

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65681; File No. SR-C2-2011-031)

November 3, 2011

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Concerning Industry Directors and the Nomination of Representative Directors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 21, 2011, the C2 Options Exchange, Incorporated (“Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 1, 2011, the Exchange submitted a technical amendment (“Amendment No. 1”) to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As provided in the instructions to Form 19b-4, the Exchange noted in Item 2 of its filing that it needed to obtain, but had not yet obtained, formal approval from its Board of Directors for the Bylaw, Certificate of Incorporation, and Voting Agreement changes set forth in this proposed rule change. The Exchange also noted that it needed to obtain, but had not yet obtained, approval from CBOE Holdings, the Exchange’s sole stockholder, of the changes to the Certificate of Incorporation and Voting Agreement. The Exchange stated that once these approvals were obtained, it would file a technical amendment to this proposed rule change to reflect these approvals. Amendment No. 1 reflected that the requisite approvals were obtained on November 1, 2011, and represented that no further action in connection with this proposed rule change was required. In addition, Amendment No. 1 contained the Exchange’s consent to an extension of time for Commission consideration of this proposed rule change for an additional thirty-five days after November 1, 2011 (the filing date of this amendment).

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

The Exchange proposes to: (i) amend its Bylaws to eliminate the requirement that at least 30% of the members of the Board of Directors must be Industry Directors; (ii) amend its Bylaws relating to its Advisory Board; (iii) amend its Bylaws relating to the nomination of Representative Directors; and (iv) make conforming changes to the C2 Certificate of Incorporation and the Voting Agreement between C2 and CBOE Holdings, Inc. (“CBOE Holdings”). The text of the proposed amendments to C2's Bylaws, C2's Certificate of Incorporation and the Voting Agreement are available on the Exchange’s website (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary and at the Commission.

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

In its filing with the Commission, the Exchange 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of this proposed rule change is to (i) amend C2’s Bylaws to eliminate the requirement that at least 30% of the members of the Board of Directors must be Industry Directors; (ii) amend C2’s Bylaws relating to its Advisory Board; (iii) amend C2’s Bylaws relating to the nomination of Representative Directors; and (iv) make conforming changes to

C2's Certificate of Incorporation and the Voting Agreement between C2 and CBOE Holdings.

(1) Elimination of 30% Industry Director Requirement

Based on the Exchange's experience since its launch in October 2010, the Exchange believes that it is no longer necessary that its Bylaws contain a requirement that its Board of Directors be composed of at least 30% Industry Directors. The Exchange believes that eliminating the requirement that at least 30% of its Board be composed of Industry Directors as defined in the Bylaws provides it with appropriate flexibility as it evaluates the structure and composition of its Board in the future. The Exchange notes that it has not made a determination as to whether it will reduce (or eliminate) the number of directors on its Board who qualify as an Industry Director as defined in the Bylaws. Even if the number of individuals who would technically qualify as Industry Directors on the Board of Directors is reduced, the Exchange recognizes the importance of having directors who have industry expertise and knowledge (whether those directors are Industry Directors or Non-Industry Directors). Additionally, no matter what the composition of its Board is, the Exchange intends to maintain the fair representation of its Trading Permit Holders in the selection of its directors and administration of its affairs consistent with Section 6(b)(3) of the Securities Exchange Act of 1934, as amended ("Act"), as further described below.

In the event the Exchange determines in the future to reduce the number of directors on its Board who would qualify as an Industry Director, the Exchange believes that a Board composed of all or nearly all Non-Industry Directors would be consistent with the Act, including Section 6(b)(3) of the Act relating to the fair representation of C2 Trading Permit

Holders in the selection of directors and the administration of the Exchange.⁴ The Exchanges also notes that in such a case, at all times at least 20% of the directors serving on the Board shall be Representative Directors nominated (or otherwise selected through the petition process) by the Representative Director Nominating Body as provided in Section 3.2 of the Bylaws. Under Section 3.2, the Representative Director Nominating Body provides a mechanism for Trading Permit Holders to provide input with respect to the nominees for Representative Directors and also allows for Trading Permit Holders to nominate alternative candidates by petition.

In connection with the proposed elimination of the requirement that at least 30% of the Board shall be composed of Industry Directors, C2 also proposes to amend Section 4.4 of its Bylaws relating to the composition of the Nominating and Governance Committee. Specifically, C2 proposes to delete the clause that states that the Nominating and Governance Committee shall consist of both Industry and Non-Industry Directors, given that at some point in the future the Board may not have Industry Directors serving on it.

(2) Amendments Relating to the Advisory Board

Recently, C2 amended its Bylaws to provide for the establishment of an Advisory Board which shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. C2 now proposes to amend Section 6.1 of the Bylaws to clarify that the Exchange “will” (as opposed to “may”) have an Advisory Board, which shall advise the Board of Directors in addition to the Office of the Chairman regarding matters that impact Trading Permit Holders. C2 also proposes to amend Section 6.1 of its Bylaws to expressly provide that at least two members of the Advisory Board shall be Trading Permit Holders or

⁴ See, e.g., Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (approving SR-NYSE-2003-34).

persons associated with Trading Permit Holders. C2 notes that the Advisory Board provides a mechanism for Trading Permit Holders to provide industry feedback to C2's Chairman and CEO, Executive Vice Chairman, President and Lead Director, all of whom are members of the Advisory Board, consistent with Section 6(b)(3) of the Act.

(3) Nomination of Representative Directors

The Exchange Bylaws will continue to require that at least 20% of C2's directors must be Representative Directors. However, the Exchange proposes to amend its Bylaws in a number of respects with regard to the nomination process for the Representative Directors. Currently, as described in Section 3.2 of the Bylaws, the Representative Directors are nominated (or otherwise selected through a petition process) by the Industry-Director Subcommittee of the C2 Nominating and Governance Committee. The Industry-Director Subcommittee is composed of all of the Industry Directors serving on the Nominating and Governance Committee. C2 Trading Permit Holders may nominate alternative Representative Director candidates to those nominated by the Industry Director Subcommittee, in which case a Run-off Election is held in which C2's Trading Permit Holders vote to determine which candidates will be elected to the C2 Board of Directors to serve as Representative Directors.

Because it is possible that at some point in the future C2's Board may not have Industry Directors as defined in the Bylaws serving on it, C2 proposes to amend its Bylaws to eliminate the requirement in Section 3.2 that the Representative Directors must be Industry Directors. In addition, C2 proposes to incorporate into the Bylaws the concept of a Representative Director Nominating Body which shall mean the current Industry-Director Subcommittee of the Nominating and Governance Committee if there are at least two

Industry Directors on the Nominating and Governance Committee. If the Nominating and Governance Committee has less than two Industry Directors as defined in the Bylaws, then the Representative Director Nominating Body shall mean the Trading Permit Holders Subcommittee of the Advisory Board.⁵ The Representative Director Nominating Body will nominate the Representative Directors in accordance with the provisions of Section 3.2 of the Bylaws. In that regard, it will perform the functions currently performed by the Industry-Director Subcommittee.

In addition, C2 proposes to amend Section 3.2 of the Bylaws with regard to the time period by which the Representative Director nominees are announced via circular to the Trading Permit Holders, the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any Run-Off Election. Presently, Section 3.2 of the Bylaws provides that the Industry-Director Subcommittee shall issue a circular announcing its Representative Director nominees not later than January 15th, or the first business day thereafter if the 15th is not a business day. Trading Permit Holders may nominate alternative candidates for the Representative Director positions by petition, which petition needs to be filed with the Secretary of the Exchange not later than 5:00 p.m. on the Monday preceding the first Friday in February (or the first business day thereafter in the event that Monday occurs on a holiday). If one or more valid petitions are received, a Run-Off Election is held at least 20 days prior to the mailing of any notice of the annual meeting.

C2 believes that it would be useful and appropriate to modify these deadlines in order to provide the Exchange, the Nominating and Governance Committee and the Representative

⁵ See proposed new Bylaw definition 1.1(k) and the proposed changes to Sections 4.4 and 6.1 of the Bylaws.

Director Nominating Body with additional flexibility. The Exchange proposes to amend Section 3.2 to provide that:

- The Representative Director Nominating Body shall issue a circular to the Trading Permit Holders identifying the Representative Director nominees not earlier than December 1st and not later than January 15th, or the first business day thereafter if January 15th is not a business day;
- Trading Permit Holders may nominate alternative candidates for election to the Representative Director positions to be elected in a given year by submitting a petition to the Secretary not later than 5:00 p.m. (Chicago time) on the 10th business day following the issuance of the circular to the Trading Permit Holders identifying the Representative Director nominees selected by the Representative Director Nominating Body (“Petition Deadline”). The Exchange believes that 10 business days is a reasonable and sufficient amount of time for Trading Permit Holders to obtain a petition signed by individuals representing not more than 10% of the total outstanding Trading Permits at that time to nominate by petition alternative candidates for election to the Representative Director positions. C2 notes that 10 business days is consistent with the minimum time period that was effective in 2010 and that would be available in 2011 under the existing Bylaws for the nomination of alternative candidates by petition; and
- The Run-off Election will be held not more than 45 days after the Petition Deadline.

As noted, the Exchange believes that modifying these deadlines as proposed will provide the Exchange with additional flexibility and enable the Exchange to complete the process for determining its nominees at an earlier point in time without changing the time period. Modifying these deadlines also will assist in synchronizing C2’s nomination process with the nomination process for C2’s parent company, CBOE Holdings. In addition to the above changes, C2 proposes to replace all references to the Industry-Director Subcommittee in the Bylaws with the term Representative Director Nominating Body.

Finally, C2 proposes to amend Section 2.2 of its Bylaws relating to the timing of its annual meeting to clarify that in no event shall the annual meeting date each year be prior to

the completion of the process for the nomination of the Representative Directors for that annual meeting as set forth in Sections 3.1 and 3.2.

C2 is not proposing to amend any other provisions with regard to the timing and process for the nomination of the Representative Directors.

(4) Amendment to Certificate of Incorporation and Voting Agreement

C2 also proposes to make conforming changes to its Certificate of Incorporation and the Voting Agreement between it and its parent company, CBOE Holdings. Specifically, C2 proposes to amend its Certificate of Incorporation and the Voting Agreement to replace the references to the Industry-Director Subcommittee with the term Representative Director Nominating Body. It also proposes to make non-substantive changes to the Voting Agreement.

2. Statutory Basis

For the reasons set forth above, C2 believes that this filing is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(1) of the Act⁷ and Section 6(b)(5) of the Act⁸ in particular, in that (i) it enables C2 to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Trading Permit Holders and persons associated with its Trading Permit Holders, with the provisions of the Act, the rules and regulations thereunder, and the rules of C2 and (ii) 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. Specifically, C2

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(1).

⁸ 15 U.S.C. 78f(b)(5).

believes that the proposed changes will improve and add greater flexibility to C2's governance structure (i) by eliminating the requirement that the Board of Directors shall be composed of at least 30% Industry Directors as defined in the Bylaws; (ii) by modifying the process for the nomination of Representative Directors, including granting the Trading Permit Holders and persons associated with Trading Permit Holders on the Advisory Board the authority to nominate the Representative Directors in those instances in which the Nominating and Governance Committee has less than two Industry Directors; (iii) by amending the Bylaws to provide that the Exchange will establish an Advisory Board, which C2 views as a useful vehicle for the Board to receive input from the perspective of Trading Permit Holders and with respect to matters of interest to Trading Permit Holders; and (iv) by modifying the deadlines relating to the nomination of the Representative Directors, which C2 believes will provide it, the Nominating and Governance Committee and the Representative Director Nominating Body with additional flexibility with respect to the timing of the nomination process so that the Exchange is not locked into specific dates that may not work well during a particular year. Additionally, C2 believes that this filing is consistent with Section 6(b)(3) of the Act in that C2's Bylaws will continue to provide for the fair representation of C2 Trading Permit Holders in the selection of directors and the administration of the Exchange.

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 not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposal.

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

Within 45 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 or disapprove such proposed rule change, or

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

As reflected in Amendment No. 1, the Exchange has consented to an extension of time for Commission consideration of this proposal for an additional thirty-five days after the filing of Amendment No. 1.⁹

⁹ Amendment No. 1 was filed on November 1, 2011. See supra note 3 (describing Amendment No. 1).

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-C2-2011-031 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-C2-2011-031. 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 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 offices of the Exchange. 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-C2-2011-031, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).