

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79591; File Nos. SR-CBOE-2016-076; SR-C2-2016-022)

December 19, 2016

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; C2 Options Exchange, Incorporated; Order Approving a Proposed Rule Change in Connection with a Proposed Corporate Transaction Involving CBOE Holdings, Inc. and Bats Global Markets, Inc.

I. Introduction

On November 4, 2016, Chicago Board Options Exchange, Incorporated (“CBOE”) and C2 Options Exchange, Incorporated (“C2” and, together with CBOE, the “CBOE Exchanges”) each filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ proposed rule changes in connection with the proposed corporate transaction (the “Transaction”), as described in more detail below, involving their ultimate parent company, CBOE Holdings, Inc. (“CBOE Holdings”), two wholly owned subsidiaries of CBOE Holdings, CBOE Corporation and CBOE V, LLC (“CBOE V”), and Bats Global Markets, Inc. (“BGM”). BGM is the ultimate parent company of Bats BZX Exchange, Inc. (“Bats BZX”), Bats BYX Exchange, Inc. (“Bats BYX”), Bats EDGX Exchange, Inc. (“Bats EDGX”), and Bats EDGA Exchange, Inc. (“Bats EDGA” and, together with Bats BZX, Bats BYX, and Bats EDGX, the “Bats Exchanges”). Upon completion of the Transaction (the “Closing”), CBOE Holdings will become the ultimate parent of the Bats Exchanges. The proposed rule changes were published for comment in the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Federal Register on November 15, 2016.⁴ The Commission received no comments on the proposals.

II. Description of the Proposed Rule Changes

A. Corporate Structure

1. Current Structure

The CBOE Exchanges are each Delaware corporations that are national securities exchanges registered with the Commission pursuant to Section 6(a) of the Act.⁵ The CBOE Exchanges are each direct, wholly owned subsidiaries of CBOE Holdings, a publicly traded Delaware corporation. CBOE V is a Delaware limited liability company and a direct, wholly owned subsidiary of CBOE Holdings, which currently has no material assets and conducts no operations.

Each Bats Exchange is a Delaware corporation that is a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act.⁶ BGM is a publicly traded Delaware corporation and the ultimate parent of the Bats Exchanges.

2. The Transaction

On September 25, 2016, CBOE Holdings, CBOE Corporation, CBOE V, and BGM entered into an Agreement and Plan of Merger, as it may be amended from time to time (the “Merger Agreement”).⁷ Pursuant to and subject to the terms of the Merger Agreement, each share of BGM common stock (whether voting or non-voting) issued and outstanding (other than

⁴ See Securities Exchange Act Release Nos. 79268 (November 8, 2016), 81 FR 80157 (SR-CBOE-2016-076); and 79267 (November 8, 2016), 81 FR 80132 (SR-C2-2016-022) (“Notices”).

⁵ 15 U.S.C. 78f(a).

⁶ Id.

⁷ See Notices, supra note 4, at 80157 and 80132.

shares owned by CBOE Holdings, BGM, or any of their respective subsidiaries, and certain shares held by BGM stockholders that are entitled to and properly demand appraisal rights) will be converted into the right to receive a particular number of shares of CBOE Holdings common stock, an amount of cash, or a combination of both, at the election of the holder of such share of BGM common stock.⁸ BGM will ultimately merge with and into CBOE Holdings' wholly owned subsidiary CBOE V, at which time the separate existence of BGM will cease and CBOE V will be the surviving company.⁹

As a result of the Transaction, CBOE Holdings will be the ultimate parent of the Bats Exchanges, each of which will continue to operate separately.¹⁰ CBOE Holdings will continue to be a publicly owned company and the ultimate parent of the CBOE Exchanges, each of which will continue to operate separately.

B. Proposed Rule Change

Section 19(b) of the Act¹¹ and Rule 19b-4¹² thereunder require a self-regulatory organization (“SRO”) to file proposed rule changes with the Commission. Although CBOE Holdings is not an SRO, certain provisions of its certificate of incorporation and bylaws, along with other corporate documents, are rules of the CBOE Exchanges, as defined in Rule 19b-4

⁸ See id. at 80158 and 80133.

⁹ See id.

¹⁰ See id.; see also Securities Exchange Act Release Nos. 79266 (November 8, 2016), 81 FR 80101 (November 15, 2016) (SR-BatsBZX-2016-68); 79269 (November 8, 2016), 81 FR 80093 (November 15, 2016) (SR-BatsBYX-2016-29); 79265 (November 8, 2016), 81 FR 80146 (November 15, 2016) (SR-BatsEDGA-2016-24) and 79264 (November 8, 2016), 81 FR 80114 (November 15, 2016) (SR-BatsEDGX-2016-60) (notice of filing of proposed rule changes related to a corporate transaction involving BGM and CBOE Holdings).

¹¹ 15 U.S.C. 78s(b).

¹² 17 CFR 240.19b-4.

under the Act, and must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder. Accordingly, each of the CBOE Exchanges filed with the Commission to seek approval of a provision in the Merger Agreement regarding the composition of the CBOE Holdings Board upon Closing.

The CBOE Exchanges represented that in connection with the Transaction, CBOE Holdings agreed in the Merger Agreement to take all requisite actions so, as of the Closing, the CBOE Holdings Board will include three individuals designated by BGM who (1) are serving as BGM directors immediately prior to the Closing and (2) comply with the policies (including clarifications of the policies provided to BGM) of the Nominating and Governance Committee of the CBOE Holdings Board as in effect on the date of the Merger Agreement and previously provided to BGM (each of whom will be appointed to the CBOE Holdings Board as of the Closing).¹³ The CBOE Holdings Board currently consists of 14 directors.¹⁴ The CBOE Exchanges expect three current CBOE Holdings directors to resign prior to the Closing, at which point the CBOE Holdings Board will fill those vacancies by appointing the three individuals designated by BGM that have complied with the policies of the Nominating and Governance Committee of the CBOE Holdings Board.¹⁵

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and

¹³ See Notices, supra note 4, at 80158 and 80133.

¹⁴ See id.

¹⁵ See id.

regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule changes are consistent with Sections 6(b)(1) and (3) of the Act,¹⁷ which, among other things, require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the 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 CBOE Exchanges represented that the proposal is consistent with CBOE Holdings' governing documents previously filed with the Commission and noted that they are not proposing any changes to existing rules or governing documents of CBOE Holdings or the CBOE Exchanges.¹⁸ The CBOE Exchanges' proposed rule changes are limited to the provision in the Merger Agreement regarding the ability of BGM to designate three directors to the CBOE Holdings Board one time in connection with Closing. The Nominating and Governance Committee of the CBOE Holdings Board, consistent with the governing documents of CBOE Holdings, must follow its policies in determining whether to recommend those candidates for election as directors to the Board. Accordingly, BGM's ability to recommend specific candidates is subject to CBOE Holdings' governance process and procedures.

¹⁶ In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(1) and (b)(3).

¹⁸ See Notices, supra note 4, at 80158 n.10 and accompanying text and 80133 n. 10 and accompanying text. See also id. at 80157-58 and 80132-33.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁹ that the proposed rule changes (SR-CBOE-2016-076 and SR-C2-2016-022), be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

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¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).