

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95385; File No. SR-C2-2022-014)

July 28, 2022

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Certain of its Rules Related to Market-Makers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 14, 2022, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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

Cboe C2 Exchange, Inc. (“C2” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend certain of its Rules related to Market-Makers. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in 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

The Exchange proposes to amend certain of its Rules related to Market-Makers. Specifically, the Exchange proposes to amend its Rules to permit a Trading Permit Holder ("TPH") to register separate market-maker aggregation units as separate Market-Makers, each of which would be subject to Market-Maker obligations on an individual basis. Currently, C2 interprets the term "Market-Maker" to apply at a firm level, including with respect to obligations. However, the Exchange understands TPHs have Market-Maker units that are completely separate from each other for operational and profit/loss purposes, with appropriate information barriers between units.³ Because of this operational separation, such organizations may prefer to have those units be treated as individual Market-Makers under the Exchange's Rules consistent with those organizations' internal operations.

The proposed rule change amends certain Rules to provide TPH with this flexibility:

- Rule 3.52 currently provides that TPHs registered as Market-Makers have certain rights and bear certain responsibilities beyond those of other TPHs. The proposed rule

³ Certain C2 rules contemplate TPHs having separate business units and require information barriers in the form of appropriate policies and procedures that reflect the TPH's business to establish those separate business units. See, e.g., Rules 8.10 (prevention of the misuse of material, nonpublic information); and 8.30, Interpretations and Policies .03 (position limits).

change adds Interpretation and Policy .01 to provide that if a TPH is comprised of multiple market-making aggregation units and has in place appropriate information barriers or segregation requirements,⁴ the TPH may register each individual aggregation unit as a separate Market-Maker.

- The proposed rule change adds Rule 5.50, Interpretation and Policy .01 to provide that Market-Maker appointments would apply to each individual Market-Maker aggregation unit and adds Rule 5.53, Interpretation and Policy .01 to provide that each Market-Maker aggregation unit will be evaluated for good standing on an individual basis.
- The proposed rule change amends Rules 5.33, Interpretation and Policy .02 and adds Rule 5.51, Interpretation and Policy .01; and Rule 5.52, Interpretation and Policy .01 to provide that Market-Maker obligations will apply to individual Market-Maker aggregation units if a TPH registers separate aggregation units as Market-Makers.
- The proposed rule change adds Rule 5.24, Interpretation and Policy .02 to require any individual Market-Maker aggregation unit within a single firm to connect to the Exchange's backup systems and participate in functional and performance testing announced by the Exchange if that unit satisfies the connection criteria set forth in Rule 5.24(b).

These proposed changes are consistent with the concept of treating individual Market-Maker aggregation units within a single firm as separate Market-Makers.

⁴ The TPH will need to provide the Exchange with sufficient evidence of separation of these units.

The proposed rule change states that a TPH may register separate aggregation units as individual Market-Makers if the TPH has in place appropriate information barriers or segregation units. The proposed language provides TPHs with flexibility to adapt their policies and procedures to reflect their business model and activities, including changes thereto. This flexibility is similar to other rules that require information barriers, such as Rule 8.10, which requires every TPH to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the TPH's business, to prevent the misuse, in violation of the Exchange Act and Exchange Rules, of material nonpublic information by the TPH or persons associated with the TPH. In accordance with this proposed rule change, pursuant to Rule 8.10, a TPH that registers separate business units as individual Market-Makers would be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to prevent the misuse of material, nonpublic information. Separate market-making units registered as individual Market-Makers may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with the proposed rule change. The proposed rule change has no pre-approval requirement; however, appropriate information barriers would be subject to review as part of the process to register the separate aggregation units as individual Market-Makers with the Exchange.⁵ Additionally, these policies and procedures would be subject to regular review by the Exchange's Regulation Division, such as part of the routine examination or testing process or as part of internal surveillances and investigations.

⁵ The Exchange's Regulatory Division intends to announce by Regulatory Circular a method by which a TPH may seek pre-approval of the policies and procedures comprising the information barriers.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ 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)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide TPH organizations with flexibility to register its business units as Market-Makers with the Exchange, and have the Exchange regulate those Market-Maker business units, in a manner consistent with these organizations’ internal business operations. The Exchange believes this will permit these organizations to manage the entirety of their

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ Id.

Market-Maker operations – including Market-Maker registrations, appointments, and quoting – as they deem appropriate based on the nature of their businesses, which may ultimately benefit the efficiency of their Market-Maker businesses. The Exchange does not propose to modify any Market-Maker responsibilities or obligations. The Exchange does not believe the proposed rule change will reduce liquidity, as any individual Market-Maker aggregation unit (as opposed to the TPH organization collectively) will need to satisfy all Market-Maker obligations, including continuous quoting obligations, on its own.

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

The Exchange 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. The proposed rule change will not impose any burden on intramarket competition, because it will apply in the same manner to all TPH organizations that register with the Exchange as Market-Makers. Whether a TPH organization registers separate business units as Market-Makers is within the sole discretion of that organization. With respect to TPH organizations that elect to register separate business units as Market-Makers, the proposed rule change will apply all applicable Market-Maker rules, including those regarding Market-Maker obligations and responsibilities, in the same manner to those units. The Exchange does not propose to modify any Market-Maker obligations or responsibilities, and thus does not believe the proposed rule change will diminish liquidity on the Exchange. The proposed rule change will not impose any burden on intermarket competition, because the proposed rule change applies only to how TPH organizations may register with the Exchange as a Market-Maker and how the Exchange will determine Market-Maker compliance with Exchange-imposed Market-Maker obligations and responsibilities.

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: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposal provides flexibility to a TPH organization to register separate market-maker aggregation units as separate Market-Makers, each of which would be subject to Market-Maker obligations on an individual basis, if appropriate information barriers or segregation requirements are in place. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

change does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹²

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.

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-C2-2022-014 on the subject line.

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-C2-2022-014. 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

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2022-014 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.¹³

J. Matthew DeLesDernier,
Deputy Secretary.

¹³ 17 CFR 200.30-3(a)(12).