

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80166; File No. SR-C2-2017-009)

March 7, 2017

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change to Amend the C2 Bylaws and Certificate of Incorporation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 22, 2017, C2 Options Exchange, Incorporated (the “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. 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

The Exchange proposes to amend its Bylaws and Certificate of Incorporation. The text of the proposed rule change is available on the Exchange’s website

(<http://www.c2exchange.com/Legal/>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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 these 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 aspects of such statements.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to amend its Bylaws and make corresponding changes to its Certificate of Incorporation. Specifically the Exchange proposes to amend its Board size range and eliminate its Compensation Committee.

First, the Exchange proposes to amend its Bylaws relating to Board size range. Currently, Section 3.1 of the Bylaws provide that the Board shall consist of not less than 12 and not more than 16 directors. The Exchange proposes to change the Board size range such that the Board shall consist of no less than 5 directors. The Exchange believes the proposed change will provide greater flexibility by permitting the Board to increase or decrease the size of the board without the need to further amend the Bylaws.<sup>3</sup> The Exchange notes that any changes in the number of directors will continue to be in all cases subject to the compositional requirements of the board set forth in the Bylaws, including its provision relating to the fair representation of members.<sup>4</sup> The Exchange also notes that the Bylaws of other Exchanges have similar board size provisions.<sup>5</sup> The Exchange also proposes to make conforming changes to its Certificate of Incorporation. Specifically, C2 proposes to amend subparagraph (b) of Article Fifth to also provide that the Board of Directors shall consist of not less than 5 directors, and eliminate the current referenced range of 12 to 16 directors.

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<sup>3</sup> The Board notes that it does not at this time anticipate changing the current Board size outside of the original range of 12-16 directors.

<sup>4</sup> See Section 3.2 of the C2 Bylaws.

<sup>5</sup> See e.g., Fourth Amended and Restated Bylaws of BZX Exchange, Inc., Article III, Board of Directors, Section 2(a), which provides that the Board of Directors shall consist of four (4) or more Directors, the number of which would be determined by resolution of the Board.

Next, the Exchange proposes to eliminate the Exchange-level Compensation Committee. The Exchange seeks to eliminate the Compensation Committee because it believes that the Compensation Committee's functions are duplicative of the functions of the Compensation Committee of its parent company, CBOE Holdings.<sup>6</sup> Specifically, under its charter, the CBOE Holdings Compensation Committee has authority to assist the CBOE Holdings Board of Directors in carrying out its overall responsibilities relating to executive compensation and also, among other things, (i) recommending the compensation of the Company's Chief Executive Officer and certain other executive officers and (ii) approving and administering all cash and equity-based incentive compensation plans of the Company that affect employees of the Company and its subsidiaries. Similarly, under its charter, the C2 Compensation Committee has authority to assist the C2 Board and the Parent Compensation Committee in carrying out its overall responsibilities relating to executive compensation as well as (i) recommending the compensation of certain executive officers designated by the Board whose compensation has not been, and is not expected to be, determined by the compensation committee of the Parent Board or another Board committee<sup>7</sup> and (ii) assist the Parent Compensation Committee in the administration of cash and equity-based incentive compensation plans of the Company that affects employees of the Company and its subsidiaries. As such, other than to the extent that the C2 Compensation Committee recommends the compensation of executive officers whose

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<sup>6</sup> The Exchange notes that the current composition of the C2 and CBOE Holdings Compensation Committees are the same.

<sup>7</sup> The Exchange notes that pursuant to its Charter, the C2 Regulatory Oversight and Compliance Committee (ROCC) of the C2 Board recommends to the Board compensation for the Chief Regulatory Officer and any Deputy Chief Regulatory Officers. The Exchange notes that the proposed change will not affect this process. The Exchange also notes that currently not all executive officers of C2 are required to have their compensation determined by the Compensation Committee.

compensation is not already determined by the CBOE Holdings Compensation Committee, its activities are duplicative of the activities of the CBOE Holdings Compensation Committee. The Exchange notes that currently, each of the executive officers whose compensation would be determined by the C2 Compensation Committee is also an executive officer of CBOE Holdings, and as such, the CBOE Holdings Compensation Committee already performs these functions for such officers. To the extent that compensation need be determined by [sic] any C2 officer who is not also a CBOE Holdings officer in the future, the C2 Board or senior management will perform such action without the use of a compensation committee, as provided for in Section 5.11 of the Bylaws. Thus, the responsibilities of the C2 Compensation Committee are fully duplicated by the responsibilities of the CBOE Holdings Compensation Committee. Accordingly, C2 is proposing to delete Section 4.3 of the C2 Bylaws which provides for the C2 Compensation Committee and to delete a reference to the C2 Compensation Committee in Section 4.1(a) of the C2 Bylaws (which lists the required C2 Board committees). C2 also proposes to eliminate the reference to the C2 Compensation Committee in Section 5.11 of the C2 Bylaws (which provides that officers are entitled to salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board unless otherwise delegated to the Compensation Committee of the Board or to members of senior management). C2 believes that its proposal to eliminate its Compensation Committee is substantially similar to prior actions taken by other securities exchanges with parent company compensation committees to eliminate their exchange-level compensation committees.<sup>8</sup>

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<sup>8</sup> See e.g., Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR-NASDAQ-2009-042). See also Securities Exchange Act Release No. 62304 (June 16, 2010), 75 FR 36136 (June 24, 2010) (SR-NYSEArca-2010-31).

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to amend the Board size range in the Bylaws and Certificate of Incorporation provides the Board with flexibility. Additionally, the Exchange is not proposing to amend any of the compositional requirements currently set forth in the Bylaws. The Exchange therefore believes that the proposed changes will provide greater flexibility to the Exchange in populating a Board of Directors that includes directors with relevant and diverse expertise, while continuing to ensure that the Board is of adequate size and the existing compositional requirements of the Exchange are met, including the provision relating to the fair representation of members.

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Id.

The Exchange believes eliminating the Exchange-level Compensation Committee allows the Exchange to eliminate a board committee whose responsibilities overlap with, and are adequately handled by, the corresponding committee of the Exchange's ultimate parent. This will allow directors of the Exchange to focus their attention on matters falling directly within the purview of the Exchange's board, including its orderly discharge of regulatory duties to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change relates to the corporate governance of C2 and not the operations of the Exchange. This is not a competitive filing and, therefore, imposes no burden on competition.

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 proposed rule change.

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 up to 90 days (i) as the Commission may designate 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2017-009 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-C2-2017-009. 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, 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 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-C2-2017-009 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.<sup>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).