

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71401; File No. SR-C2-2014-001)

January 27, 2014

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Bylaws of its Parent Company

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 17, 2014, C2 Options Exchange, Incorporated (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

The Exchange proposes to amend the Bylaws of its parent company, CBOE Holdings, Inc. (“CBOE Holdings”). The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 proposed rule change. The text of these statements may be examined at the places specified in

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

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

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 is proposing to make certain amendments to the Bylaws (the “Bylaws”) of its parent company, CBOE Holdings, Inc. (“CBOE Holdings”) to make improvements in its governance. Currently, CBOE Holdings’ Bylaws provide that “when a quorum is present at any meeting, a plurality of the votes properly cast for the election of directors shall be sufficient to elect directors.” This applies to both contested and uncontested elections. The Exchange proposes to change the manner in which uncontested elections occur. Specifically, the Exchange is proposing to move from a plurality voting standard to a majority voting standard for uncontested elections where “each nominee for director shall be elected to the Board of Directors if a majority of the votes properly cast are in favor of such nominee’s election (i.e., if the number of votes properly cast “for” a nominee’s election exceeds the number of votes properly cast “against” that nominee’s election); *provided, however*, that, if, as of the last date by which stockholders of the Corporation may submit notice to nominate a person for election as a director pursuant to *Section 2.11* of these Bylaws or pursuant to any rule or regulation of the Securities and Exchange Commission, the number of nominees for director exceeds the number of directors to be elected at any such meeting (a “Contested Election”), a plurality of the votes properly cast for the election of directors shall be sufficient to elect directors.” As such, there will be no change to the voting process for contested elections.

Under the majority voting standard that will apply to uncontested elections, a nominee who fails to receive the requisite vote would not be duly elected to the Board; however, because

a director holds office until his or her successor is duly elected and qualified, any incumbent director-nominee who fails to receive the requisite vote does not automatically cease to be a director. Instead, such director continues as a “holdover director” until such director’s death, resignation or removal, or until his or her successor is duly elected and qualified. For this reason, the majority voting standard under consideration requires that any incumbent nominee, as a condition to his or her nomination for election, must submit in writing an irrevocable resignation, the effectiveness of which is conditioned upon the director’s failure to receive a majority of the votes properly cast in favor of such nominee’s election and the Board’s acceptance of the resignation.<sup>3</sup> The Exchange is proposing to amend the language in *Section 3.4* of the Bylaws to delete the statement that a resignation, unless specifically contingent upon its acceptance, will be effective as of its date or of the date specified therein, and replace that language with the statement that a resignation “will be effective when delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events.” This would allow Directors to submit resignations that are contingent upon both the Director not receiving majority vote in an uncontested election and the Board accepting such resignation (or some other event that could lead to the Director no longer intending to act as a Director at some point in the future due to the occurrence of some future event). After a director’s failure to receive the majority of properly cast votes, CBOE Holdings’ Nominating & Governance Committee then considers the resignation offer and recommends to the CBOE Holdings Board of Directors regarding whether to accept it. Within 90 days after the certification of the election

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<sup>3</sup> Pursuant to the “Board Election Process” section of CBOE Holdings’ Corporate Governance Guidelines (available at <http://ir.cboe.com/documentdisplay.cfm?DocumentID=7090>).

results, the Board of Directors will decide whether to accept or reject the resignation. Promptly thereafter, the Board will announce its decision by means of a press release.

Additionally, the Exchange is proposing some non-substantive changes to *Section 3.2* of the Bylaws for added clarity. For example, the term “Board” is being replaced with “Board of Directors” in two places to add clarity. Also, the phrase “Directors will serve one-year terms ending on the annual meeting following the meeting at which such directors were elected or at such time as their successors are elected or appointed and qualified...” is being replaced with “Directors shall be elected annually and shall hold office until the next annual meeting and until such time as their successors are elected or appointed and qualified” to avoid confusion regarding the term length and to clarify until when elected directors hold office. This change will clarify that terms are not necessarily for one year, but until the next annual meeting (which may not be exactly one year from the date of the previous meeting), and that there may be holdover directors until their successors are elected or appointed and qualified (except in the event of earlier death, resignation or removal).

As CBOE Holdings is listed on the NASDAQ Stock Market, these proposed changes are not inconsistent with the NASDAQ listing rules.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

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<sup>4</sup> 15 U.S.C. 78f(b).

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)<sup>6</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, for purposes of an uncontested election, the proposed amendments adopt a majority vote standard for director elections for the Exchange's parent company, which would enable its directors to be elected in a manner that the Board of Directors believes is reflective of the desires of shareholders and provide a mechanism to protect against the election of directors by less than the majority vote of the shareholders.

The proposed rule change to amend CBOE Holdings' Bylaws to adopt a majority vote standard for uncontested elections is consistent with the Act because the proposed change is designed to allow the members of the Board of Directors to be elected in a manner that the Board of Directors believes closely reflects the desires of its shareholders (as well as a manner in which uncontested Board of Director elections are conducted for the majority of large public companies in the United States), while also providing a process for addressing the circumstance when a director fails to receive a majority of the votes in an uncontested election. The plurality standard would continue to apply in contested elections.

The proposed non-substantive changes to the Bylaws are intended to enhance clarity and prevent confusion, thereby removing impediments to and perfecting the mechanism of a free and

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<sup>5</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, protecting investors and the public interest.

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 change does not impact either intermarket or intramarket competition, but instead is intended to enhance the governance of the Exchange's parent company.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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 Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

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<sup>6</sup> Id.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2014-001 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-C2-2014-001. 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 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2014-001 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.<sup>11</sup>

Kevin M. O’Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).