe that the proposed rule change will impose any burden on competition 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



The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such shorter

time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2015-026 on the subject line.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

Paper Comments:

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

All submissions should refer to File Number SR-C2-2015-026. 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 the 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 Number SR-C2-2015-026 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Robert W. Errett  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).