

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow FINRA to more effectively carry out its enforcement activities on behalf of the Exchange. Therefore, the Commission designates the proposal operative upon filing.¹⁴

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2011-90 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-NYSEARCA-2011-90. This file number should be included on the subject line if email 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 a.m. and 3 p.m. Copies of the 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-NYSEARCA-2011-90 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65979; File No. SR-C2-2011-031]

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

December 15, 2011.

I. Introduction

On October 21, 2011, the C2 Options Exchange, Incorporated ("Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Bylaws concerning Industry Directors and the nomination of Representative Directors and to make conforming changes to the C2 Certificate of Incorporation and the Voting Agreement between C2 and CBOE Holdings, Inc. ("CBOE Holdings"). On November 1, 2011, the Exchange submitted a technical amendment ("Amendment No. 1") to the proposed rule change.³

¹⁵ 17 CFR 200.30-3(a)(12).

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

Continued

On November 9, 2011, the proposed rule change was published for comment in the **Federal Register**.⁴ The Commission received no comments on the proposed rule change. This order grants approval to the rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

(a) Elimination of 30% Industry Director Requirement

Currently, the Exchange's Bylaws contain a requirement that its Board of Directors be composed of at least 30% Industry Directors.⁵ The Exchange proposed to amend its Bylaws to eliminate this requirement. In its Notice, the Exchange said that this change was intended to give it flexibility as it evaluates the composition of its Board in the future.⁶ C2 also proposed a conforming change to amend Section 4.4 of its Bylaws to delete the clause that requires the Nominating and Governance Committee ("NGC") to consist of both Industry and Non-Industry Directors.

(b) Nomination of Representative Directors

Currently, the Exchange Bylaws state that at least 20% of C2's directors must be Representative Directors.⁷ As described in Section 3.2 of the Bylaws, candidates for Representative Director positions are nominated by the Industry Director Subcommittee of the NGC.⁸ In addition, C2 Trading Permit Holders may nominate alternative candidates (in addition to those nominated by the Industry Director Subcommittee) for election to the Representative Director positions via a petition process. In such 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.

As proposed, the Exchange Bylaws will continue to require that at least 20% of C2's directors must be Representative Directors. However, the Exchange proposed to amend its Bylaws to revise the nomination process for the Representative Directors. First, the

Exchange proposed to eliminate the requirement in Section 3.2 that the Representative Directors must be Industry Directors to reflect the fact that the other change it proposed with respect to Industry Directors could result in the Board potentially not having Industry Directors. Second, the Exchange proposed to incorporate into the Bylaws the concept of a Representative Director Nominating Body ("RDNB").⁹ Under proposed Section 1.1(k), RDNB would mean the current Industry Director Subcommittee of the NGC if there are at least two Industry Directors on the Exchange's NGC and would mean the Trading Permit Holders Subcommittee of the Advisory Board if the NGC has fewer than two Industry Directors. The RDNB would nominate the Representative Directors in accordance with the current provisions of proposed Section 3.2 of the Bylaws, and therefore would perform the functions currently performed by the Industry Director Subcommittee.

In addition, C2 proposed 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, as well as the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any run-off election. C2 proposed to amend these deadlines in order to provide it with additional flexibility to complete the process for determining nominees at an earlier point in time. The Exchange did not propose to change the timeframes between the milestones in the process. In addition, C2 intends the new timelines to allow it to synchronize the Exchange's nomination process to that of CBOE Holdings.

The NGC will continue to be bound to accept and nominate the Representative Director nominees recommended by the RDNB, provided that the Representative Director nominees are not opposed by a petition candidate. If such Representative Director nominees are opposed by a petition candidate, then the Nominating and Governance Committee shall be bound to accept and nominate the Representative Director nominees who receive the most votes pursuant to a run-off election.¹⁰

(c) Amendments Relating to the Advisory Board

Currently, Section 6.1 of the Exchange Bylaws provides that the Board may establish an Advisory Board which shall advise the Office of the Chairman regarding matters of interest to Trading Permit Holders. The Exchange proposed to amend Section 6.1 of the Bylaws to provide 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 proposed 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 persons associated with Trading Permit Holders.

(d) Amendment To Certificate of Incorporation and Voting Agreement

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

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule change is consistent with: (1) Section 6(b)(1) of the Act,¹² which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; (2) Section 6(b)(3) of the Act,¹³ which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer (the "fair

days after November 1, 2011 (the filing date of this amendment).

⁴ See Securities Exchange Act Release No. 65681 (November 3, 2011), 76 FR 69783 ("Notice").

⁵ See Section 3.1 of the Exchange's Bylaws. The term "Industry Directors" is defined in this Section.

⁶ See Notice, *supra* note 4, at 69784.

⁷ See Section 3.1 of Exchange Bylaws. The term "Representative Directors" is defined in Section 3.2 of the Exchange Bylaws.

⁸ The Industry Director Subcommittee is composed of all of the Industry Directors serving on the NGC.

⁹ See proposed new Bylaws definition 1.1(k) and the proposed changes to Sections 4.4 and 6.1 of the Bylaws.

¹⁰ See Section 3.1 of the Exchange Bylaws.

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(1).

¹³ 15 U.S.C. 78f(b)(3).

representation requirement”); and (3) Section 6(b)(5) of the Act,¹⁴ in that it is designed, among other things, 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 a national market system; and, in general, to protect investors and the public interest.

(a) Elimination of 30% Industry Director Requirement and Fair Representation

The Commission believes that the Exchange’s proposal to eliminate the requirement that its Board of Directors be composed of at least 30% Industry Directors is consistent with Section 6(b) of the Act,¹⁵ including Section 6(b)(3) of the Act.¹⁶ Even if the Exchange’s Board might not someday include directors who technically qualify as Industry Directors, or the number of such directors is otherwise reduced below current levels,¹⁷ the Exchange’s proposal would not impact its current process to ensure fair representation of its Trading Permit Holders in the selection of its directors and administration of its affairs as required by Section 6(b)(3) of the Act.¹⁸ Specifically, at all times, at least 20% of the directors serving on the Board will be Representative Directors nominated (or otherwise selected through the petition process) with the input of Trading Permit Holders (or persons associated with Trading Permit Holders) as provided in the proposed Section 3.2 of the Bylaws.

The Commission has previously approved proposals in which an exchange’s board of directors was composed of all or nearly all non-industry directors where the process was nevertheless designed to comply with the “fair representation”

requirement in the selection and election of directors.¹⁹

(b) Nomination of Representative Directors and Fair Representation

As proposed, the Exchange Bylaws will continue to require that at least 20% of C2’s directors must be Representative Directors. However, in light of the changes that the Exchange proposed to the composition of the Board, the Exchange revised the nomination process for the Representative Directors. First, the Exchange proposed to incorporate into the Bylaws the concept of a RDNB,²⁰ which would mean the current Industry Director Subcommittee of the NGC if there are at least two Industry Directors on the Exchange’s NGC or the Trading Permit Holders Subcommittee of the Advisory Board if the NGC has less than two Industry Directors. Second, the Exchange proposed to eliminate the requirement in Section 3.2 that the Representative Directors must be Industry Directors.²¹ In addition, C2 proposed 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, as well as the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any run-off election.²²

The Commission believes that the Exchange’s proposed changes to the nomination process for the Representative Directors are consistent with Section 6(b) of the Act,²³ including Section 6(b)(3) of the Act.²⁴ As discussed above, currently the Exchange satisfies the fair representation requirement by having on its Board at

¹⁹ See, e.g., Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (approving SR-NYSE-2003-34).

²⁰ See *supra* note 9 and accompanying text.

²¹ In the Notice, the Exchange explained that it proposed this change because it is possible that at some point in the future C2’s Board may not have Industry Directors serving on it. See Notice, *supra* note 4, at 69784.

²² In the Notice, the Exchange explained that it proposed this change because it would provide the Exchange, the NGC, and the RDNB with additional flexibility and enable the exchange to complete the process for determining its nominees for Representative Director positions at an earlier point in time without changing the time period, as well as synchronize C2’s nomination process with the nomination process of its parent company, CBOE Holdings. See Notice, *supra* note 4, at 69785.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(3). This Section requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

least 20% Representative Directors. As a result of the proposed changes to the composition of the Board, the NGC could have fewer than two Industry Directors, in which case the Industry Director Subcommittee would not be formed.²⁵ Under this scenario, the RDNB would be the Trading Permit Holders Subcommittee of the Advisory Board (consisting of at least two members who are Trading Permit Holders (or persons associated with Trading Permit Holders))²⁶ and would provide a mechanism for Trading Permit Holders to have input with respect to the nominees for Representative Directors. Pursuant to Bylaws Section 6.1, members of the Advisory Board are recommended by the NGC for approval by the Board. The proposed change leaves intact the current process to nominate and elect Representative Directors, but is intended to accommodate the need for member input in the nomination of Representative Director candidates in the event that the Board does not contain a sufficient number of Industry Directors to empanel the Industry Director Subcommittee.

Further, with respect to the proposed changes to the time period by which the Representative Director nominees are announced via circular to the Trading Permit Holders, as well as the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any run-off election, the Commission believes that such changes generally preserve the current schedule with respect to the various milestones in the process, while allowing the Exchange to shift slightly the start of the process. Further, the Commission notes that the proposed provision specifically provides that “[i]n 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.”²⁷

(c) Amendments Relating to the Advisory Board and Fair Representation

As stated above, the Exchange proposed to amend Section 6.1 of the Bylaws to provide 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

²⁵ See Section 4.4 of the Exchange Bylaws.

²⁶ See *infra* note 29 and accompanying text.

²⁷ See Section 2.2 of the Exchange Bylaws.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(3). This Section requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

¹⁷ In the Notice, the Exchange stated 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 and that it recognizes the importance of having directors who have industry expertise and knowledge (whether those directors are Industry Directors or Non-Industry Directors). See Notice, *supra* note 4, at 69784.

¹⁸ 15 U.S.C. 78f(b)(3).

Holders.²⁸ C2 also proposed 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 persons associated with Trading Permit Holders.²⁹ By providing for the mandatory establishment of the Advisory Board and for the mandatory inclusion of at least two Trading Permit Holders or persons associated with Trading Permit Holders in the Advisory Board, the Exchange's proposal is designed to facilitate the provision of input by industry members and Trading Permit Holders into the selection of its directors and administration of its affairs, consistent with Section 6(b)(3) of the Act.³⁰

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-C2-2011-031), as modified by Amendment No. 1, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011-32603 Filed 12-20-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65970; File No. SR-NYSEArca-2011-74]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Expanding the Scope of Potential "Users" of Its Co-Location Services To Include Any Market Participant that Requests to Receive Co-Location Services Directly From the Exchange and Amending Its Fee Schedule To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

December 15, 2011.

I. Introduction

On October 14, 2011, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to expand the scope of potential "Users" of its co-location services, and to amend its Fee Schedule. The proposed rule change was published for comment in the **Federal Register** on November 1, 2011.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.⁴ For purposes of its co-location services, the term "User" currently includes any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to NYSE Arca Equities Rule 7.29 (*see* NYSE Arca Equities Rule 1.1(yy)). The Exchange proposed to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.⁵ Under the proposed rule change, Users could therefore include ETP Holders, Sponsored Participants,

non-ETP Holder broker-dealers and vendors.⁶

The Exchange also proposed to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers ("Hosted Users") at the Exchange's data center.⁷ "Hosting" would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposed to charge each User a fee of \$500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange's co-location services increases access to the Exchange's co-location facilities and that the co-location services would be offered to these additional Users in a

²⁸ In the Notice, the Exchange explained that it recently established an Advisory Board. *See* Notice, *supra* note 4, at 69784.

²⁹ In the Notice, the Exchange noted 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. *See* Notice, *supra* note 4, at 69784.

³⁰ 15 U.S.C. 78f(b)(3).

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ *See* Securities Exchange Act Release No. 65625 (October 26, 2011), 76 FR 67522 ("Notice").

⁴ *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048.

⁵ As stated by the Exchange, Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange. *See* Notice, 76 FR at 67522.

⁶ *Id.* The Exchange anticipated that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.

⁷ *Id.*

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).