

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82336; File No. SR-CBOE-2017-072; SR-C2-2017-030)

December 15, 2017

Self-Regulatory Organizations; Cboe Exchange, Inc.; Cboe C2 Exchange, Inc.; Order Granting Accelerated Approval to a Proposed Rule Change Relating to its Nominating and Governance Committee and Regulatory Oversight and Compliance Committee as well as its Director Nomination and Committee Appointment Process

I. Introduction

On November 14, 2017, Cboe C2 Exchange, Inc. (“C2”) and on November 15, 2017, Cboe Exchange, Inc. (“Cboe” and, together with C2, the “Exchanges”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² proposed rule changes to eliminate their Nominating and Governance Committees (“N&G Committee”); amend the process by which (i) directors are elected, (ii) committee appointments are made, and (iii) vacancies are filled; and rename their Regulatory Oversight and Compliance Committees (“ROCC”).³ The proposed rule changes were published for comment in the Federal Register on November 27, 2017.⁴ The Commission received no comments on the proposals. This order approves the proposed rule changes on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In addition, the Exchanges propose to make several formatting changes throughout their Bylaws as well as to change their names in the title and signature lines in their Certificates of Incorporation (“Certificates”) to reflect recent changes to their legal names.

⁴ See Securities Exchange Act Release No. 82119 (November 20, 2017), 82 FR 56085 (SR-CBOE-2017-072); Securities Exchange Act Release No. 82120 (November 20, 2017), 82 FR 56069 (SR-C2-2017-030) (“Notices”).

II. Description of the Proposal

First, the Exchanges propose to eliminate their N&G Committees and provide that the sole stockholder of the Exchanges (Cboe Global Markets, Inc.) shall nominate and elect directors at the annual meetings of the sole stockholder, except with respect to fair-representation directors (“Representative Directors”).⁵ As a consequence of the elimination of the N&G Committee, the Exchanges propose conforming changes to reallocate its responsibility. Specifically, the Exchanges propose to amend the definition of “Representative Director Nominating Body” to provide that if an Exchange’s Board of Directors (“Board”) has two or more Industry Directors, excluding directors that are Exchange employees, those Industry Directors shall act as the Representative Director Nominating Body. If there are fewer than two Industry Directors on the Board (excluding directors that are employees of the Exchange), then the Trading Permit Holder Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body. The Exchanges further propose to amend their Bylaws and Certificates to provide that the sole stockholder is bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Lastly, the Exchanges each propose to amend Section 3.1 of their Bylaws to provide that the Board is responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director.

Second, the Exchanges propose to transfer the N&G Committee’s current authority with respect to committee appointments to their Boards (or appropriate subcommittee of the Board).⁶

⁵ See id. at 56086 and 56069, respectively.

⁶ See id. at 56086 and 56070, respectively.

Specifically, the Exchanges propose to amend Section 4.2 and 6.1 of their Bylaws to state that members of the Executive Committee and Advisory Board will be appointed by the Board. The Exchanges also propose to amend Section 4.4 of their Bylaws to state that members of the ROCC will be appointed by the Board on the recommendation of the Non-Industry Directors of the Board. Lastly, Cboe proposes to amend its Rule 2.1 to provide that the Board shall appoint the Chairman, Vice Chairman (if any) and members to the Business Conduct Committee (“BCC”) as well as fill any vacancies on the BCC.

Third, the Exchanges propose to amend their Bylaws to alter the process for filling director vacancies.⁷ Specifically, the Exchanges propose to amend Section 3.4 of their Bylaws to provide that in the event any Industry or Non-Industry Director fails to maintain the required qualifications and the director’s term is accordingly terminated, the sole stockholder, instead of the Board, shall be able to fill the vacancy.⁸ The Exchanges also propose to amend Section 3.5 of their Bylaws to provide the sole stockholder with authority to fill vacancies so long as the elected director qualifies for the position. Additionally, with respect to vacancies among the Representative Directors, the Representative Director Nominating Body will recommend an individual, or provide a list of recommended individuals, to the sole stockholder who shall select and fill the position.

⁷ See *id.* at 56086 and 56070, respectively.

⁸ Amended Section 3.4 would also provide that if such terminated director requalified, the sole stockholder would have discretion to reappoint such director, including by increasing the size of the Board, should that be necessary.

Fourth, the Exchanges propose to change the name of the ROCC to the “Regulatory Oversight Committee” (“ROC”).⁹ As such, the Exchanges propose to remove the word “Compliance” from references to the “ROCC” in the Bylaws and, as applicable, Exchange rules.

Finally, the Exchanges propose to change their names in the title and signature lines in their Certificates to reflect recent changes to their legal names.¹⁰

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of Section 6 of the Act¹¹ and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposed rule changes are consistent with Sections 6(b)(1) the Act,¹³ which require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to comply and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Commission also finds that the proposed rule changes are consistent with Section 6(b)(3) of the Act,¹⁴ which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its

⁹ The Exchanges note that the regulatory oversight committees of its affiliated exchanges does not use the term “Compliance” in their Committees’ name. See Notices, supra note 4 at 56087 n.8 and 56070 n.8, respectively.

¹⁰ Other technical formatting changes occur throughout the Bylaws as a result of the Exchanges proposed changes. See Notices, supra note 4 at 56087 and 56070, respectively.

¹¹ 15 U.S.C. 78f(b).

¹² In approving these proposed rule changes, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(1).

¹⁴ 15 U.S.C. 78f(b)(3).

affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

The Commission believes that the Exchanges' proposals to eliminate their N&G Committees and reassign the N&G Committees' responsibilities are consistent with the Act. In particular, with respect to vesting the authority to nominate and elect directors in the sole stockholder, the Exchanges cite to the rules of another Exchange that similarly does not maintain an exchange-level nominating committee and instead provides that the sole stockholder of the Exchange nominates and elects their non-fair representation directors.¹⁵ Importantly, the Commission notes that the proposed rule changes do not substantively impact the provisions concerning the nomination and selection of fair representation directors that currently apply to the Exchanges. The sole stockholder will continue to be bound to nominate and elect the Representative Director nominees recommended by the Representative Director Nominating Body and there are no other changes to the process for the nomination and selection of Representative Directors. Accordingly, the Commission believes that members of the Exchanges should continue to have a voice in the governance of the Exchanges through Board representation and thus will have a voice in the Exchanges' exercise of their self-regulatory authority. The Exchanges represent that they are not proposing to amend any of the compositional requirements currently set forth in the Bylaws and that such existing compositional requirements must continue to be satisfied, including the provision relating to the fair representation of members.¹⁶

¹⁵ See Section 3.02(f) of the Amended and Restated NYSE Arca, Inc. Bylaws. See also Notices, supra note 4 at 56086 and 56069, respectively.

¹⁶ See id. at 56087 and 56071, respectively.

In addition, with respect to providing the Board, as opposed to the N&G Committee, with the authority to recommend and approve members of the Executive Committee, Advisory Board, ROC and BCC, the Commission notes that other exchanges provide that their Boards, without input from a nominating committee, may appoint members to committees.¹⁷ While the internal Exchange delegations of the authority relating to the (i) nomination and election of directors, (ii) nominating body for Representative Directors, (iii) filling of director vacancies and (iv) appointment of committees are being amended, the Exchanges represent that the substantive requirements of the Exchanges applicable to those items will remain the same.¹⁸

The Commission further believes that the proposals to change the name of the ROCC to the ROC are consistent with the Act as they may clarify the scope of the ROC's activities. Moreover, the Exchanges note that changing the name of the committee would harmonize the names with the name of the regulatory oversight committee of their affiliated exchanges.¹⁹

Finally, the Commission believes that the proposals to update the exchanges' names in their Certificates are consistent with the Act as they may also serve to reduce potential confusion by ensuring the Exchanges' corporate documents reflect their recent name changes.

IV. Accelerated Approval of Proposed Rule Changes

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁰ to approve the proposed rule changes prior to the 30th day after the date of publication of the Notices in the

¹⁷ See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

¹⁸ See id.

¹⁹ See supra note 9.

²⁰ 15 U.S.C. 78s(b)(2).

Federal Register.²¹ The Commission believes that the proposed rule changes do not raise novel regulatory issues and are substantively similar to the existing rules of other national securities exchanges.²² In particular, the Commission notes that the proposed rule changes do not substantively impact the provisions concerning the nomination and selection of fair representation directors that currently apply to the Exchanges. Members of the Exchanges should continue to have an opportunity to participate in the selection of Board representation and have input into the Exchanges' exercise of self-regulatory authority. In addition, the Commission did not receive any comment on the proposed changes. Accordingly, the Commission finds that good cause exists to approve the proposed rule changes on an accelerated basis.

²¹ As noted above, the Notices were published for comment in the Federal Register on November 27, 2017 and the comment period closed on December 12, 2017. Accordingly, the 30th day after publication of the Notices is December 27, 2017.

²² See notes 15 and 17, supra.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²³ that the proposed rule changes (SR-CBOE-2017-072; SR-C2-2017-030), be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Robert W. Errett
Deputy Secretary

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).