

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61140; File No. SR-CBOE-2009-048)

December 10, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Regarding Authority over C2 Options Exchange, Incorporated

I. Introduction

On July 2, 2009, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) 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 relating to CBOE’s authority over C2 Options Exchange, Incorporated (“C2”), a wholly-owned subsidiary of CBOE that has filed with the Commission to register as a self-regulatory organization (“SRO”) under Section 6 of the Exchange Act.³ The proposed rule change was published for comment in the Federal Register on July 22, 2009.⁴ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description

On January 21, 2009, CBOE filed an application with the Commission seeking registration of a second national securities exchange, referred to as C2.⁵ In connection with that application, CBOE proposed to adopt a policy to codify the fact that CBOE, upon any Commission approval of the Form 1 application seeking to establish C2 as a registered options

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities and Exchange Act Release No. 59441 (February 24, 2009), 74 FR 9322 (March 3, 2009) (File No. 10-191) (“C2 Notice”).

⁴ See Securities Exchange Act Release No. 60307 (July 15, 2009), 74 FR 36289 (“Notice”).

⁵ See C2 Notice, supra note 3.

exchange, will be responsible for ensuring that C2 fulfills its self-regulatory obligations and will have the resources necessary for it to do so.⁶ The proposed policy sets forth certain principles that will guide CBOE in fulfilling its responsibilities as the parent company of C2 should the Commission grant C2's application for registration.⁷

III. Discussion and Commission's Findings

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.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to

⁶ The first paragraph of proposed Rule 2.50 reads, in relevant part:

C2 Options Exchange, Incorporated ("C2") will be and remain a self-regulatory organization registered under Section 6 of the Exchange Act and as such will have statutory authority and responsibility concerning, among other things, the operation of its market and regulation of its members. As the parent company with 100% controlling interest in C2, the Exchange will be responsible for ensuring that C2 meets its obligations as a self-regulatory organization.

⁷ The proposed principles set forth in proposed Rule 2.50 are as follows:

1. The Exchange will exercise its powers and its managerial influence to ensure that C2 fulfills its self-regulatory obligations by:

Directing C2 to take action necessary to effectuate its purposes and functions as a national securities exchange operating pursuant to the Exchange Act; and ensuring that C2 has and appropriately allocates such financial, technological, technical, and personnel resources as may be necessary or appropriate to meet its obligations under the Exchange Act.

2. The Exchange will refrain from taking any action with respect to C2 that, to the best of its knowledge, would impede, delay, obstruct, or conflict with efforts by C2 to carry out its self-regulatory obligations under the Exchange Act and the rules and regulations thereunder.

⁸ 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).

⁹ 15 U.S.C. 78f(b)(5).

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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal addresses the role of CBOE in the operation of C2 and sets forth certain important governing principles relating to this responsibility.¹⁰ The proposed policy reflects CBOE's commitment and responsibility to ensure that C2 meets its obligations as an SRO. Specifically, CBOE's proposed policy represents that it will bear ultimate responsibility for ensuring that C2 meets its statutory obligations. Further, CBOE will ensure that C2 has and appropriately allocates the necessary resources so that C2 can meet those obligations. The Commission believes it is consistent with the Act for CBOE, as parent company and controlling owner of C2, to make these commitments. Further, the Commission notes that the proposed policy is similar to a policy that was formerly adopted by the National Association of Securities Dealers, Inc. in connection with its combination with the American Stock Exchange, Inc.¹¹

¹⁰ See note 7, *supra* (setting forth the proposed principles).

¹¹ See Securities and Exchange Act Release No. 40622 (October 30, 1998), 63 FR 59819 at 59827 (November 5, 1998) (SR-Amex-98-32; SR-NASD-98-56; SR-NASD-98-67).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CBOE-2009-048) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).