

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91203)

February 24, 2021

Order Granting Application by Cboe C2 Exchange, Inc. for Exemption Pursuant to Section 36(a) of the Exchange Act from the Rule Filing Requirements of Section 19(b) of the Exchange Act with Respect to Certain Rules Incorporated by Reference

Cboe C2 Exchange, Inc. (“C2” or the “Exchange”) has filed with the Securities and Exchange Commission (the “Commission”) an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ from the rule filing requirements of Section 19(b) of the Exchange Act² with respect to certain rules of Cboe Exchange, Inc. (“Cboe”) that the Exchange seeks to incorporate by reference.³ Section 36(a)(1) of the Exchange Act,⁴ subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchange filed a proposed rule change⁵ under Section 19(b) of the Exchange Act to update various C2 Rules and Chapters to reflect changes to the Cboe Options rulebook. Namely, in the proposed rule change, the Exchange proposed to incorporate by reference

¹ 15 U.S.C. 78mm(a)(1).

² 15 U.S.C. 78s(b).

³ See letter from Rebecca Tenuta, Counsel, Cboe C2 Exchange, Inc. to Vanessa Countryman, Secretary, Commission, dated February 9, 2021 (“Exemptive Request”).

⁴ 15 U.S.C. 78mm(a)(1).

⁵ See Securities Exchange Act Release No. 87646 (December 2, 2019), 84 FR 66938 (December 6, 2019) (SR-C2-2019-025).

rule changes made to each Cboe Options rule cross-referenced in the following C2 chapters or sections: Chapter 3, Section B (TPH Registration);⁶ Chapter 4, Section A (Equity and ETP Options);⁷ Chapter 4, Section B (Index Options);⁸ Chapter 5 (Business Conduct);⁹ Chapter 6, Section E (Intermarket Linkage);¹⁰ Chapter 6, Section F (Exercises and Deliveries);¹¹ Chapter 7, Section A;¹² Chapter 7, Section B;¹³ Chapter 9 (Doing Business with the Public);¹⁴ Chapter 10 (Margin Requirements);¹⁵ Chapter 1 (Net Capital Requirements);¹⁶ Chapter 12 (Summary Suspension);¹⁷ Chapter 13 (Discipline);¹⁸ Chapter 14 (Arbitration);¹⁹ and Chapter 15 (Hearings and Review)²⁰ (the “Cboe Incorporated Rules”).

⁶ Incorporates by reference Cboe Options Chapter 3, Section B.

⁷ Incorporates by reference Cboe Options Chapter 4, Section A.

⁸ Incorporates by reference Cboe Options Chapter 4, Section B.

⁹ Incorporates by reference Cboe Options Chapter 8.

¹⁰ Incorporates by reference Cboe Options Chapter 5, Section E.

¹¹ Incorporates by reference Cboe Options Chapter 6, Section B.

¹² Incorporates by reference Cboe Options Chapter 7, Section A.

¹³ Incorporates by reference Cboe Options Chapter 7, Section B.

¹⁴ Incorporates by reference Cboe Options Chapter 9. See also Securities Exchange Act Release No. 87646 (December 2, 2019), 84 FR 66938 (December 6, 2019) (SR-C2-2019-025), which relocated former Rule 3.19 to Rule 9.20 in order to include Cboe Options Rule 9.20 in C2 Chapter 9’s incorporation of Cboe Options Chapter 9 by reference, as former Rule 3.19 is identical to Cboe Options Rule 9.20 and it is within the same category of exchange rules otherwise incorporated into C2 Chapter 9 by reference to Cboe Options Chapter 9 (i.e. rule related to doing business with the public).

¹⁵ Incorporates by reference Cboe Options Chapter 10.

¹⁶ Incorporates by reference Cboe Options Chapter 11.

¹⁷ Incorporates by reference Cboe Options Chapter 12.

¹⁸ Incorporates by reference Cboe Options Chapter 13.

¹⁹ Incorporates by reference Cboe Options Chapter 14.

²⁰ Incorporates by reference Cboe Options Chapter 15.

The Commission notes it previously granted C2 an exemption from the rule filing requirements of Section 19(b) of the Act for the rules of the Cboe set forth in the C2 rules referenced above.²¹ Since that time, the Cboe has renumbered and relocated the previously incorporated rules within its rulebook. As a result, C2 has submitted this exemptive request to reflect rule number changes in the Cboe Options rulebook. Specifically, the Exchange is now requesting, pursuant to Rule 0-12 under the Exchange Act,²² that the Commission grant an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Chapters 3-7 and 9-15 of the Exchange's rules that are effected solely by virtue of a change to a Cboe Incorporated Rule. The Exchange requests that it be permitted to incorporate by reference changes made to the Cboe Incorporated Rules without the need for the Exchange to file separately the same proposed rule change pursuant to Section 19(b) of the Exchange Act.²³

The Exchange represents that the Cboe Incorporated Rules are not trading rules.²⁴ Moreover, the Exchange states that it proposes to incorporate by reference a category of rules (rather than individual rules within a category).²⁵ The Exchange also represents that, as a condition of this exemption, the Exchange will provide written notice to its applicants and members whenever Cboe proposes a change to a Cboe Incorporated Rule.²⁶

²¹ See Securities Exchange Act Release Nos. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009); and 80339 (March 29, 2017), 82 FR 16442 (April 4, 2017).

²² 17 CFR 240.0-12.

²³ See Exemptive Request, supra note 3.

²⁴ Id.

²⁵ Id.

²⁶ The Exchange states that it will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to Rule 19b-4(l) within the timeframe required by such Rule. In addition, the Exchange states that the website posting will include a link to the location on Cboe's website where the applicable proposed rule change is posted. Id.

According to the Exchange, this exemption is necessary and appropriate to maintain consistency between C2 rules and the Cboe Incorporated Rules, thus helping to ensure identical regulation of C2 Permit Holders that are also Cboe Trading Permit Holders with respect to the incorporated provisions as well as helping to ensure that C2-only Permit Holders are subject to consistent regulation as Cboe Trading Permit Holders.²⁷ The Exchange believes that, without such an exemption, such Permit Holders could be subject to two different standards.²⁸

The Commission has issued exemptions similar to the Exchange's request.²⁹ In granting similar exemptions, the Commission stated that it would consider future exemption requests, provided that:

- A self-regulatory organization ("SRO") wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth

²⁷ See Exemptive Request, supra note 3.

²⁸ See id.

²⁹ See, e.g., Securities Exchange Act Release Nos. 86896 (September 6, 2019), 84 FR 48186 (September 12, 2019) (order granting exemptive request from Nasdaq BX, Inc. relating to rules of The Nasdaq Stock Market LLC incorporated by reference) ("Nasdaq BX Order"); 86422 (July 22, 2019), 84 FR 36151 (July 26, 2019) (order granting exemptive request from Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, and Nasdaq Phlx LLC relating to rules of The Nasdaq Stock Market LLC incorporated by reference); 80338 (March 29, 2017), 82 FR 16464 (April 4, 2017) (order granting exemptive request from MIAX PEARL, LLC relating to rules of Miami International Securities Exchange, LLC incorporated by reference); and 72650 (July 22, 2014), 79 FR 44075 (July 29, 2014) (order granting exemptive requests from NASDAQ OMX BX, Inc. and the NASDAQ Stock Market LLC relating to rules of NASDAQ OMX PHLX LLC incorporated by reference).

in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the Exchange Act;³⁰

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.³¹

The Commission believes that the Exchange has satisfied each of these conditions. Further, the Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchange's resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO. The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules it incorporates by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its applicants and members whenever Cboe changes a Cboe Incorporated Rule.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act,³² that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act

³⁰ See 17 CFR 240.0-12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) ("Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule").

³¹ See Nasdaq BX Order, supra note 29.

³² 15 U.S.C. 78mm.

solely with respect to changes to the rules identified in the Exemptive Request, provided that the Exchange promptly provides written notice to its applicants and members whenever Cboe proposes to change a Cboe Incorporated Rule.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier
Assistant Secretary

³³ 17 CFR 200.30-3(a)(76).