

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90077; File No. SR-C2-2020-011)

October 2, 2020

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Fifth Amended and Restated Bylaws of the Exchange's Parent Corporation, Cboe Global Markets, Inc.

I. Introduction

On July 30, 2020, Cboe C2 Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Fifth Amended and Restated Bylaws (the "Parent Bylaws") of its parent corporation, Cboe Global Markets, Inc. (the "Parent"). The proposed rule change was published for comment in the Federal Register on August 19, 2020.³ The Commission received no comment letters regarding the proposed rule change. On September 24, 2020, the Exchange filed Amendment No. 1 to the proposal.⁴ The Commission is publishing this notice to solicit comments on Amendment No. 1

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89547 (August 13, 2020), 85 FR 51100 ("Notice").

⁴ In Amendment No. 1, the Exchange provided additional detail and clarity on a few points without materially changing the proposal or the proposed rule text. Specifically, in Amendment No. 1, the Exchange: (i) provided additional support for its proposed restrictions on the use of audio, video, and cell phones during stockholder meetings, including information on past practice by the Exchange, underlying authority for such restrictions in the current Parent Bylaws, and comparison to the practices of other Delaware-incorporated public companies; (ii) clarified that the provisions of proposed Section 3.15 are subject to existing Section 10.2, including a representation that emergency Bylaw amendments made pursuant to proposed Section 3.15(g) may need to be filed pursuant to Section 19 of the Exchange Act; (iii) clarified that proposed Section 3.15 is meant to provide short-term flexibility to continue operations during the initial stage of an emergency situation, and that proposed paragraph (f) makes clear that, as soon as it is

from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description

The Exchange proposed certain amendments to the Parent Bylaws that, according to the Exchange, would “improve the governance processes” of the Parent and “make certain provisions more consistent with the Delaware General Corporation Law (“DGCL”).”⁵ According to the Exchange, many of the proposed changes reflect corporate governance best practices and, in some instances, provide clarity and flexibility to the Parent Bylaws.⁶

Proposed Changes to Article 2 - Stockholders⁷

The majority of the proposed changes amend Section 2.11 (Nomination of Directors) and Section 2.12 (Notice of Business at Annual Meetings). According to the Exchange, the changes are designed to reflect the most up-to-date practices under the DGCL and provide the Board with additional information and advance notice in connection with nominations and the conduct of business at annual and special meetings. In particular, the Exchange combines current Section 2.12 into Section 2.11 and amends provisions that govern notice requirements for annual and special meetings, as well as provisions that provide general procedures and practices in connection with

practicable for a majority of the elected directors to reconvene, they would be expected to do so; and (iv) added further explanation of the provision in proposed Section 4.1 regarding the limitation of the power and authority vested in a Board committee in the management of the business and affairs of the Parent. To promote transparency of its proposed amendment, when the Exchange filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the filing, which then became publicly available on the Commission’s website.

⁵ See Notice, supra note 3, at 51100.

⁶ See Notice, supra note 3.

⁷ See Notice, supra note 3, for a discussion of the detailed proposed changes to Article 2 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

notices. The proposed delineation does not alter the process or definition of either type of meeting, but instead provides for significantly more detailed written notice requirements as well as updates to the manner and timeliness of notices.

Additionally, as detailed further in the Notice, the proposed rule change relocates and expands text concerning nominees for directors and elections of directors, as well as amends provisions concerning the place of annual and special meetings and the adjournment of meetings.⁸

Further, the Exchange proposes to update provisions that govern the preparing of the voting list, the ability of the Board to appoint a director to preside over meetings in the absence of the Chairman of the Board, and provisions concerning the procedural authority of the presiding officer at any stockholder meeting.⁹

Proposed Changes to Article 3 - Directors¹⁰

The proposed rule change amends provisions concerning director vacancies, notice for special meetings of the Board, and the routine filing of consents following an action by the Board.¹¹

The proposed change also adds new Section 3.15 (Emergency Bylaws). In particular, that new section provides certain temporary emergency provisions that would apply at the outset of an emergency, disaster, or catastrophe, notwithstanding anything to the contrary in the Certificate of Incorporation or the Bylaws, only for so long as a quorum of the Board cannot readily be convened

⁸ See Notice, supra note 3, at 51103. See also Section 2.10 (Action at Meeting), 2.11 (Notice of Business and Nomination of Directors at Meetings of Stockholders), 2.1 (Place of Meetings), 2.2 (Annual Meeting), 2.3 (Special Meeting), and 2.7 (Adjournments).

⁹ See also Amendment No. 1 (concerning restrictions on the use of audio, video, and cell phones during stockholder meetings).

¹⁰ See Notice, supra note 3, for a discussion of the detailed proposed changes to Article 3 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

¹¹ See Section 3.5 (Vacancies), Section 3.10 (Special Meetings), and Section 3.13 (Action by Consent). See also Notice, supra note 3, at 51103-04.

for action. The Exchange notes that proposed Section 3.15 is meant to provide the Parent with short-term flexibility to continue operations during an emergency situation, and that proposed paragraph (f) makes clear that, as soon as it is practicable for a majority of the elected directors to reconvene, they would be expected to do so.¹²

Proposed Changes to Article 4 – Committees¹³

The proposed rule change to Section 4.1 (Designation of Committees) adds language to reflect that the Board may designate one or more committees of the Board, and also adds text to address the absence or disqualification of committee members and allow committee members to unanimously appoint another Director to act at the meeting in place of any such absent or disqualified member. In addition, the Exchange proposes to add text to reflect the power and authority of Board committees.¹⁴

The proposed rule change to Section 4.2 (The Executive Committee) replaces a list of specific actions and matters that are not to be handled by the Executive Committee and replaces it with a reference to matters under the DGCL that are to be submitted to stockholders for approval.

The proposed change to Section 4.5 (The Nominating and Governance Committee) reduces the minimum size requirement of that committee from five members to three members.

Proposed Changes to Article 8 – Notices¹⁵

¹² See Amendment No. 1.

¹³ See Notice, supra note 3, for a discussion of the detailed proposed changes to Article 4 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

¹⁴ See Amendment No. 1 (noting that any Board committee may act only insofar as the resolution of the Board of Directors permits, which is consistent with how Article 4 currently operates).

¹⁵ See Notice, supra note 3, for a discussion of the detailed proposed changes to Article 8 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

The proposed rule changes in Section 8.1 (Notices) allow notices sent by messenger or overnight courier to be left at the recipient's address and also updates language concerning delivery by electronic mail and when electronic mail delivery is not allowed. The Exchange also proposes to amend Section 8.2 (Electronic Notice) to allow for electronic delivery of materials to stockholders unless the stockholder has opted-out of electronic transmission (currently, electronic transmission is permitted only when a stockholder has opted-in to electronic delivery).

Proposed Rule Changes to Article 11 – Forum for Adjudication of Disputes¹⁶

The proposed rule changes to Article 11 add clarifying provisions and additional detail regarding the exclusive forum for adjudication of disputes.

Finally, the proposed rule change makes non-substantive edits to the Parent Bylaws, including updating paragraph lettering and numbering and ensuring consistent use of defined terms.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Act,¹⁸ which requires, that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and

¹⁶ See Notice, supra note 3, for a discussion of the detailed proposed changes to Article 11 and the DGCL provisions and/or rules of other exchanges on which they are modeled.

¹⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(1).

persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change reflects the Exchange's stated goals to improve the governance process of the Parent and update the Parent Bylaws to reflect and track the DGCL and current best practices.¹⁹ The Exchange has represented that it does not believe the proposed rule changes are controversial and that the proposed provisions are common among comparable public companies.²⁰

The Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act, including Section 6(b)(1) thereunder, in that the Exchange, and its Parent on the Exchange's behalf as applicable, will remain so organized and have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

While proposed Section 3.15 will provide the Parent with special limited powers to ensure continued operations at the onset of an emergency situation that otherwise prevents the Board from obtaining the necessary quorum to convene and exercise its power, that section is intended only to provide limited short-term flexibility to ensuring continue operations of the Parent during the initial stage of the emergency situation. Pursuant to proposed paragraph (f), a majority of the elected directors are expected to reconvene as soon as it is possible to do so. In addition, the provisions in

¹⁹ See Notice, supra note 3, at 51105.

²⁰ The Exchange represents that other public companies have provisions similar to what it is proposing, and that some of its proposed rule changes have been adopted by other securities and commodities exchanges, including Nasdaq, Inc., Intercontinental Exchange, and the CME Group, Inc. Id.

new Section 3.15 concerning amendments to the Parent Bylaws remain subject to existing Section 10.2 and, as applicable, the rule filing requirements of Section 19 of the Act.²¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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-C2-2020-011 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-C2-2020-011. 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

²¹ 15 U.S.C. 78s. See also Amendment No. 1.

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-C2-2020-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30th day after the date of publication of notice in the Federal Register. Amendment No. 1 provided additional detail and clarity on a few points without materially changing the proposal or the proposed rule text.²² The Commission notes that Amendment No. 1 does not change the substance of the proposed rule change as it was initially filed, but merely adds detail to a few select items of the proposal regarding their intended scope. These points of clarification add helpful detail to support the proposal without materially altering it. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.²³

²² See supra note 4 for a description of Amendment No. 1.

²³ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change, as modified by Amendment No. 1 (SR-C2-2020-011), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier
Assistant Secretary

²⁴ Id.

²⁵ 17 CFR 200.30-3(a)(12).