SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101781; File Nos. SR-CBOE-2024-041; SR-C2-2024-016; SR-CboeBZX-2024-087; SR-CboeBYX-2024-034; SR-CboeEDGA-2024-037; SR-CboeEDGX-2024-059)

November 29, 2024

Self-Regulatory Organizations; Cboe Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Order Approving Proposed Rule Changes to Amend the Bylaws of Cboe Global Markets, Inc.

I. Introduction

On October 11, 2024, each of the Cboe Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc. (collectively, the "SROs"), 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 (the "Proposals") with respect to the bylaws of Cboe Global Markets, Inc. ("CGM"), the parent company of the SROs (the "CGM Bylaws"). The Proposals amend the CGM Bylaws to provide stockholders owning a combined 25% or more of CGM's outstanding stock with the right to request a special meeting of the stockholders, to refine CGM's current advance notice bylaws for annual stockholder meetings, and to make other miscellaneous changes to the CGM Bylaws. The Proposals were published for comment in the Federal Register on October 29, 2024.[3] The Commission did not receive any comment letters on the Proposals. This order approves the Proposals.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Securities Exchange Act Release Nos. 101415 (October 23, 2024), 89 FR 86019 (SR-CBOE-2024-041) ("CBOE Notice"), 101421 (October 23, 2024), 89 FR 86016 (SR-C2-2024-016) ("C2 Notice"), 101420 (October 23, 2024), 89 FR 85999 (SR-CboeBYX-2024-034) ("CboeBYX Notice"), 101419 (October 23, 2024), 89 FR 86051 (SR-CboeBZX-2024-087) ("CboeBZX Notice"), 101416 (October 23, 2024), 89 FR 86046 (SR-CboeEDGA-2024-037) ("CboeEDGA Notice"); 101417 (October 23, 2024), 89 FR 86065 (SR-CboeEDGX-2024-059) ("CboeEDGX Notice," and, collectively, "Notices").

II. Description of the Proposal

First, The SROs propose to amend certain provisions of the CGM Bylaws that relate to the power of stockholders to call a special meeting. Specifically, the SROs propose to amend Section 2.3 of the CGM Bylaws, which sets forth how a special meeting of the stockholders can be called. Currently, Section 2.3 of the CGM Bylaws provides that only the Chair of the CGM Board, the Chief Executive Officer or the CGM Board itself may call a special meeting of the stockholders. The SROs propose to amend Section 2.3(a) to state that a special meeting of stockholders may be called: (i) at any time by the CGM Board pursuant to a resolution adopted by the affirmative vote of a majority of the total number of CGM directors then in office; or (ii) by CMG's Corporate Secretary following the receipt of a written request in proper form for a special meeting (a "Special Meeting Request") by one or more stockholders.[4] In order to call a special meeting, the stockholders must hold, in the aggregate, at least 25% of CGM's outstanding shares of common stock entitled to vote on matters brought before the special meeting (the "Requisite Percentage").[5] As such, in addition to allowing stockholders with the Requisite Percentage to call a special meeting, the SROs also propose to remove the Chair of the CGM Board, the Chief Executive Officer, and the President of CGM from Section 2.3(a) so that they may not individually call a special meeting of the stockholders.

The SROs also propose to add new Sections 2.3(b), 2.3(c), 2.3(d), 2.3(e), 2.3(f), 2.3(g) and 2.3(h) of the CGM Bylaws to set forth the procedures to implement the Proposals to allow a stockholder to call a special meeting of stockholders (a "Stockholder Requested Special Meeting"). In summation, the SRO's proposal for these sections includes instructions to

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4 Id.

5 Id.

properly submit a written request to call a Stockholder Requested Special Meeting, explanations of the detailed information required for a Special Meeting Request to have been properly delivered, and explanations for how the CGM Board shall review and process a Special Meeting Request. The SROs state that the proposed amendments are designed to help ensure that the SROs are able to comply with their disclosure and other requirements under applicable law and to help ensure that that the CGM Board and its stockholders are able to assess the proposed business and meeting request adequately.[6]

Second, the SROs propose to amend Section 2.9 of the CGM Bylaws, which govern proxy representation. The SROs propose to add language to clarify that white colored proxy cards are reserved for exclusive use by the CGM Board, and that stockholders soliciting proxies from other stockholders of the CGM may use any other color proxy card.

Third, the SROs propose to amend Section 2.11 of the CGM Bylaws, which are the advance notice bylaws, to reflect what the SROs assess and represent are recent developments in Delaware Law.[7] Section 2.11 sets forth that stockholders must notify CGM, during a specified period in advance of an annual meeting or special meeting called by the CGM Board, of an intention to nominate persons to the CGM Board or to present a business proposal at the meeting. The SROs state that while designing the proposed requirements for stockholders to call a special meeting, they evaluated the existing requirements and determined that the advance notice bylaws could be enhanced to help achieve more fulsome disclosure and explanations from stockholders bringing business or potential nominees before a stockholder meeting.[8] Thus, the

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6 See, e.g., CboeEDGX Notice, supra note 3, at 86067.

7 See, e.g., CboeBZX Notice, supra note 3, at 86053-54.

8 Id.

SROs propose to amend Sections 2.11(a)(iii)(C), 2.11(a)(iii)(D), 2.11(a)(iii)(F), 2.11(c)(ii), 2.11(c)(iii), 2.11(c)(vi) and 2.11(a)(iii)(B).

The SROs propose to amend Section 2.11(a)(iii)(C) to clarify the information a stockholder is required to disclose relating to arrangements between the stockholder, a Stockholder Associated Person, and any other stockholder, and to eliminate disclosures on performance related fees to which such stockholder or Stockholder Associated Person may be entitled as a result of any increase or decrease in the stock of the CGM, and the prospectus or similar document of the stockholder providing notice or any Stockholder Associated Person. The SROs state that while the current provisions in Section 2.11(a)(iii)(C) provide valuable information, the proposal should help ensure the objectives of the provisions are met without burdening stockholders with potentially overbroad requests for information.[9]

Section 2.11(a)(iii)(D) of the CGM Bylaws currently sets forth representations to be made by a stockholder regarding whether such stockholder is part of a group which intends to deliver or solicit proxies from stockholders when bringing business or a Stockholder Nominee before a stockholder meeting. The SROs state they are proposing changes to make this provision more consistent with the universal proxy rules provided for in Rule 14a-19 of the Act.[10] The SROs also propose requiring the stockholder to confirm whether it intends, or is part of a group which intends, to engage in a solicitation (within the meaning of Rule 14a-1(1) of the Act) with respect to the nomination of any proposed nominee or proposed business to be considered at the meeting. The SROs state that any stockholder providing notice that they intend to solicit proxies

9 See, e.g. C2 Notice, supra note 3, at 86063.

10 See, e.g. CboeEDGA Notice, supra note 3, at 86049.

in support of a proposed nominee must do so in accordance with Rule 14a-19 of the Exchange Act.[11]

Section 2.11(a)(iii)(F) of the CGM Bylaws currently requires that a Stockholder Nominee provide any information that is required to determine the qualifications of such Stockholder Nominee to serve as a director of CGM. The SROs propose to add language clarifying that any required information must be consistent with the parameters set forth in CGM's Corporate Governance Guidelines or the CGM Board's past practice for assessing potential director nominees.

Existing Section 2.11(c)(ii) of the CGM Bylaws requires a stockholder providing notice to notify the CGM Secretary of any inaccuracy or change in any information submitted pursuant to Section 2.11. The SROs propose to modify this requirement by narrowing the scope to require the stockholder to provide notice of any material inaccuracies or changes to information that they previously provided.

For Section 2.11(c)(iii) of the CGM Bylaws, the SROs propose that any stockholder or Stockholder Associated Person providing notice with respect to any Stockholder Nominee is required to do so in a manner consistent with the requirements for universal proxy rules pursuant to Rule 14a-19 of the Exchange Act.

The SROs propose to amend Section 2.11(c)(vi) of the CGM Bylaws to add specificity to the definition of "Stockholder Associated Person," limit which individuals may be determined to be a Stockholder Associated Person and make other clarifying changes. The SROs state that

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[11] See, e.g. id.

these changes to reflect recent developments in Delaware law and to provide clarifications should help prevent confusion.[12]

The SROs further propose to add a note to Section 2.11(a)(ii) that any proposed business for a stockholder meeting must be a proper matter for stockholder action. Additionally, the SROs propose to amend Section 2.11(a)(iii)(B) to state that a Stockholder Nominee's written consent must be included in the CGM's proxy statement before they may be brought before a meeting, and that a Stockholder Nominee will not enter into any commitment to vote in a certain manner if nominated to the CGM Board. The SROs state that these proposals add specificity with regard to the CGM.[13] The SROs also propose to amend this section to require that a Stockholder Nominee not omit facts that are necessary to ensure statements made are not misleading in any material respect, which adds a materiality threshold to the current provision.

Fourth, the SROs propose to make changes to Section 3.10 of the CGM Bylaws. Current Section 3.10 allows, among other things, for the Chair of the Board or the Chief Executive Officer to call a special meeting of the CGM Board. The proposal would additionally allow the Lead Director of CGM to call a special meeting of the CGM Board. The SROs state that revising this section to allow the Lead Director to call a special meeting of the CGM Board addresses a potential scenario in which the Chair of the Board and the Chief Executive Officer positions are jointly held by one individual and a special meeting of the CGM Board is not able to be called by individual independent directors.[14]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Proposals are consistent with the

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12 Id.

13 Id.

14 See, e.g., CBOE Notice, supra note 3, at 86022.

requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the Proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] Specifically, the Commission believes that the Proposals are consistent with Section 6(b) of the Act[17] in general, and with Section 6(b)(1)[18] in particular, in that it enables the SROs to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the SROs.

The SROs assert that the Proposals would strengthen the corporate governance of CGM by now permitting stockholders to bring business or Stockholder Nominees before CGM via a special meeting of the stockholders.[19] Under the current text of Section 2.3(a) of the CGM Bylaws, special meetings of CGM stockholders may only be called by the Chairman of the CGM Board, the Chief Executive Officer of CGM, the President of CGM or the CGM Board of Directors. Under the Proposals, only the CGM Board of Directors or a group of stockholders that meets the Requisite Percentage may call a special meeting of stockholders pursuant to revised Section 2.3(a).

Furthermore, the SROs propose to expand the provisions of Section 2.3 of the CGM

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15 Additionally, in approving the Proposals, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

16 Certain provisions of the CGM Bylaws are considered rules of the SROs if they are stated policies, practices, or interpretations, as defined in Rule 19b-4 under the Act, and therefore, must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78s(b); 17 CFR 240.19b-4.

17 15 U.S.C. 78f(b).

18 15 U.S.C. 78f(b)(1).

19 See, e.g., CboeBYX Notice, supra note 3, at 6002.

Bylaws to set forth detailed provisions regarding, among other things, the procedural requirements for CGM stockholders to call a special meeting of stockholders, the duties and deadlines of the CGM Secretary upon receiving a request for a special meeting of stockholders, and a process for cancelling a special meeting called by the Requisite Percentage of stockholders should those stockholder subsequently call below the requisite percentage. The SROs assert that these provisions will ensure both timely notices of special meeting requests and the ability of stockholders to adequately assess the proposed business for a given special meeting of stockholders.[20] The Commission believes that the proposed changes to Section 2.3(a) – coupled with the aforementioned procedural requirements and limitations set forth in new subsections (b)-(h) of Section 2.3 of the CGM Bylaws – are reasonably designed to comply with the requirements under Section 6(b)(1)[21] of Act in that they allow the Exchange to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the SROs.

As outlined above,[22] the SROs also propose to amend Section 2.11 of the CGM Bylaws, which are the advance notice bylaws, to reflect what the SROs assess and represent are recent developments in Delaware Law.[23] Among other things, the SROs aim to ensure the objectives of the advance notice bylaws are met without burdening stockholders with potentially overbroad requests for information in a manner that is consistent with what the SROs represent and assess

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20 See, e.g., CBOE Notice, supra note 3, at 86020.

21 15 U.S.C. 78f(b)(1).

22 See supra notes 7-13 and accompanying text.

23 See, e.g., CboeBZX Notice, supra note 3, at 86053-54.

are recent developments in Delaware Law.[24] The Commission believes that these proposed changes are also reasonably designed to comply with the requirements under Section 6(b)(1)[25] of Act in that they allow the Exchange to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the SROs.

Finally, SROs proposed to revise revisions to Sections 2.9 and 3.10 of the CGM Bylaws to address proxy card color categorization and to allow the Lead Director to call a special meeting of the board in order to mitigate circumstances in which the CGM Bylaws would not otherwise empower a second Independent Director to call a special meeting, respectively. The Commission believes that these changes are reasonably designed to facilitate more efficient and effective corporate governance of CGM in accordance with the requirements of Section 6(b)(1)[26] of Act.

IV. Conclusion

For the foregoing reasons, the Commission finds that the Proposals are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

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[24] Id.

[25] 15 U.S.C. 78f(b)(1).

[26] 15 U.S.C. 78f(b)(1).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[27] that the Proposals (SR-CBOE-2024-041; SR-C2-2024-016; SR-CboeBZX-2024-087; SR-CboeBYX-2024-034; SR-CboeEDGX-2024-059; SR-CboeEDGA-2024-037) be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Deputy Secretary.

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27 15 U.S.C. 78s(b)(2).

28 17 CFR 200.30-3(a)(12).