

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68767; File No. SR-C2-2012-039)

January 30, 2013

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Granting Approval to a Proposed Rule Change Relating to Bylaw and Other Changes Concerning the Board of Directors of the Exchange

I. Introduction

On November 30, 2012, the C2 Options Exchange, Incorporated (“Exchange” or “C2”) 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 a proposed rule change to amend its Bylaws concerning the nomination of Representative Directors, petition candidates, and the size of the Exchange’s Board of Directors (“Board”), and to make conforming changes to the C2 Certificate of Incorporation. On December 19, 2012, the proposed rule change was published for comment in the Federal Register.³ The Commission received no comments on the proposed rule change. This order grants approval to the proposed rule change.

II. Description of the Proposed Rule Change

Compositional Requirements Determined by the Board

In December of 2011, C2 amended its Bylaws and Certificate of Incorporation to, among other things: (i) eliminate the requirement that its Board of Directors be composed of at least 30% Industry Directors, and (ii) eliminate the requirement in Section 3.2 of the Bylaws that the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 68429 (December 13, 2012), 77 FR 75237 (“Notice”).

Representative Directors must be Industry Directors.⁴ In connection with these changes, C2 also amended Section 3.1 of the Bylaws to provide that: “[T]he Board shall determine from time to time pursuant to resolution adopted by the Board the total number of directors, the number of Non-Industry Directors and Industry Directors (if any), and the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any).”⁵

C2 proposed to amend the Bylaws to expressly provide that any person nominated by the Representative Director Nominating Body⁶ and any petition candidate nominated pursuant to the Section 3.2 of the Bylaws must satisfy the compositional requirements determined by the Board pursuant to a resolution adopted by the Board in accordance with Section 3.1 designating the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any). C2 also proposed to amend Section 3.5 of the Bylaws relating to the filling of vacancies on the Board to provide that the Representative Director Nominating Body may only recommend individuals to fill a vacancy in a Representative Director position who satisfy those same compositional requirements.

Board Size Range

Currently, the Bylaws provide that the Board shall consist of not less than 11 and not more than 23 directors. C2 proposed to change the Board size range such that the Board would

⁴ See Securities Exchange Act Release Nos. 65681 (November 3, 2011), 76 FR 69783 (November 9, 2011) (SR-C2-2011-031) (noticing for comment); and 65979 (December 15, 2011), 76 FR 79239 (December 21, 2011) (approving SR-C2-2011-031).

⁵ See C2 Bylaw 3.1. See also Securities Exchange Act Release Nos. 65681 (November 3, 2011), 76 FR 69783 (November 9, 2011) (SR-C2-2011-031) (noticing for comment).

⁶ The Exchange noted that at all times at least 20% of the directors serving on the Board would be Representative Directors nominated by the Representative Director Nominating Body as provided in Section 3.2 of the Bylaws (or otherwise selected through the petition process). See Notice, supra note 3, at 75237.

consist of not less than 12 and not more than 16 directors.

Conforming Amendments to Certificate of Incorporation

Finally, C2 proposed to make conforming changes to its Certificate of Incorporation and to include in its Certificate of Incorporation that the Board and/or Nominating and Governance Committee, as applicable, shall make determinations as to whether a director candidate satisfies applicable qualifications for election as a director pursuant to and in accordance with Section 3.1 of the Exchange's Bylaws, which is nearly identical to the current provisions in the Exchange's existing Bylaws.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,⁸ which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; Section 6(b)(3) of the Act,⁹ 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 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 "fair representation

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(1).

⁹ 15 U.S.C. 78f(b)(3).

requirement”); and Section 6(b)(5) of the Act,¹⁰ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; 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.

The Commission believes that the Exchange’s proposal to expressly provide that any person nominated by the Representative Director Nominating Body¹¹ and any petition candidate nominated pursuant to the Section 3.2 of the Bylaws must satisfy the compositional requirements determined by the Board pursuant to a resolution adopted by the Board in accordance with Section 3.1 of the Bylaws, as well as the proposal to amend Section 3.5 of the Bylaws to provide that the Representative Director Nominating Body may only recommend individuals to fill a vacancy in a Representative Director position who satisfy those same compositional requirements, are consistent with Section 6(b) of the Act,¹² including Section 6(b)(3) of the Act.¹³ The Exchange’s proposal would not impact its current process to ensure fair representation of its Trading Permit Holders in the selection of its directors and administration of its affairs as required by Section 6(b)(3) of the Act.¹⁴ Specifically, the proposed changes are consistent with the changes to the Bylaws that C2 made in December of 2011 and simply reflect the application of those changes. As the Commission noted when it approved that prior proposal, the Commission had previously approved proposals in which an exchange’s board of

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See supra note 6.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(3). Section 6(b)(3) of the Act 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 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.

¹⁴ See id.

directors was composed of all or nearly all non-industry directors where the process was nevertheless designed to comply with the “fair representation” requirement in the selection and election of directors.¹⁵

In addition, the Commission believes that the Exchange’s proposal to change the Board size range to consist of not less than 12 and not more than 16 directors is consistent with Section 6(b) of the Act,¹⁶ including Section 6(b)(3) of the Act.¹⁷ The Exchange’s proposal would not impact in any manner its current process to ensure fair representation of its Trading Permit Holders in the selection of its directors and administration of its affairs as required by Section 6(b)(3) of the Act.¹⁸ Further, the proposed change is consistent with the current size of C2’s Board and simply narrows the possible size range from 11 to 23 to 12 to 16.

¹⁵ See Securities Exchange Act Release No. 65979 (December 15, 2011), 76 FR 79239 at 79241 (December 21, 2011) (approving SR-C2-2011-031) (citing to Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (approving SR-NYSE-2003-34)).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(3).

¹⁸ See id.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-C2-2012-039) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Kevin M. O'Neill
Deputy Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).