

(SECURITIES AND EXCHANGE COMMISSION)
(Release No. 34-80522; File No. SR-C2-2017-009)

April 25, 2017

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving a Proposed Rule Change to Amend the Bylaws and Certificate of Incorporation

I. Introduction

On February 22, 2017, 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 Bylaws³ and Certificate of Incorporation.⁴ The Commission published the proposed rule change for comment in the Federal Register on March 13, 2017.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

First, the Exchange proposes to amend its Bylaws relating to the Board of Directors (“Board”) size range. Currently, Section 3.1 of the Bylaws provides that the Board shall consist of not less than 12 and not more than 16 directors. The Exchange proposes to change the Board size range such that the Board shall consist of no less than five directors. The Exchange also proposes to make conforming changes to its Certificate of Incorporation by amending

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amended and Restated Bylaws of C2 Options Exchange, Incorporated (“Bylaws”).

⁴ See Amended and Restated Certificate of Incorporation of C2 Options Exchange, Incorporated (“Certificate of Incorporation”).

⁵ See Securities Exchange Act Release No. 80166 (March 7, 2017), 82 FR 13518 (“Notice”).

subparagraph (b) of Article Fifth to also provide that the Board shall consist of not less than five directors and to eliminate the current referenced range of 12 to 16 directors.⁶

Second, the Exchange proposes to eliminate the Exchange-level Compensation Committee. C2 is proposing to delete Section 4.3 of the Bylaws, which provides for the C2 Compensation Committee, and to delete a reference to the C2 Compensation Committee in Section 4.1(a) of the Bylaws (which lists the required Board committees). C2 also proposes to eliminate the reference to the C2 Compensation Committee in Section 5.11 of the Bylaws, which provides that officers are entitled to salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board unless otherwise delegated to the Board's Compensation Committee or to senior management. The Exchange justifies eliminating the C2 Compensation Committee because its functions largely are duplicative of those of the Compensation Committee of its parent company, CBOE Holdings.⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act,⁸ and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,¹⁰ which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act

⁶ Id.

⁷ Id. at 13518-19. The Exchange notes that the composition of both committees currently are the same. See id. at 13518 n.6.

⁸ 15 U.S.C. 78f.

⁹ 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).

¹⁰ 15 U.S.C. 78f(b)(1).

and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(3) of the Act,¹¹ which requires that the rules of a national securities exchange assure a 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 Commission further finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles 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.

In particular, the Commission notes that the proposal to require at least five directors for the Board, rather than a required range of not less than 12 and not more than 16, is comparable to the board size requirements stipulated in the bylaws of at least one other exchange, which was approved by the Commission.¹³ Importantly, the Exchange represents that it is not proposing to amend any of the compositional requirements of the Board, including its provision relating to the fair representation of members, which are set forth in Section 3.2 of the Bylaws.¹⁴ The

¹¹ 15 U.S.C. 78f(b)(3).

¹² 15 U.S.C. 78f(b)(5).

¹³ See Securities Exchange Act Release No. 69884 (June 27, 2013), 78 FR 40255 (July 3, 2013) (SR-BYX-2013-013) (providing that the BATS Y-Exchange board of directors will consist of four or more directors).

¹⁴ See Notice, supra note 5, at 13518.

Commission notes that the Exchange represents that, while the proposal provides the Board with greater flexibility to determine the size of the Board without amending the Bylaws, it will continue to allow the Exchange to ensure that the Board is of adequate size and includes directors with relevant and diverse experience.¹⁵ The Exchange also notes that it has no current plans to change the size of its Board outside of the original range of 12–16 directors.¹⁶

With regard to the proposal to eliminate the C2 Compensation Committee, the Commission notes that this change is comparable to the governing structures of other exchanges, which the Commission has previously approved.¹⁷ As more fully set forth in the Notice, the Exchange explains that the C2 Compensation Committee’s responsibilities largely are duplicative of those of the corresponding Compensation Committee of CBOE Holdings, other than to the extent that the C2 Compensation Committee recommends the compensation of executive officers whose compensation is not already determined by the CBOE Holdings Compensation Committee.¹⁸ Accordingly, under the proposed rule change, such functions now will be performed by the CBOE Holdings Compensation Committee or as otherwise provided in the Bylaws.¹⁹ The Commission notes that the Exchange represents that currently, each of the executive officers whose compensation would need to be determined by the Compensation Committee are officers of both C2 and CBOE Holdings, but should compensation need to be determined in the future for any C2 officer who is not also a CBOE Holdings officer, the C2

¹⁵ See id. at 13519.

¹⁶ See id. at 13518 n.3.

¹⁷ See e.g., Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR-NASDAQ-2009-042); see also Securities Exchange Act Release No. 62304 (June 16, 2010), 75 FR 36136 (June 24, 2010) (SR-NYSEArca-2010-31).

¹⁸ See Notice, supra note 5, at 13518-9.

¹⁹ Id.

Board or C2 senior management will perform such action without the use of a compensation committee, as provided for in Section 5.11 of the Bylaws.²⁰ Further, the Commission notes that the C2 Regulatory Oversight and Compliance Committee (“ROCC”) of the Board will continue to recommend to the Board the compensation for the Chief Regulatory Officer and any Deputy Chief Regulatory Officers, and this process is not be affected by this proposed rule change.

For the reasons noted above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-C2-2017-009) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

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Assistant Secretary

²⁰ See Bylaws Section 5.11 (providing that “[o]fficers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board unless otherwise delegated to the Compensation Committee of the Board or to members of senior management”).

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).