

SECURITIES AND EXCHANGE COMMISSION
(Release No: 34-82952; File No. SR-C2-2018-004)

March 27, 2018

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Concerning an Affiliation between the Exchange and Cboe Trading and to Adopt Rules to Permit Inbound Routing by Cboe Trading

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 March 12, 2018, Cboe C2 Exchange, Inc. (the “Exchange” or “C2 Options”) 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 and, for the reasons discussed below, is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rules related to the inbound router for C2 Options.

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 proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks: (1) to adopt Rule 3.18 to govern the Exchange’s receipt of inbound options orders from the Exchange’s affiliate broker-dealer, Cboe Trading, Inc. (“Cboe Trading”), on behalf of the Exchange’s affiliate options exchanges, Cboe EDGX Exchange, Inc. (“EDGX Options”) and Cboe BZX Exchange, Inc. (“BZX Options) and (2) approval from the Securities and Exchange Commission (the “Commission”) pursuant to Rule 3.2(f) for affiliate Cboe Trading to become a Trading Permit Holder of the Exchange.

Proposed Rule 3.18 is based on EDGX Options Rule 2.12. Pursuant to proposed Rule 3.18, Cboe Trading’s inbound routing services from EDGX Options and BZX Options to the Exchange would be subject to the following conditions and limitations: (1) The Exchange must enter into (a) a plan pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated self-regulatory organization³ and (b) a regulatory services contract with a non-affiliated SRO to perform regulatory responsibilities for Cboe Trading for unique Exchange rules. (2) The regulatory services contract must require the Exchange to provide the non-affiliated self-regulatory organization with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively, “Exceptions”) in which Cboe Trading is identified as a participant that has potentially violated Exchange or Commission rules, and shall require that the non-affiliated self-

³ The Exchange will ensure a 17d-2 plan is in place prior to offering inbound routing from Cboe Trading.

regulatory organization provide a report to the Exchange quantifying all such exception reports, alerts, complaints, trading errors, cancellations, investigations and enforcement matters on not less than a quarterly basis. (3) The Exchange, on behalf of its parent company, Cboe Global Markets, must establish and maintain procedures and internal controls reasonably designed to ensure that Cboe Trading does not develop or implement changes to its systems on the basis of nonpublic information obtained as a result of its affiliation with the Exchange until such information is available generally to similarly situated Trading Permit Holders of the Exchange.

The Exchange will comply with the above-listed conditions prior to offering inbound routing from Cboe Trading. In meeting the conditions, the Exchange will have mechanisms in place to protect the independence of the Exchange's regulatory responsibility with respect to Cboe Trading, as well as demonstrate that Cboe Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage.

Exchange Rule 3.2(f) provides that without prior Commission approval, no Trading Permit Holder may be or become affiliated with the Exchange. The Exchange seeks Commission approval for Exchange affiliate Cboe Trading to become a Trading Permit Holder of the Exchange pursuant to Rule 3.2(f).

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.⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

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

In particular, the Exchange believes that the rule change promotes the maintenance of a fair and orderly market, the protection of investors and the public interest, and is in the best interests of the Exchange and its Trading Permit Holders as it will allow the routing of orders from affiliated exchanges, BZX Options and EDGX Options, to the Exchange. Moreover, in meeting the requirements of Rule 3.18 (i.e., the 17d-2 plan, the regulatory services contract, and procedures and internal controls) the Exchange believes it will have mechanisms in place that protect the independence of the Exchange's regulatory responsibility with respect to Cboe Trading, as well as demonstrates that Cboe Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage.

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

C2 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 Exchange does not believe the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of Act as the proposed rule is based on EDGX Options Rule 2.12 and BZX Options Rule 2.12 [sic], which allow [sic] EDGX

⁶ Id.

Options and BZX Options to receive orders from affiliate Cboe Trading on behalf of affiliate exchanges. Moreover, the requirements of Rule 3.18 (i.e., the 17d-2 plan, the regulatory services contract, and procedures and internal controls) help to prevent an unfair burden on competition and unfair discrimination between customers, issuers, brokers, or dealers.

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. 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-C2-2018-004 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-C2-2018-004. 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-C2-2018-004, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of

⁷ 15 U.S.C. 78f(b). 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).

⁸ 15 U.S.C. 78f(b)(1).

the Act,⁹ which requires, among other things, that the rules of a national securities 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange has proposed limitations and conditions to Cboe Trading's affiliation with the Exchange to permit the Exchange to accept routed orders that Cboe Trading would route in its capacity as a facility of C2.

Specifically, as detailed above, the Exchange committed to the following limitations and conditions:

- The Exchange shall enter into a plan pursuant to Rule 17d-2 under the Act with a non-affiliated self-regulatory organization ("SRO") and ensure that such plan is operative before offering routing services through Cboe Trading. The 17d-2 plan will relieve the Exchange of regulatory responsibilities with respect to Cboe Trading for rules that are common rules between the Exchange and the non-affiliated SRO. In addition, the Exchange shall enter into a regulatory services agreement ("RSA") with a non-affiliated

⁹ 15 U.S.C. 78f(b)(5).

SRO to perform regulatory responsibilities for Cboe Trading for unique Exchange rules that are not common rules under the 17d-2 plan.

- The RSA shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively “Exceptions”) in which Cboe Trading is identified as a participant that has potentially violated Exchange or Commission rules, and shall require that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which Cboe Trading is identified as a participant that has potentially violated Exchange or Commission rules.
- The Exchange, on behalf of Cboe Trading, shall establish and maintain procedures and internal controls reasonably designed to ensure that Cboe Trading does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange in connection with the provision of order routing to or from the Exchange.

As the Exchange represents above, the Exchange believes that the above conditions will protect the independence of the Exchange’s regulatory responsibility with respect to Cboe Trading and ensure that Cboe Trading cannot use any information that it may have because of its affiliation with the Exchange to its advantage.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair

competitive advantage.¹⁰ To address these concerns, the Exchange has proposed ongoing conditions applicable to Cboe Trading's routing activities in its capacity as a facility of C2, which are enumerated above. The Commission believes that these conditions are designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that a non-affiliated SRO's oversight of Cboe Trading, combined with a non-affiliated SRO's monitoring of Cboe Trading's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to Cboe Trading. The Commission also believes that the Exchange's proposal is designed to ensure that the Exchange will not permit Cboe Trading to have any information advantage on account of its affiliation with the Exchange.

Finally, Exchange Rule 3.2(f) provides that, without prior Commission approval, no Trading Permit Holder may be or become affiliated with the Exchange. The Exchange now seeks Commission approval for its affiliate, Cboe Trading, to become a Trading Permit Holder of

¹⁰ See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62 and SR-NYSE-2008-60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10-182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and 10-196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10-198) (order granting the exchange registration of BATS-Y Exchange, Inc.).

the Exchange pursuant to Rule 3.2(f) so that its affiliate may provide routing services as a facility of the Exchange. Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed above, the Commission believes that it is consistent with the Act to permit Cboe Trading to become affiliated with the Exchange, in the capacity of a facility of C2, for the purposes of providing routing services for the Exchange subject to the conditions described above.¹¹

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the 30th day after publication of the notice thereof in the Federal Register. The Exchange stated that accelerated approval of its proposal will facilitate the Exchange's plans to migrate C2 Options to Bats technology in May 2018.

The Commission notes that Cboe Trading, formerly known as Bats Trading, Inc.,¹² serves as the routing facility for the Exchange's affiliate options exchanges, EDGX Options and BZX

¹¹ The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. See, e.g., Securities Exchange Act Release Nos. 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR-BX-2011-007); 66808 (April 13, 2012), 77 FR 23294 (April 18, 2012) (SR-BATS-2012-013); 66807 (April 13, 2012), 77 FR 23300 (April 18, 2012) (SR-BYX-2012-006); 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030); 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR-NASDAQ-2013-028); 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR-BX-2013-013); 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR-Phlx-2013-15); and 68970 (June 27, 2013), 78 FR 40225 (July 3, 2013) (SR-EDGX-2013-17).

¹² See Securities Exchange Act Release No. 81952 (October 26, 2017), 82 FR 50725 (November 1, 2017) (SR-BatsBYX-2017-27).

Options and is subject to substantively identical conditions and limitations by those exchanges.¹³ The Exchange's current proposal is intended to allow Cboe Trading to perform an identical role for the Exchange as to which it currently performs for EDGX Options and BZX Options, including accepting routed orders sent from EDGX Options and BZX Options to the Exchange.

The Commission believes that good cause exists for accelerated approval of the proposed rule change because it raises no novel issues, as the Exchange is adopting the same conditions and limitations that EDGX Options and BZX Options have adopted for Cboe Trading.¹⁴ Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁵ to approve the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the Federal Register.

¹³ See EDGX Options Rule 2.12 (Cboe Trading, Inc. as Inbound Router) and BZX Options Rule 2.12 (Cboe Trading, Inc. as Inbound Router). See also EDGX Options Rule 2.11 (Cboe Trading, Inc. as Outbound Router) and BZX Options Rule 2.11 (Cboe Trading, Inc. as Outbound Router).

¹⁴ The Commission notes that it did not receive any comments on a substantively identical proposal from EDGX Options with respect to inbound routing from Cboe Trading. See Securities Exchange Act Release No. 69870 (June 27, 2013), 78 FR 40225 (July 3, 2013) (SR-EDGX-2013-17).

¹⁵ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-C2-2018-004) be, and hereby is, approved on an accelerated basis.

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

Jill M. Peterson
Assistant Secretary

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).