

SECURITIES AND EXCHANGE COMMISSION
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November 20, 2017

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to its Nominating and Governance Committee and Regulatory Oversight and Compliance Committee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 14, 2017, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 its governance documents with respect to changes relating to its director nomination and committee appointment process, its Nominating and Governance Committee and its Regulatory Oversight and Compliance Committee.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.c2exchange.com/Legal/>), 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Bylaws and Certificate. Specifically the Exchange proposes to eliminate its Nominating and Governance Committee (“N&G Committee”), as well as amend the process by which (i) directors are elected, (ii) committee appointments are made and (iii) vacancies are filled. Additionally, the Exchange proposes to amend the name of the Regulatory Oversight and Compliance Committee (“ROCC”) and make other technical, non-substantive changes.

Elimination of Nominating and Governance Committee

(a) Nomination of Directors

By way of background, Section 4.3 of the Bylaws provides, among other things, that the Exchange N&G Committee shall consist of at least five directors that are majority Non-Industry Directors and are appointed by the Board on the recommendation of the N&G Committee. Section 4.3 of the Bylaws also provides that the N&G Committee shall have the authority to nominate individuals for election as directors of the Corporation and such other duties as prescribed by resolution of the Board.³ Additionally, if the N&G Committee has two or more Industry Directors, those Industry Directors shall act as the Representative Director Nominating Body, which body is responsible for the nomination of the Representative Directors. If however,

³ Article Fifth, subparagraph (c) of the Certificate also provides that the N&G Committee nominates persons for election as directors.

there are less than two Industry Directors on the N&G Committee, then the Trading Permit Holder Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body.⁴ The N&G Committee is bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.⁵ Pursuant to Section 3.1 of the Bylaws, the N&G Committee is also responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the N&G Committee, subject to review, if any, by the Board, is final.

The Exchange first proposes to eliminate its N&G Committee and amend the process by which Directors are nominated and elected. Specifically, the Exchange proposes to provide that the sole stockholder of the exchange shall nominate and elect directors for nomination at the annual meeting of the stockholder, except with respect to fair-representation directors (“Representative Directors”) as described below. The Exchange notes that another Exchange similarly does not maintain an exchange-level nominating committee and instead provides that the sole stockholder of the Exchange nominates and elects their non-fair representation Directors.⁶ With respect to the nomination of Representative Directors, the Exchange proposes to amend the definition of “Representative Director Nominating Body” and provide that if the Board has two or more Industry Directors, excluding directors that are exchange employees,

⁴ See Sections 1.1(k) and 4.3 of the Bylaws. Section 3.2 of the Bylaws sets forth a detailed process for the nomination and selection of fair representation directors for the Board of Directors.

⁵ See Sections 3.1 and 3.2 of the Bylaws and Article Fifth, subparagraph (c) of the Certificate.

⁶ See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

those Industry Directors shall act as the Representative Director Nominating Body. Additionally, similar to today's practice, if there are less than two Industry Directors on the Board (excluding directors that are employees of the Exchange), then the Trading Permit Holder Subcommittee of the Advisory Board shall act as the Representative Director Nominating Body. The Bylaws and Certificate will also be amended to provide that the sole stockholder is bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election. Lastly, as the N&G Committee is being eliminated, the Exchange proposes to amend Section 3.1 of the Bylaws to provide that the Board, instead of the N&G Committee, is responsible for determining whether a director candidate satisfies the applicable qualifications for election as a director, and the decision of the Board, is final. There are no other changes with respect to the process for the nomination and selection of Representative Directors. The Exchange notes that it believes that the proposed changes continue to give Exchange members a voice in the Exchange's use of self-regulatory authority.

(b) Committee Appointments

The N&G Committee is also currently responsible for recommending to the Board of Directors appointments to certain Committees. Specifically, Section 4.2 and Section 6.1 of the Bylaws provides that the members of the Executive Committee and Advisory Board, respectively, be recommended by the N&G Committee for approval by the Board. Pursuant to Section 4.4 of the Bylaws, members of the ROCC are recommended by the Non-Industry Directors on the N&G Committee for approval by the Board.

In light of the elimination of the N&G Committee, the Exchange proposes to eliminate

references to the N&G Committee with respect to committee appointments and transfer the N&G's current authority to the Board (or appropriate subcommittee of the Board). Specifically the Exchange proposes that members of the Executive Committee and Advisory Board be appointed by the Board and members of the ROCC be appointed by the Board on the recommendation of the Non-Industry Directors of the Board. The Exchange notes that Boards of other Exchanges also have authority to appoint Board Committees.⁷

Filling of Director Vacancies

Next, the Exchange proposes to amend the process to fill Director vacancies. Currently, Sections 3.4 of the Bylaws provides that in the event any Industry Director or Non-Industry Director fails to maintain the qualifications required for such category of director, his office shall become vacant and the vacancy may be filled by the Board with a person who qualifies for the category in which the vacancy exists. If a director is determined to have requalified, Section 3.4 provides the Board, in its sole discretion, may fill an existing vacancy in the Board or may increase the size of the Board, as necessary, to appoint such director to the Board; provided, however, that the Board shall be under no obligation to return such director to the Board.

Section 3.5 of the Bylaws also provides that a vacancy on the Board may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. Additionally, for vacancies of Representative Directors, the Representative Director Nominating Body will recommend an individual to be elected, or provide a list of recommended individuals, and the position shall be filled by the vote of a majority of the Directors then in office. Consistent with the proposal to have the sole stockholder nominate and elect directors to the Board (and to be bound to accept and elect the

⁷ See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

Representative Director Nominating Body’s nominee(s)), the Exchange wishes to provide that the sole stockholder, instead of the Board, will also have the ability to fill the above described Director vacancies.

Regulatory Oversight and Compliance Committee Changes

The Exchange proposes to change the name of the “Regulatory Oversight and Compliance Committee” (“ROCC”) to the “Regulatory Oversight Committee” (“ROC”). The Exchange notes that there may be overlap and duplication of reports from the Compliance Department to the parent company Audit Committee and the Exchange ROCC. To address this issue, going forward, the Cboe Global Markets Audit Committee will be the “go to” Board committee for reports from the Chief Compliance Officer (“CCO”) related to compliance matters. As such, the Exchange proposes to drop the reference of “Compliance” in “ROCC” in the Bylaws. The Exchange notes that the reporting function of the CCO to the ROC will be permissive. The Exchange also notes that the regulatory oversight committees of its affiliated exchanges does not use the term “Compliance” in their Committees’ name.⁸

Technical, Non-Substantive Changes

Lastly, the Exchange proposes to change the Exchange’s name in the title and signature line in its Certificate from “C2 Options Exchange, Incorporated” to Cboe C2 Exchange, Inc.” The Exchange notes that it recently changed its legal name, but was unable to update the Exchange’s name in the title or signature line in its Certificate as the name changes were not effective until the Exchange, as previously named, filed the proposed changes in Delaware. The Exchange had noted in the filing that proposed the name changes that it would later amend the Certificate to reflect the new name in the title and signature line and the

⁸ See Section 4.4 of the Bylaws of Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc. and Cboe EDGX Exchange, Inc.

Exchange is seeking to do so now. Pursuant to Delaware law, the Exchange is also adding a reference to its original name in the introductory paragraph of the Certificate.⁹

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(1) of the Act in particular, in that it enables the Exchange 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

⁹ See Section 245(c) of the Delaware General Corporation Law (DGCL).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² Id.

the Exchange. The Exchange also believes that this proposal furthers the objectives of Section 6(b)(3)¹³ of the Act in particular, in that it is designed to assure a fair representation of Exchange Members in the selection of its directors and administration of its affairs and provide that one or more directors would be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. For instance, the proposed changes continue to include a process by which Exchange members can directly petition and vote for representation on the Board.

The Exchange believes eliminating the exchange-level N&G Committee allows the Exchange to eliminate a board committee whose core responsibilities can be adequately handled by its sole stockholder or Board, as applicable. The Exchange believes the elimination of this board committee will streamline, make more efficient, and improve the Exchange's governance structure and allow directors of the Exchange to continue to focus their attention on matters within the purview of the Exchange's board including its orderly discharge of regulatory duties 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. The Exchange also notes that it is not statutorily required to maintain a standing nominating committee. Indeed, another Exchange similarly does not do so and instead provides that its sole stockholder nominates and elects its non-fair representation directors.¹⁴ Other Exchanges also

¹³ 15 U.S.C. 78f(b)(3).

¹⁴ See Section 3.02 of the Amended and Restated NYSE Arca, Inc. Bylaws.

provide that their Board, without input from a nominating committee, appoint members to committees.¹⁵ The Exchange also believes that since it is being proposed that the sole stockholder have the authority to nominate (and elect) directors to the Board (and accept and elect Representative Director nominees), it is also consistent to transfer the authority to fill director vacancies from the Board to the sole stockholder.

The Exchange importantly notes that it is not proposing to amend any of the compositional requirements currently set forth in the Bylaws and that notwithstanding the proposed changes, existing compositional requirements of the Exchange will still be required to be satisfied, including the provision relating to the fair representation of members. While the delegation of the authority relating to the (i) nomination and election of directors, (ii) nominating body for Representative Directors, (iii) filling of Director vacancies and (iv) appointment of committees is being modified, the substantive practices of the Exchange will remain the same. For example, the sole stockholder will be bound to nominate and elect the Representative Directors nominees recommended by the Representative Director Nominating Body or, in the event of a petition candidate, the Representative Director nominees who receive the most votes pursuant to a Run-off Election.

The Exchange believes eliminating the reference to “Compliance” in the ROCC’s name is appropriate and will reduce potential confusion given that the CCO is no longer required to (but may) report to the ROCC. The Exchange notes that the new name is also consistent with the name of the regulatory oversight committee of its affiliated exchanges.¹⁶ Lastly, the Exchange

¹⁵ See e.g., Eleventh Amended and Restated Operating Agreement of New York Stock Exchange, LLC, Section 2.03(h) and By-Laws of Nasdaq Phlx LLC, Section 5-3.

¹⁶ See Section 4.4 of the Bylaws of Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc. and Cboe EDGX Exchange, Inc.

believes updating the Exchange's name in the title and signature line of its Certificate and adding a reference to its original name in the introductory paragraph of the Certificate, allows the Exchange to comply with Delaware law and reduce potential confusion. The alleviation of confusion removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest of market participants.

The Exchange believes the proposed changes do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons in any way.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of the Exchange and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-C2-2017-030 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-C2-2017-030. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2017-030, and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).