

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62118; File No. SR-C2-2010-002)

May 18, 2010

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Corporate Structure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 14, 2010, C2 Options Exchange, Incorporated ("C2") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by C2. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

C2, a wholly-owned subsidiary of Chicago Board Options Exchange, Incorporated ("CBOE"), is filing this proposed rule change with the Commission under Section 19(b)(1) of the Act in connection with the plan of CBOE to restructure from a Delaware non-stock corporation to a Delaware stock corporation that will be a wholly-owned subsidiary of CBOE Holdings, Inc. ("CBOE Holdings"), a holding company organized as a Delaware stock corporation.³ As a result of this Restructuring Transaction, C2 will become a wholly-owned subsidiary CBOE Holdings.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ The term "Restructuring Transaction" is defined in proposed CBOE Rule 1.1(hhh) in the proposed rule change to effectuate the demutualization of CBOE (the "CBOE Demutualization Filing") as "the restructuring of the Exchange from a non-stock corporation to a stock corporation and wholly-owned subsidiary of CBOE Holdings,

The text of the proposed Certificate of Incorporation of CBOE Holdings, the proposed Bylaws of CBOE Holdings, the proposed amendments to C2's Certificate of Incorporation, the proposed amendments to C2's Bylaws, the proposed amendments to C2's Rules, and the proposed Voting Agreement between CBOE Holdings and C2 are available on C2's Web site (<http://www.cboe.org/Legal>), on the Commission's Web site at www.sec.gov, at C2's Office of the Secretary, and at the Commission's Public Reference Room.⁵

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, C2 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 Item IV below. C2 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

(1) The Restructuring Transaction

C2 is filing this proposed rule change in connection with the plan of its parent company CBOE to restructure from a Delaware non-stock corporation owned by its members to a

Inc.” The Commission has noticed the CBOE Demutualization Filing for comment, and has not received any comments on it. See Exchange Act Release No. 58425 (Aug. 26, 2008), 73 FR 51652 (Sept. 4, 2008) (File No. SR-CBOE-2008-88).

⁵ The CBOE Demutualization Filing also includes the proposed Certificate of Incorporation and Bylaws of CBOE Holdings, as well as the proposed Certificate of Incorporation of CBOE, the proposed Bylaws of CBOE, the proposed amendments to the Rules of CBOE, and the proposed Voting Agreement between CBOE Holdings and CBOE. C2 notes that this rule filing includes and contains descriptions of the most recent versions of the proposed Certificate of Incorporation and Bylaws of CBOE Holdings.

Delaware stock corporation that will be a wholly-owned subsidiary of CBOE Holdings, a holding company organized as a Delaware stock corporation.⁶ After the Restructuring Transaction, the owners of membership interests in CBOE will become stockholders of CBOE Holdings through the conversion of their memberships into shares of common stock of CBOE Holdings. In addition, members of the settlement class in the lawsuit brought by The Board of Trade of the City of Chicago, Inc., its parent company CME Group, Inc. and a class of individuals (collectively, the “CBOT Parties”) against CBOE and CBOE’s Board of Directors will become stockholders of CBOE Holdings.⁷

As noted above, C2 currently is a wholly-owned subsidiary of CBOE. In connection with the Restructuring Transaction, CBOE will dividend up to CBOE Holdings all of the shares of C2. As a result of the Restructuring Transaction, CBOE Holdings will hold all of the outstanding common stock of C2 and CBOE, as well as certain subsidiaries of CBOE. C2 and CBOE will continue to function as self-regulatory organizations (“SROs”) and to operate their exchange businesses and facilities.

(2) CBOE Holdings

After the Restructuring Transaction, CBOE Holdings will be the parent company and sole shareholder of C2 and CBOE. The Certificate of Incorporation and the Bylaws of CBOE Holdings will govern the activities of CBOE Holdings.⁸

⁶ C2 was recently registered as a national securities exchange under Section 6 of the Exchange Act. See Exchange Act Release No. 61152 (Dec. 10, 2009), 74 FR 66699 (Dec. 16, 2009). When operational, C2 will operate an all-electronic marketplace for the trading of listed options. It will not maintain a physical trading floor.

⁷ CME Group Inc. et al. v. CBOE Inc. et al., Civil Action No. 2369-VCN (Filed Aug. 23, 2006). CBOE entered into a Stipulation of Settlement (“Stipulation”) on August 20, 2008 with the CBOT Parties to resolve this lawsuit. The Stipulation and amendments to it can be found at (<http://www.cboe.org/Legal/>).

⁸ While certain provisions of the Certificate of Incorporation and Bylaws for CBOE

(A) CBOE Holdings Board of Directors

The business and affairs of CBOE Holdings will be managed by or under the direction of its Board of Directors (“CBOE Holdings Board”). The CBOE Holdings Board will consist of between 11 and 23 directors, the exact number to be fixed by the CBOE Holdings Board from time to time pursuant to resolution adopted by the Board.⁹ It is intended that the initial CBOE Holdings Board following the Restructuring Transaction will be composed of the 22 individuals that are the directors of CBOE immediately prior to the Restructuring Transaction. At all times at least two-thirds of the CBOE Holdings directors will satisfy the independence requirements adopted by the CBOE Holdings Board, as may be modified and amended by the Board from time to time, and which shall satisfy the independence requirements contained in the listing standards of NYSE or The Nasdaq Stock Market.¹⁰

The CBOE Holdings Board will appoint one of the directors on the CBOE Holdings Board to serve as Chairman of the CBOE Holdings Board.¹¹ The CBOE Holdings Bylaws do

Holdings are not related to the operation of C2 or CBOE, for so long as CBOE Holdings controls any Regulated Securities Exchange Subsidiary (currently, C2 and CBOE), before any amendment, alteration or repeal of any provision of the Certificate of Incorporation and Bylaws of CBOE Holdings becomes effective, such amendment, alteration or repeal will be submitted to the Board of Directors of each Regulated Securities Exchange Subsidiary, and if such amendment, alteration or repeal must be filed with or filed with and approved by the Commission, then such amendment, alteration or repeal will not become effective until filed with or filed with and approved by the Commission, as the case may be. See proposed Article Eleventh of the CBOE Holdings Certificate of Incorporation and proposed Article 10.2 of the CBOE Holdings Bylaws. The term “Regulated Securities Exchange Subsidiary” is defined as “any national securities exchange controlled, directly or indirectly, by [CBOE Holdings], including, but not limited to CBOE.” See proposed Article Fifth(a) of the CBOE Holdings Certificate of Incorporation.

⁹ See proposed Article Seventh(b) of the CBOE Holdings Certificate of Incorporation and proposed Article 3.2 of the CBOE Holdings Bylaws.

¹⁰ See proposed Article 3.3 of the CBOE Holdings Bylaws.

¹¹ See proposed Article 3.6 of the CBOE Holdings Bylaws.

not restrict the Chief Executive Officer of CBOE Holdings from serving in this role.¹² The CBOE Holdings Board also may appoint an independent director to serve as Lead Director, who will perform such duties and possess such powers as the CBOE Holdings Board may from time to time prescribe.¹³ All CBOE Holdings directors will serve one-year terms.¹⁴ There is no limit on the number of terms a director may serve on the CBOE Holdings Board.

The CBOE Holdings Board or a committee thereof each year will nominate CBOE Holdings director candidates for election at the CBOE Holdings annual meeting of shareholders.¹⁵ In this regard, the Nominating and Governance Committee, which is described below, will nominate candidates for the CBOE Holdings Board. Each holder of CBOE Holdings voting stock will be entitled to one vote for each share of voting stock he or she holds, except as otherwise provided by the General Corporation Law of the State of Delaware or the Certificate of Incorporation or Bylaws of CBOE Holdings.¹⁶ At each annual meeting of the shareholders of CBOE Holdings at which a quorum is present, the individuals receiving a plurality of the votes cast will be elected directors of CBOE Holdings.¹⁷

¹² See proposed Article 5.1 of the CBOE Holdings Bylaws.

¹³ See proposed Article 3.7 of the CBOE Holdings Bylaws.

¹⁴ See proposed Article 3.2 of the CBOE Holdings Bylaws. Directors will serve one-year terms ending on the annual meeting following the meeting at which such directors were elected or at such time as their successors are elected or appointed and qualified, except in the event of earlier death, resignation or removal.

¹⁵ See proposed Article 2.11 of the CBOE Holdings Bylaws. Subject to certain conditions, stockholders also have the right under this provision to nominate persons for the CBOE Holdings Board.

¹⁶ See proposed Article 2.8 of the CBOE Holdings Bylaws.

¹⁷ See proposed Article 2.10 of the CBOE Holdings Bylaws. Except as otherwise provided by law or the Certificate of Incorporation or Bylaws of CBOE Holdings, the holders of a majority in voting power of the shares of the capital stock of CBOE Holdings issued and outstanding and entitled to vote at the meeting (after taking into account the effect of any reduction of the number of shares entitled to vote as a result of the voting limitations

(B) Committees of CBOE Holdings

CBOE Holdings will have an Executive Committee, an Audit Committee, a Compensation Committee, a Nominating and Governance Committee, as well as such other committees that the CBOE Holdings Board establishes.¹⁸ The Nominating and Governance Committee will consist of at least five directors, all of whom will be Independent Directors and be recommended by the Nominating and Governance Committee for approval by the CBOE Holdings Board.¹⁹ Members of the Executive, Audit, and Compensation Committees of CBOE Holdings will be recommended by the Nominating and Governance Committee for approval by the CBOE Holdings Board.²⁰

The Executive Committee will have and may exercise all the powers and authority of the CBOE Holdings Board in the management of the business and affairs of CBOE Holdings, except it will not have the power or authority of the CBOE Holdings Board in reference to, among other things, amending the CBOE Holdings Certificate of Incorporation, adopting an agreement of merger or consolidation, approving the sale, lease or exchange of all or substantially all of the CBOE Holdings' property and assets, or approving the dissolution of CBOE Holdings or a revocation of a dissolution.²¹ The Audit, Compensation, and Nominating and Governance Committees will have such duties and may exercise such authority as may be prescribed by the

imposed by Article Sixth of the Certificate of Incorporation of CBOE Holdings, if any), present in person or represented by proxy, will constitute a quorum for the transaction of business. See proposed Article 2.6 of the CBOE Holdings Bylaws. The voting limitations in Article Sixth are discussed below.

¹⁸ See proposed Article 4.1 of the CBOE Holdings Bylaws. The CBOE Holdings Board will designate the members of these other committees and may designate a Chairman and a Vice-Chairman thereof.

¹⁹ See proposed Article 4.5 of the CBOE Holdings Bylaws.

²⁰ See proposed Articles 4.2, 4.3 and 4.4 of the CBOE Holdings Bylaws.

²¹ See proposed Article 4.2 of the CBOE Holdings Bylaws.

CBOE Holdings Board and their respective Charters as adopted by resolution of the CBOE Holdings Board.²²

(C) Officers of CBOE Holdings

The officers of CBOE Holdings will be the Chief Executive Officer, a Chief Financial Officer, a President, one or more Vice-Presidents (the number thereof to be determined by the CBOE Holdings Board), a Secretary, a Treasurer, and such other officers as the CBOE Holdings Board may determine, including an Assistant Secretary or Assistant Treasurer.²³ The CBOE Holdings Board by an affirmative vote of the majority of the board will appoint the Chief Executive Officer of CBOE Holdings, who will have general charge and supervision of the business of the CBOE Holdings.²⁴ In general, the other officers of CBOE Holdings will have the duties or powers or both set out in the CBOE Holdings Bylaws, as well as such other duties or powers or both as the CBOE Holdings Board or the Chief Executive Officer may from time to time prescribe.²⁵

(D) Shareholder Restrictions

In addition to the restrictions on the ability of certain CBOE Holdings stockholders to transfer their shares prior to and after an initial public offering if such an offering were to occur, the Certificate of Incorporation of CBOE Holdings places certain ownership and voting limits on the holders of CBOE Holdings stock and their Related Persons.²⁶ These restrictions are intended

²² See proposed Articles 4.3, 4.4 and 4.5 of the CBOE Holdings Bylaws.

²³ See proposed Article 5.1 of the CBOE Holdings Bylaws.

²⁴ See proposed Articles 5.1 and 5.2 of the CBOE Holdings Bylaws.

²⁵ See proposed Articles 5.3, 5.4, 5.5, 5.6 and 5.7 of the CBOE Holdings Bylaws.

²⁶ The term “Related Person” is defined in proposed Article Fifth(a) of the CBOE Holdings Certificate of Incorporation and includes, among other things, any “person associated with a member” (as such term is defined in Section 3(a)(21) of the Exchange Act).

to address the possibility that a person holding a controlling interest in an SRO could use that interest to affect the SRO's regulatory responsibilities under the Exchange Act.²⁷ In particular, these restrictions provide that:

Ownership

- No person (either alone or together with its Related Persons) may beneficially own directly or indirectly shares of stock representing in the aggregate more than 10% of the total outstanding shares of CBOE Holdings stock; provided, that, in the event a public offering of common stock is completed, the ownership percentage that a person is permitted to beneficially own will increase from 10% to 20% of the total outstanding shares of CBOE Holdings stock,²⁸ and

- In the event that a person, either alone or together with its Related Persons, beneficially owns shares of stock representing more than 10% of the outstanding shares of stock (or, in the event that a public offering of common stock has been completed, 20% of the outstanding shares of stock), CBOE Holdings will be obligated to redeem promptly, at a price equal to the par value of such shares of stock and to the extent that funds are legally available for such redemption, that number of shares of stock necessary so that such person, together with its Related Persons, will beneficially own directly or indirectly shares of stock representing in the aggregate no more than 10% of the outstanding shares of stock (or, in the event that a public offering of common stock has been completed, 20% of the outstanding shares of stock), after

²⁷ In 2004, the Commission proposed rules that were designed to address conflicts of interest relating to for-profit SROs. See, e.g., Securities Exchange Act Release No. 50699 (Nov. 18, 2004), 69 FR 71126 (Dec. 8, 2004).

²⁸ See proposed Article Sixth(b) of the CBOE Holdings Certificate of Incorporation.

taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding.²⁹

Voting

- No person (either alone or together with its Related Persons) will be entitled to vote or cause the voting of shares of stock beneficially owned directly or indirectly by that person or those Related Persons to the extent that those shares would represent in the aggregate more than 10% of the total number of votes entitled to be cast on any matter, and no person (either alone or together with its Related Persons) will be entitled to vote more than 10% of the total number of votes entitled to be cast on any matter by virtue of agreements entered into by that person or those Related Persons with other persons not to vote shares of outstanding stock; provided, that, in the event a public offering of common stock is completed, the voting percentage that any person is permitted to control, whether through beneficial ownership or other agreement, will increase from 10% to 20% of the total number of votes entitled to be cast on any matter;³⁰ and

²⁹ See proposed Article Sixth(b) of the CBOE Holdings Certificate of Incorporation. If and to the extent that shares of CBOE Holdings stock beneficially owned by any person or its Related Persons are held of record by any other person, this provision will be enforced against such record owner by requiring the redemption of shares of CBOE Holdings stock held by such record owner in a manner that will accomplish the ownership limitation applicable to such person and its Related Persons.

³⁰ See proposed Article Sixth(a) of the CBOE Holdings Certificate of Incorporation. The voting limitation does not apply to a solicitation of a revocable proxy by any CBOE Holdings stockholder on behalf of CBOE Holdings or by directors or officers of CBOE Holdings on behalf of CBOE Holdings or to a solicitation of a revocable proxy by a stockholder in accordance with Regulation 14A under the Exchange Act. 17 CFR 240.14A. This exception, however, would not apply to a solicitation by a stockholder pursuant to Rule 14a-2(b)(2) under the Exchange Act, which permits a solicitation made otherwise than on behalf of CBOE Holdings where the total number of persons solicited is not more than 10.

- In the event that a person, either alone or together with its Related Persons, is entitled to vote or cause the voting of shares representing in the aggregate more than 10% (or, in the event that a public offering of common stock has been completed, 20%) of the total number of votes entitled to be cast on any matter (including if it and its Related Persons possess this voting power by virtue of agreements entered into with other persons not to vote shares of stock), then such person, either alone or together with its Related Persons, will not be entitled to vote or cause the voting of these shares of stock to the extent that such shares represent in the aggregate more than 10% (or, in the event that a public offering of common stock has been completed, 20%) of the total number of votes entitled to be cast on any matter, and any such votes purported to be cast in excess of this percentage will be disregarded.³¹

The CBOE Holdings Board of Directors may waive the provisions regarding ownership and voting limits by a resolution expressly permitting ownership or voting rights in excess of such limits (which resolution must be filed with and approved by the SEC prior to being effective), subject to a determination of the Board that:³²

- the acquisition of beneficial ownership in excess of the ownership limits or the exercise of voting rights in excess of the voting limits will not impair the ability of CBOE Holdings and any Regulated Securities Exchange Subsidiary to discharge their responsibilities under the Exchange Act and the rules and regulations under the Exchange Act and is otherwise

³¹ See proposed Article Sixth(a) of the CBOE Holdings Certificate of Incorporation. If and to the extent that shares of CBOE Holdings stock beneficially owned by any person or its Related Persons are held of record by any other person, this provision will be enforced against such record owner by limiting the votes entitled to be cast by such record owner in a manner that will accomplish the voting limitation applicable to such person and its Related Persons.

³² See proposed Articles Sixth(a) and (b) of the CBOE Holdings Certificate of Incorporation.

in the best interests of CBOE Holdings and its stockholders and the Regulated Securities Exchange Subsidiaries;

- the acquisition of beneficial ownership in excess of the ownership limits or the exercise of voting rights in excess of the voting limits will not impair the SEC's ability to enforce the Exchange Act;
- neither the person obtaining the waiver nor any of its Related Persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act) if such person is seeking to obtain a waiver above the applicable ownership or voting percentage level,³³ and
- for so long as CBOE Holdings directly or indirectly controls any Regulated Securities Exchange Subsidiary, neither the person obtaining the waiver nor any of its Related Persons is a Trading Permit Holder in any Regulated Securities Exchange Subsidiary if such person is seeking to obtain a waiver above the applicable ownership or voting percentage level.

In making these determinations, the CBOE Holdings Board may impose conditions and restrictions on the relevant stockholder and its Related Persons that it deems necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of CBOE Holdings.³⁴

The CBOE Holdings Certificate of Incorporation also provides that the CBOE Holdings Board has the right to require any person and its Related Persons that the Board reasonably believes (i) to be subject to the ownership or voting restrictions summarized above, or (ii) to beneficially own an aggregate of 5% or more of the then outstanding shares of CBOE Holdings stock entitled to vote on any matter, which ownership has not been reported to CBOE Holdings,

³³ 15 U.S.C. 78c(a)(39).

³⁴ See proposed Articles Sixth(a) and (b) of the CBOE Holdings Certificate of Incorporation.

to provide to CBOE Holdings complete information as to all shares of the stock that such stockholder beneficially owns, as well as any other information relating to the applicability to such stockholder of the voting and ownership requirements outlined above as may reasonably be requested.³⁵

CBOE has received a legal opinion that the foregoing ownership and voting rights limitations, as well as the provisions providing for the redemption of shares held by a person (either alone or together with its Related Persons) in excess of the ownership limitation, are valid under Delaware law.

(E) Self-Regulatory Function and Oversight

The CBOE Holdings Certificate of Incorporation contains various provisions designed to protect the independence of the self-regulatory function of any Regulated Securities Exchange Subsidiary (currently, C2 and CBOE) and to make clear the Commission's and each Regulated Securities Exchange Subsidiary's jurisdiction with respect to CBOE Holdings. For example, pursuant to the CBOE Holdings Certificate of Incorporation, for so long as CBOE Holdings controls any Regulated Securities Exchange Subsidiary, each officer, director and employee of CBOE Holdings must give due regard to the preservation of the independence of the self-regulatory function of the Regulated Securities Exchange Subsidiaries and to their obligations under the Exchange Act.³⁶ In addition, such officers, directors and employees are specifically prohibited from taking any actions that they reasonably should have known would interfere with the effectuation of any decisions by the Board of Directors of any Regulated Securities Exchange Subsidiary relating to such Regulated Securities Exchange Subsidiary's regulatory functions,

³⁵ See proposed Article Sixth(d) of the CBOE Holdings Certificate of Incorporation.

³⁶ See proposed Article Sixteenth(c) of the CBOE Holdings Certificate of Incorporation.

including disciplinary matters, or would adversely affect the Regulated Securities Exchange Subsidiary's ability to carry out its responsibilities under the Exchange Act.³⁷

The CBOE Holdings Certificate of Incorporation also contains a specific requirement that to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of Regulated Securities Exchange Subsidiaries (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of any Regulated Securities Exchange Subsidiary that comes into the possession of CBOE Holdings will: (1) not be made available to any persons other than to those officers, directors, employees and agents of CBOE Holdings that have a reasonable need to know the contents thereof; (2) be retained in confidence by CBOE Holdings and the officers, directors, employees and agents of CBOE Holdings; and (3) not be used for any commercial purposes.³⁸

The CBOE Holdings Certificate of Incorporation also provides that for so long as CBOE Holdings controls any Regulated Securities Exchange Subsidiary, the books, records, premises, officers, directors and employees of CBOE Holdings will be deemed to be the books, records, premises, officers, directors and employees of the Regulated Securities Exchange Subsidiary for purposes of and subject to oversight pursuant to the Act, but only to the extent that such books,

³⁷ Id.

³⁸ Notwithstanding this restriction, nothing in the CBOE Holdings Certificate of Incorporation will be interpreted so as to limit or impede the rights of the SEC or any Regulated Securities Exchange Subsidiary to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of CBOE Holdings to disclose such confidential information to the SEC or any Regulated Securities Exchange Subsidiary. See proposed Article Fifteenth of the CBOE Holdings Certificate of Incorporation.

records, premises, officers, directors and employees of CBOE Holdings relate to the exchange business of such Regulated Securities Exchange Subsidiary.³⁹

Further, the CBOE Holdings Certificate of Incorporation provides that CBOE Holdings will take reasonable steps necessary to cause its directors, officers and employees, prior to accepting such a position with CBOE Holdings, to consent in writing to the applicability to them of Article Fourteenth, Article Fifteenth and Sections (c) and (d) of Article Sixteenth of the CBOE Holdings Certificate of Incorporation, as applicable, with respect to their activities related to any of the Regulated Securities Exchange Subsidiaries.⁴⁰ In addition, CBOE Holdings will take reasonable steps necessary to cause its agents, prior to accepting such a position with CBOE Holdings, to be subject to the provisions of Article Fourteenth, Article Fifteenth and Sections (c) and (d) of Article Sixteenth of the CBOE Holdings Certificate of Incorporation, as applicable, with respect to their activities related to any of the Regulated Securities Exchange Subsidiaries.

The CBOE Holdings Certificate of Incorporation also provides that CBOE Holdings, its directors, officers, agents and employees, irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, and the Regulated Securities Exchange Subsidiaries, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the Regulated Securities Exchange Subsidiaries' activities.⁴¹ Further, the Certificate of Incorporation provides that CBOE Holdings, its directors, officers, agents and employees, waive, and agree not to assert

³⁹ The books and records related to the exchange business of a Regulated Securities Exchange Subsidiary will be subject at all times to inspection and copying by the SEC and the Regulated Securities Exchange Subsidiary. Id. In addition, the CBOE Holdings Bylaws provide that the books of CBOE Holdings must be kept within the United States. See proposed Section 1.3 of the CBOE Holdings Bylaws.

⁴⁰ See proposed Article Sixteenth(b) of the CBOE Holdings Certificate of Incorporation.

⁴¹ See proposed Article Fourteenth of the CBOE Holdings Certificate of Incorporation.

by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. federal courts, the SEC, and the Regulated Securities Exchange Subsidiaries, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.⁴²

In addition, the CBOE Holdings Certificate of Incorporation (and Bylaws) provide that, before any amendment or repeal of any provision of the Certificate of Incorporation and Bylaws of CBOE Holdings becomes effective, such amendment or repeal will be submitted to the Board of Directors of each Regulated Securities Exchange Subsidiary, and if such amendment or repeal must be filed with or filed with and approved by the Commission, then such amendment or repeal will not become effective until filed with or filed with and approved by the Commission, as the case may be.⁴³ The CBOE Holdings Certificate of Incorporation also contains a provision that requires each director of the Board of CBOE Holdings to take into consideration the effect that CBOE Holdings' actions would have on each Regulated Securities Exchange Subsidiary's ability to carry out its responsibilities under the Exchange Act.⁴⁴

(3) C2

CBOE Holdings will become the parent company and sole shareholder of C2 (and CBOE) in connection the demutualization of CBOE. C2 (and CBOE), and not CBOE Holdings, will continue to be the entities registered as national securities exchanges under Section 6 of the Exchange Act.

⁴² Id.

⁴³ See proposed Article Eleventh of the CBOE Holdings Certificate of Incorporation and proposed Article 10.2 of the CBOE Holdings Bylaws.

⁴⁴ See proposed Article Sixteenth(d) of the CBOE Holdings Certificate of Incorporation.

(A) C2 Certificate of Incorporation and Bylaws

The Commission recently approved C2's Certificate of Incorporation and Bylaws, which are modeled after the proposed Certificate of Incorporation and Bylaws for CBOE after it demutualizes and becomes a wholly-owned subsidiary of CBOE Holdings.⁴⁵ Accordingly, C2 is not proposing any significant changes to its Certificate of Incorporation and Bylaws. Rather, C2 is proposing to make certain changes to C2's Certificate of Incorporation to effect the change of ownership of C2 from CBOE to CBOE Holdings, to clarify certain aspects of C2's Bylaws as a result of this transfer of ownership, and to make certain ministerial changes to C2's Certificate of Incorporation and Bylaws.

With respect to C2's Certificate of Incorporation, C2 is proposing to amend Article Fourth of the certificate to transfer the ownership of all of the common stock of C2 from CBOE to CBOE Holdings. As required in Article Fourth, C2 is seeking in this proposed rule change Commission approval for this transfer of ownership of C2 from CBOE to CBOE Holdings. C2 also is amending Article Fourth to require Commission approval if CBOE Holdings sells, transfers or assigns any shares of C2 common stock. In addition, C2 is proposing to delete Article Twelfth of the C2 Certificate of Incorporation because it is no longer necessary. This provision lists the incorporator of C2 and provides that once C2's Certificate of Incorporation is filed in Delaware, C2 is required to appoint its initial Board of Directors, which is required to be comprised of the same individuals then-serving as the Board of Directors of CBOE. These actions have already been taken, and accordingly, Article Twelfth is no longer necessary.

With respect to C2's Bylaws, C2 is making several clarifying and ministerial changes to them. In particular, C2 is proposing to delete the second sentence of the first paragraph of

⁴⁵ See supra note 5.

Section 3.1 of the C2 Bylaws, which provides that “[t]he Board shall initially consist of 23 directors, including the Chief Executive Officer, twelve Non-Industry Directors and ten Industry Directors,” because the initial Board of Directors of C2 (“C2 Board”) has already been appointed.⁴⁶ Similarly, C2 is proposing to delete a reference in the last sentence of the first paragraph regarding the initial C2 Board because that Board has already been appointed.

C2 is proposing to amend the sixth paragraph of Section 3.1 of the C2 Bylaws to provide that all directors of the C2 Board will serve one-year terms.⁴⁷ Previously, the C2 directors were divided into two classes, with each class serving staggered two-year terms. C2 is proposing to make this change because CBOE has decided to convert all of the terms of the directors of CBOE Holdings and CBOE to one-year terms after the demutualization. Similarly, C2 is proposing to amend the fifth paragraph of Section 3.2 of the C2 Bylaws to remove a reference to electing a class of directors because C2 will no longer have different classes of directors.

C2 is proposing to amend paragraph (c) of Section 3.4 of the C2 Bylaws to clarify that Representative Directors (as opposed to any Director) can be removed for cause, which will include, but not be limited to (i) a breach of a Representative Director’s duty of loyalty to C2 or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) transactions from which a Representative Director derived an improper personal benefit, or (iv) a failure of a Representative Director to be free from a

⁴⁶ C2 also is changing the reference to the “Board of the Corporation” in that sentence to the “Board.”

⁴⁷ C2 also is proposing to amend this paragraph to clarify that C2 directors can be replaced if they become disqualified (e.g., a “Non-Industry Director” becomes an “Industry Director”). Similarly, C2 is proposing to amend paragraph (a) of Section 3.5 of the C2 Bylaws to clarify that a director elected to fill a vacancy will not serve until the next annual meeting of stockholders if he or she becomes disqualified. In addition, C2 is proposing to move a reference to “Representative Directors” (described below) in the first sentence of the seventh paragraph of Section 3.1 of the C2 Bylaws to clarify the intent of that sentence.

statutory disqualification (as defined in Section 3(a)(39) of the Act).⁴⁸ C2 is further amending this paragraph to provide that any Representative Director may be removed for cause by the holders of a majority of the shares of stock then entitled to be voted at an election of directors.⁴⁹ C2 is making these changes since it is no longer proposed that C2 have a classified Board (this change also will make C2's Bylaws consistent in this regard with CBOE's post-demutualization Bylaws).

C2 is proposing to amend Section 4.6 of the C2 Bylaws to provide that the C2 Regulatory Oversight Committee will consist of at least three directors instead of at least four directors. C2 believes that the Regulatory Oversight Committee will be able to function just as effectively with three or more members as it would with four or more members and is proposing this change to provide for greater flexibility in the designation of C2 Board committees.

C2 is proposing to amend Section 5.8 of the C2 Bylaws to modify the responsibilities of the Treasurer of C2. Specifically, C2 is proposing to delete the second sentence in this section, which reads “[i]n addition, the Treasurer shall perform such duties and have such powers that are incident to the office of Treasurer, including without limitation the duty to keep and be responsible for all funds of the Corporation,” to make this section consistent with the Treasurer provision in CBOE's proposed post-demutualization Bylaws.

(B) C2 Rules

Because the C2 Rules use terms from and incorporate by reference CBOE Rules, C2 is proposing to make certain minor, non-substantive changes to its Rules to reflect the changes that

⁴⁸ At least 20% of the directors on the Board will be nominated (or otherwise selected by a petition of C2 Permit Holders) by the Industry-Director Subcommittee of the Nominating and Governance Committee (such directors are referred to collectively as the “Representative Directors”). See Section 3.2 of the C2 Bylaws.

⁴⁹ C2 is amending paragraph (b) of Section 3.4 of the Bylaws to replace a reference to “SEC” with “Securities and Exchange Commission (“SEC”).”

CBOE will make to its Rules in connection with the demutualization. In this regard, CBOE is proposing to replace the term “member” (or variations of it) with the term “Trading Permit Holder” (or variations of it) throughout its Rules in connection with the demutualization.

Accordingly, C2 is proposing to adopt in C2 Rule 1.1 the term “CBOE Trading Permit,” which is defined as a “Trading Permit” as such term is defined in CBOE’s Bylaws and Rules, and the term “CBOE Trading Permit Holder,” which is defined as a “Trading Permit Holder” as such term is defined in CBOE’s Bylaws and Rules. C2 proposes to replace references in its Rules to (1) a CBOE “member” with the term “CBOE Trading Permit Holder” (or “Trading Permit Holder” in certain instances where there is a direct cross-reference to CBOE Rules),⁵⁰ (2) a CBOE “membership” with the term “CBOE Trading Permit” (or “Trading Permit” in certain instances where there is a direct cross-reference to CBOE Rules),⁵¹ and (3) a CBOE “Clearing Member” (or variations of it) with the term “Clearing Trading Permit Holder.”⁵² C2 is making these changes to reflect in the C2 Rules certain changes that will be made to CBOE Rules in connection with the demutualization.

C2 also is making a few minor, non-substantive fixes to its Rules. For example, C2 is replacing references to a C2 “member” in its Rules with the term “Permit Holder” or “Participant” (which both have the same meaning under C2 Rules).⁵³ C2 also is deleting a reference in C2 Rule 3.3(b) regarding member organizations not registered as broker-dealers because C2 does not have such organizations (i.e., all Permit Holders of C2 are required to be registered as broker-dealers). In addition, C2 is fixing some of some of the cross-references in

⁵⁰ See, e.g., proposed C2 Rule 3.1(a) and Chapter 4 of the C2 Rules.

⁵¹ See, e.g., proposed C2 Rule 3.1(c) and Chapter 16 of the C2 Rules.

⁵² See, e.g., proposed Chapter 11 of the C2 Rules.

⁵³ See, e.g., proposed C2 Rules 6.55.

its Rules to CBOE Rules. For instance, C2 is amending Chapter 15 of its Rules, which cross-references Chapter XV of CBOE's Rules, to provide that references to "Trading Permit Holder" (i.e., CBOE Trading Permit Holder) in Chapter XV of CBOE's Rules mean "Participant" or "Permit Holder" for purposes of Chapter 15 of C2's Rules.

(C) C2 Voting Agreement with CBOE

C2 currently has in place a Voting Agreement with CBOE in which CBOE agrees to vote in favor of those individuals nominated by C2's Nominating and Governance Committee for election as C2 Representative Directors. After the demutualization, CBOE Holdings, and not CBOE, will be the sole stockholder of C2. Accordingly, C2 is proposing to enter into a new Voting Agreement with CBOE Holdings that similarly will require CBOE Holding to vote in favor of those individuals nominated by C2's Nominating and Governance Committee for election as C2 Representative Directors. This new agreement will be modeled after and virtually identical the current CBOE agreement. Accordingly, C2 proposes to change the references in the current CBOE agreement from "CBOE" to "Holdings." This will have the effect of requiring CBOE Holdings to vote in favor of those individuals nominated by C2's Nominating and Governance Committee for election as C2 Representative Directors.

In addition, C2 is adding a provision in the Voting Agreement to reflect the "for cause" removal standard for Representative Directors in C2's Bylaws, which is discussed above. This provision will provide that CBOE Holdings agrees that it will not take action to remove any Representative Director of C2 from office at any time unless CBOE Holdings believes there is cause to remove such director. For purposes of this section "cause" will include, but not be limited to (i) a breach of a Representative Director's duty of loyalty to C2 or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing

violation of law, (iii) transactions from which a Representative Director derived an improper personal benefit, or (iv) a failure of a Representative Director to be free from a statutory disqualification (as defined in Section 3(a)(39) of the Act).

2. Statutory Basis

For the reasons set forth above, C2 believes that this filing is consistent with Section 6(b) of the Exchange Act,⁵⁴ in general, and furthers the objectives of Section 6(b)(1) of the Exchange Act,⁵⁵ in particular, in that it enables C2 to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to 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 C2. C2 also believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act because the rules summarized herein would create a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.⁵⁶ Among other things, the Certificate of Incorporation and Bylaws of CBOE Holdings and C2 are designed to protect and maintain the integrity of the SRO functions of C2, and to allow it to carry out its regulatory responsibilities under the Exchange Act.

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.

⁵⁴ 15 U.S.C. 78f(b).

⁵⁵ 15 U.S.C. 78f(b)(1).

⁵⁶ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. 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-C2-2010-002 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-C2-2010-002. 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 Web site (<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 Web site 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 such filing also will be available for inspection and copying at the principal office of the C2. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2010-002 and should be submitted on or before [insert date **15** days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Florence E. Harmon
Deputy Secretary

⁵⁷ 17 CFR 200.30-3(a)(12).