

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64128; File No. SR-C2-2011-003)

March 25, 2011

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Bylaw and Related Rule Changes

I. Introduction

On January 27, 2011, C2 Options Exchange, Incorporated (“C2” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to modify its governance structure. On February 9, 2011, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment in the Federal Register on February 10, 2011.<sup>4</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

---

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

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

<sup>3</sup> At the time C2 submitted the original proposed rule change, it had not yet obtained formal approval from its Board of Directors for the specific Bylaw and rule changes set forth in this proposed rule change. C2 stated that once that approval was obtained, the Exchange would file a technical amendment to its proposed rule change to reflect that approval. In Amendment No. 1, the Exchange notes that the C2 Board of Directors approved the specific Bylaw and rule changes set forth in SR-C2-2011-003 on February 8, 2011 and stated that no further action was necessary in connection with its proposal. Amendment No. 1 is technical in nature, and the Commission is not publishing Amendment No. 1 for public comment.

<sup>4</sup> See Securities Exchange Act Release No. 63845 (February 4, 2011), 76 FR 7598 (“Notice”).

## II. Description of the Proposal

The Exchange proposes to: (1) eliminate its office of the Vice Chairman of the Board (“Vice Chairman”); (2) provide that the Board of Directors may establish an Advisory Board; and (3) eliminate the C2 Audit Committee.

### A. Elimination of the Office of the Vice Chairman of the Board

The Exchange proposes to amend its Bylaws to eliminate the office of the Vice Chairman.<sup>5</sup> The primary function of the Vice Chairman’s office was to facilitate communication between the Exchange and its Trading Permit Holders and to coordinate the activities of Trading Permit Holder committees.<sup>6</sup> The Exchange believes that C2 management is able to perform these functions and has represented that it will continue to obtain input from Trading Permit Holders through other channels, including direct communication with individual Trading Permit Holders, committees established by the Exchange, and through the proposed Advisory Board (discussed below).<sup>7</sup>

### B. Provision for an Advisory Board

The Exchange proposes to adopt Section 6.1 of the Bylaws that would allow the Board of Directors to establish an Advisory Board which would advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. According to the Exchange, this would be beneficial because it would provide another vehicle by which the Exchange management

---

<sup>5</sup> The specific proposed Bylaw and rule changes relating to the elimination of the Office of the Vice Chairman are discussed in detail in the Notice. See Notice, supra note 4, 76 FR at 7598-7599.

<sup>6</sup> Currently, the Vice Chairman is an office held by one of the Exchange’s Industry Directors. See Notice, supra note 4, 76 FR at 7598.

<sup>7</sup> See Notice, supra note 4, 76 FR at 7598.

could receive advice and feedback from Trading Permit Holders.<sup>8</sup> Under the proposal, the Board of Directors would determine the number of members of the Advisory Board, the Chief Executive Officer or his or her designee would serve as the Chairman of an Advisory Board, and the C2 Nominating and Governance Committee would recommend the members of any Advisory Board for approval by the Board of Directors.

The Advisory Board would be completely advisory in nature and would not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. Pursuant to proposed Section 6.1 of the Bylaws, the Board of Directors would have the discretion as to whether (or not) to put an Advisory Board in place. C2 has represented that the Board of Directors intends to establish an Advisory Board.<sup>9</sup>

#### C. Elimination of Exchange Audit Committee

C2 proposes to amend its Bylaws to eliminate its Audit Committee because its functions are duplicative of the functions performed by the Audit Committee of its parent company, CBOE Holdings, Inc. (“CBOE Holdings”).

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: (1) the qualifications, engagement, and oversight of CBOE Holdings’ independent auditor; (2) CBOE Holdings’ financial statements and disclosure matters; (3) CBOE Holdings’ internal audit function and internal controls; and (4) CBOE Holdings’ oversight and risk management, including compliance with legal and regulatory requirements. CBOE Holdings’ financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings’ subsidiaries, including C2. Therefore, according to the Exchange, the CBOE

---

<sup>8</sup> See Notice, supra note 4, 76 FR at 7599.

<sup>9</sup> See Notice, supra note 4, 76 FR at 7599.

Holdings Audit Committee's purview necessarily includes C2 and the responsibilities of the C2 Audit Committee are fully duplicated by the responsibilities of the CBOE Holdings Audit Committee.<sup>10</sup> Consequently, C2 proposes that the responsibilities of its audit committee be performed by the CBOE Holdings Audit Committee.

Although the CBOE Holdings Audit Committee would continue to have overall responsibility with respect to the internal audit function, the C2 Board of Directors would 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 Regulatory Oversight Committee would have the authority to review the internal audit plan relating to C2's regulatory functions and to request at any time that C2's internal auditor conduct an audit relating to those functions.<sup>11</sup>

### III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the

---

<sup>10</sup> See Notice, supra note 4, 76 FR at 7599 (noting that the C2 Audit Committee has a more limited role focusing on: (1) C2's financial statements and disclosure matters, and (2) C2's oversight and risk management, including compliance with legal and regulatory requirements, in each case, only to the extent required in connection with C2's discharge of its obligations as a self-regulatory organization).

<sup>11</sup> These changes would be in addition to the C2's current Regulatory Oversight Committee charter provision, which provides that the Regulatory Oversight Committee shall meet regularly with C2's internal auditor regarding regulatory functions. C2's Regulatory Oversight Committee would continue its existing practice of reviewing internal audits of C2's regulatory functions. See Notice, supra note 4, 76 FR at 7600.

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,<sup>13</sup> which requires a national securities exchange to be so organized and have the capacity 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 Commission finds that the proposed elimination of C2's Office of the Vice Chairman of the Board is consistent with the Act. As noted above, the Exchange believes that the role previously performed by the Vice Chairman of the Board can effectively be performed by C2 management and the new Advisory Board. Accordingly, the Exchange seeks to eliminate this position to make its governance structure more streamlined and efficient. With respect to member input in the affairs of the Exchange, the Commission notes that the Exchange Bylaws will continue to require that at least 30% of the directors on the C2 Board of Directors be Industry Directors and that at least 20% of C2's directors be Representative Directors.<sup>14</sup> The Commission has previously noted that this requirement, consistent with Section 6(b)(3) of the Act,<sup>15</sup> helps to ensure that an exchange's members have a voice in the governing body of the exchange and the corresponding exercise by the exchange of its self-regulatory authority, and that the exchange is administered in a way that is equitable to all who trade on its market or

---

<sup>13</sup> 15 U.S.C. 78f(b)(1).

<sup>14</sup> 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. 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 would be held in which C2's Trading Permit Holders would vote to determine which candidates would be elected to the C2 Board of Directors to serve as Representative Directors. See Notice, supra note 4, 76 FR at 7599.

<sup>15</sup> 15 U.S.C. 78f(b)(3).

through its facilities.<sup>16</sup> The Commission believes that, despite the elimination of the office of the Vice Chairman, C2 governance 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. Further, as discussed below, additional opportunities for member input could result from the proposed Advisory Board.

In addition, the Commission finds that the Exchange's proposal to authorize an Advisory Board to advise the Office of the Chairman regarding matters of interest to Trading Permit Holders is consistent with the Act. With respect to composition, the Nominating and Governance Committee will recommend members of the Advisory Board for approval by the Board of Directors.<sup>17</sup> The Commission notes that the new Advisory Board will be advisory in nature and will not be vested with decision-making authority or the authority to act on behalf of the Exchange. Nevertheless, the Advisory Board could serve as a supplemental adjunct advisory body that can provide an additional forum for members to be heard and provide input to Exchange management above and beyond the formal role played by Representative Directors, discussed above.

Finally, the Commission finds that the proposed elimination of C2's Audit Committee is consistent with the Act. The Commission previously approved a structure in which certain committees of the board of directors of NYSE Euronext, including its audit committee, were authorized to perform functions for various subsidiaries, including the New York Stock

---

<sup>16</sup> See Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (File No. 191) (approving C2 as a national securities exchange) ("C2 Approval Order").

<sup>17</sup> Persons interested in being considered for a seat on an Advisory Board could contact the Nominating and Governance Committee, but the Nominating and Governance Committee would have sole discretion in recommending members of the Advisory Board to the Board of Directors for approval.

Exchange, LLC.<sup>18</sup> More recently, the Commission approved proposals by The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., and NASDAQ OMX PHLX, Inc. to eliminate their respective audit committees.<sup>19</sup> The responsibilities of the C2 Audit Committee are fully duplicated by the CBOE Holdings Audit Committee. Further, the C2 Regulatory Oversight Committee has broad authority to oversee the adequacy and effectiveness of C2's regulatory responsibilities and is able to maintain oversight over internal controls in tandem with the CBOE Holdings Audit Committee. Accordingly, elimination of the C2 Audit Committee should not impact the ability of the C2 Board or the C2 Regulatory Oversight Committee to maintain substantial and independent oversight of the Exchange's regulatory program.

---

<sup>18</sup> See Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120).

<sup>19</sup> See Securities Exchange Act Release Nos. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR-NASDAQ-2009-042), 60247 (July 17, 2009), 74 FR 33495 (July 13, 2009) (SR-BX-2009-021), and 60687 (September 18, 2009), 74 FR 49060 (September 25, 2009) (SR-Phlx-2009-59).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-C2-2011-003), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Cathy H Ahn  
Deputy Secretary

---

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).