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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68429; File No. C2-2012-039)

December 13, 2012

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Proposed Rule Change Related to Bylaw and Other Changes

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 November 30, 2012, the Chicago Board 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. 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 proposes to: (i) amend its Bylaws to expressly provide that the Representative Director Nominating Body and any petition candidate must satisfy the compositional requirements determined by the Board from time to time pursuant to a resolution adopted by the Board; (ii) amend its Bylaws relating to the Board size range such that the Board shall consist of not less than 12 and not more than 16 directors; and (iii) make conforming changes to the C2 Certificate of Incorporation. The text of the proposed amendments to C2’s Bylaws and C2’s Certificate of Incorporation are 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.

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

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

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 expressly state that the Representative Director Nominating Body and any petition candidate must satisfy the compositional requirements determined by the Board from time to time pursuant to a resolution adopted by the Board; (ii) amend its Bylaws relating to the Board size range such that the Board shall consist of not less than 12 and not more than 16 directors; and (iii) make conforming changes to the C2 Certificate of Incorporation.

(1) Compositional Requirements Determined by the Board

Last year, C2 amended its Bylaws and Certificate of Incorporation to, among other things: (i) eliminate the requirement that its Board of Directors be composed of at least 30% Industry Directors, and (ii) eliminate the requirement in Section 3.2 of the Bylaws that the Representative Directors must be Industry Directors.<sup>3</sup> In its rule filing, C2 noted that the

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<sup>3</sup> The Exchange notes that at all times at least 20% of the directors serving on the Board shall be Representative Directors nominated by the Representative Director Nominating Body as provided in Section 3.2 of the Bylaws (or otherwise selected through the petition process). Under Section 3.2, the Representative Director Nominating Body provides a mechanism for Trading Permit Holders to provide input

changes would provide it with appropriate flexibility as it evaluates the structure and composition of its Board in the future.<sup>4</sup> Additionally, C2 stated that 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"). In approving C2's rule filing, the SEC noted that it 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.<sup>5</sup>

In connection with these changes, C2 also amended Section 3.1 of the Bylaws to provide that: "[T]he Board shall determine from time to time pursuant to resolution adopted by the Board the total number of directors, the number of Non-Industry Directors and Industry Directors (if any), and the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any)." C2 now proposes to amend the Bylaws to expressly provide that any person nominated by the Representative Director Nominating Body and any petition candidate nominated pursuant to the Section 3.2 of the Bylaws shall satisfy the compositional requirements determined by the Board pursuant to a resolution adopted by the Board in accordance with Section 3.1 designating the number of

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with respect to the nominees for Representative Directors and Trading Permit Holders are also allowed to nominate alternative candidates by petition.

<sup>4</sup> See Securities Exchange Act Release No. 65681 (November 3, 2011), 76 FR 69783 (November 9, 2011) (noticing for comment SR-C2-2011-031); Securities Exchange Act Release No. 65979 (December 15, 2011), 76 FR 79239 (December 21, 2011) (approving SR-C2-2011-031).

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (approving SR-NYSE-2003-34).

Representative Directors that are Non-Industry Directors and Industry Directors (if any). C2 also proposes to amend Section 3.5 of the Bylaws relating to the filling of vacancies on the Board to provide that the Representative Director Nominating Body shall only recommend individuals to fill a vacancy in a Representative Director position who satisfy the compositional requirements designated by the Board pursuant to resolution adopted by the Board in accordance with Section 3.1, designating the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any). C2 believes that these changes are consistent with the changes to the Bylaws that were made last year and simply makes those changes more explicit.

(2) Board Size Range

C2 proposes to amend its Bylaws relating to the Board size range. Currently, the Bylaws provide that the Board shall consist of not less than 11 and not more than 23 directors. C2 proposes to change the Board size range such that the Board shall consist of not less than 12 and not more than 16 directors. C2 believes that this new Board size range is consistent with the current size of C2's Board and the Board size range that it expects to maintain in the future.

(3) Amendment to Certificate of Incorporation

C2 proposes to make conforming changes to its Certificate of Incorporation. Specifically, C2 proposes to amend its Certificate of Incorporation to expressly provide that any individual(s) recommended by the Representative Director Nominating Body and any individual(s) who are petition candidates shall satisfy the compositional requirements determined by the Board of Directors from time to time pursuant to a resolution adopted by the Board in accordance with Section 3.1 of C2's Bylaws, designating the number of

Representative Directors that are Non-Industry Directors and Industry Directors (if any). C2 also proposes to include in its Certificate of Incorporation that the Board of Directors and/or Nominating and Governance Committee, as applicable, shall make such determinations as to whether a director candidate satisfies applicable qualifications for election as a director pursuant to and in accordance with Section 3.1 of the Corporation's Bylaws, which is consistent with the current provisions in the Bylaws.

2. Statutory Basis

For the reasons set forth above, C2 believes that this filing is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(1) of the Act<sup>7</sup> and Section 6(b)(5) of the Act<sup>8</sup> 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 believes that the proposed changes will enhance C2's governance structure by (i) by expressly providing that any person nominated by the Representative Director Nominating Body and any petition candidate nominated pursuant to the Section 3.2 of the Bylaws shall satisfy the compositional requirements determined by the Board pursuant to a resolution adopted by the Board in accordance with Section 3.1 designating the number of

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(1).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

Representative Directors that are Non-Industry Directors and Industry Directors (if any); and (ii) by changing the Board size range from 11 to 23 directors to 12 to 16 directors.

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.

#### 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-C2-2012-039 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-C2-2012-039. 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-C2-2012-039, 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).