



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76300; File No. SR-C2-2015-030]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 6.45 Relating to Disaster Recovery

October 29, 2015

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 28, 2015, C2 Options Exchange, Incorporated (“Exchange” or “C2”) filed with the Securities and Exchange Commission (“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 Rule 6.45 relating to disaster recovery. The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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 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.

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

1. Purpose

C2 proposes to amend Rule 6.45 relating to disaster recovery. Specifically, C2 proposes to update Rule 6.45 to further describe C2's back-up systems, the circumstances under which they may be used and the testing that C2 may conduct to ensure the availability, functionality and performance of such systems. Additionally, C2 proposes certain updates to Rule 6.45 in response to new disaster recovery regulations and business resumption standards recently adopted by the Securities and Exchange Commission ("SEC" or "Commission") as promulgated in Regulation Systems Compliance and Integrity ("Regulation SCI") under the Securities Exchange Act of 1934 (the "Act").³

Background

C2 adopted Rule 6.45 in 2012 for the limited purpose of providing alternative means of operation in the event C2's trading system became inoperable or otherwise unavailable for use due to a disaster or other unusual circumstance. In particular, Rule 6.45, as originally adopted, was intended to allow C2 to operate a Disaster Recovery Facility ("DRF") to continue to trade

³ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 F.R. 72252 (December 5, 2014) (Regulation Systems Compliance and Integrity) (File No. S7-01-13).

exclusively-listed option classes until C2's main trading system was again available.⁴ At that time, C2 intended to utilize hardware located in the Chicago Board Options Exchange, Incorporated ("CBOE") building in Chicago, IL for the purposes of operating the DRF. C2's main trade engine is located on the east coast.

In addition to adding greater detail to C2's disaster recovery rules in Rule 6.45, C2 proposes to make updates to Rule 6.45 to harmonize its disaster recovery rules with the newly implemented disaster recovery-related regulatory imperatives of Regulation SCI. Regulation SCI supersedes and replaces the SEC's voluntary Automation Review Policy ("ARP"), established by the Commission's two policy statements each titled "Automated Systems of Self-Regulatory Organizations," issued in 1989 and 1991, expanding existing practices and making them mandatory.⁵ As part of Regulation SCI, C2 is required to maintain back-up and recovery capabilities with sufficient resiliency and geographical diversity and that are reasonably designed to achieve next business-day resumption of trading and two-hour resumption of critical systems following a wide-scale disruption.⁶ C2 must also participate in at least annual testing of its business continuity and disaster recovery plans and, to that end, develop and adopt standards to designate which of its TPHs must participate in testing in order to reasonably ensure the maintenance of a fair and orderly market if C2's disaster recovery plan must be activated.⁷

Proposed Rule Changes

⁴ See Securities Exchange Act Release No. 67357 (July 5 2012), 77 F.R. 40928 (July 11, 2012) (SR-C2-2012-011).

⁵ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 F.R. at 72252 (December 5, 2014) (Regulation Systems Compliance and Integrity) (File No. S7-01-13).

⁶ 17 C.F.R. § 242.1001(a)(2)(v).

⁷ Id. at § 242.1004.

C2 now proposes to make changes to Rule 6.45 to allow for trading in all C2-traded option classes on a back-up data center in the event the main trading system is unavailable. The proposed rule will no longer be limited to exclusively-listed options traded on C2. Furthermore, prior to the compliance date of Regulation SCI, C2 will have separate hardware designated for the C2 back-up data center (as opposed to using CBOE hardware).

C2 proposes to make changes to Rule 6.45 to provide additional details regarding C2's back-up trading systems and business continuity and disaster recovery plans activation and testing. As discussed above, C2 also seeks to update its disaster recovery rules to ensure consistency with Regulation SCI.

Current Rule 6.45 is divided into four sections, (a) through (d). Rule 6.45(a) authorizes C2 to maintain a DRF to preserve C2's ability to trade exclusively-listed options in the event C2's primary data center becomes inoperable or otherwise unavailable for use. Current Rule 6.45(b) describes the notice that must be given prior to commencing trading on back-up data center systems. Current Rule 6.45(c) describes the rules that would be in effect if C2 were to switch its trading operations to the DRF. Current Rule 6.45(d) prescribes that Trading Permit Holders ("TPH") are required to take appropriate actions as instructed by C2 to accommodate C2's ability to trade options via the DRF.

C2 proposes to make rule changes to Rule 6.45 with detail added to each section of the current rule. Under proposed Rule 6.45(a) (General) C2 would adopt a general statement regarding the purpose of its disaster recovery rules, providing that C2 maintains business continuity and disaster recovery plans that may be effected in the interests of the continued operation of fair and orderly markets in the event of a systems failure, disaster, or other unusual circumstances that might threaten the ability to conduct business on C2.

Proposed Rule 6.45(b) (Back-up Data Center) would incorporate parts of the current Rule 6.45(a) in that it includes a statement that C2 maintains a back-up data center (replacing what was formerly referenced as a “Disaster Recovery Facility” or “DRF”) in order to preserve C2’s ability to conduct business in the event C2’s primary data center becomes inoperable or otherwise unavailable for use. Proposed Rule 6.45(b) no longer limits the C2 disaster recovery facility to preserving C2’s ability to trade exclusively-listed options. Currently C2 does not trade exclusively-listed options. The proposed Rule would now cover all option classes available for trading on C2. The proposed Rule notes that disaster recovery plans may be effected to ensure the continued operation of a fair and orderly market. C2 is removing the reference to the trading of exclusively-listed options in favor of “conduct business”. This proposed rule change reflects the fact that C2 may be engaged in business activities other than just the trading of options, including, but not limited to, the dissemination of market data and certain regulatory functions.

Proposed Rule 6.45(b) would add the scenario of a significant systems failure to the list of causes that may trigger an operational switch to C2’s back-up data center. The proposed addition of significant systems failures to the list of scenarios that may trigger an operational switch to C2’s back-up data center is intended to more accurately reflect the realities of electronic trading environments and contemporary threats posed to the operation of fair and orderly markets. In addition to the reformulation of the description of C2’s back-up data center, proposed Rule 6.45(b) would also contain subsections similar to the notice, applicable rules, and Trading Permit Holder (“TPH”) preparations provisions currently contained in Rules 6.45(b) through (d).

Proposed Rule 6.45(b)(i) (Back-up Data Center Functionality), would make clear the functional and performance standards that the back-up data center must be reasonably designed

to achieve. Specifically, proposed Rule 6.45(b)(i) would provide that C2 maintains a back-up data center that C2 has determined is reasonably designed to achieve prompt resumption of systems consistent with Regulation SCI. Proposed Rule 6.45(b)(i) would also provide that nothing in the provisions of proposed Rule 6.45(b) shall be interpreted to require C2 to develop or maintain a back-up data center designed to fully replicate the capacity, latency, and other features of the primary data center. This statement attempts to make clear that in order to preserve C2's ability to conduct business in the event C2's primary data center becomes inoperable or otherwise unavailable for use, C2 must maintain a back-up data center that is reasonably designed achieve resumption of systems consistent with Regulation SCI during a significant systems failure, disaster or other unusual circumstances, rather than replicate C2's primary data center systems. C2 believes that the standards set forth in proposed Rule 6.45(b)(i) are reasonable to help ensure the maintenance of fair and orderly markets in the event of a significant systems failure, disaster or other unusual circumstances and are consistent with provisions in the release language of Regulation SCI.⁸

Proposed Rule 6.45(b)(ii) (Notice), would be similar to current Rule 6.45(b) and provide that prior to commencing trading on the back-up data center, C2 shall announce publicly the classes that will be available for trading. Proposed Rule 6.45(b)(iii) (Applicable Rules) would provide that in the event the primary data center becomes inoperable, trading will continue using the back-up data center and all trading rules will remain in effect. Consistent with current Rule 6.45(c), the proposed rule would also contain the provisions that all non-trading rules of C2 shall continue to apply.

⁸ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 F.R. at 72353 (December 5, 2014) (Regulation Systems Compliance and Integrity) (File No. S7-01-13).

Proposed Rule 6.45(b)(iv) (Trading Permit Holder Participation) regarding testing of C2's back-up data center would contain provisions similar to current Rule 6.45(d) (Trading Permit Holder Preparations), but add subparagraphs to more clearly articulate C2's authority to conduct testing of its back-up data center systems. Thus, similar to current Rule 6.45(d), proposed Rule 6.45(b)(iv) would provide that TPHs are required to take appropriate actions as instructed by C2 to accommodate C2's ability to trade options via the back-up data center. C2 also proposes changing the rule text in proposed Rule 6.45(b)(iv) to provide that TPHs are required to take appropriate actions as instructed by C2 to accommodate C2's ability to conduct business via the back-up data center, rather than solely to accommodate C2's ability to trade options. Under the proposed rule change, the title of current Rule 6.45(d) (Trading Permit Holder Preparations) would also be changed in proposed Rule 6.45(b)(iv) (Trading Permit Holder Participation) to better describe the purpose of the rule provisions.

Subsections (A) through (C) under proposed Rule 6.45(b)(iv) are designed to harmonize C2's back-up data center testing rules with certain provisions of Regulation SCI. Under proposed Rule 6.45(b)(iv)(A) (Designated BCP/DR Participants), C2 shall designate those Trading Permit Holders that the C2 reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of the C2's business continuity and disaster recovery plans ("Designated BCP/DR Participants"). Designated BCP/DR Participants will include: 1) all C2 Market-Makers and; 2) all C2 Trading Permit Holders connected to the C2 primary data center and transacting non-Participant customer business, unless a C2 Trading Permit Holder, other than a C2 Market-Maker, can demonstrate ready access to the back-up data center through another C2 Trading Permit Holder that is a designated participant. C2 has reasonably determined that a C2 TPH, other than a C2 Market-Maker, who can

demonstrate ready-access to the back-up data center through another C2 Trading Permit Holder, that is a designated participant, is not necessary for the maintenance of fair and orderly markets in the event of the activation of the C2's business continuity and disaster recovery plans. Criteria for designating BCP/DR participants will be announced prior via Regulatory Circular. Any changes to the standards by which a market participant might be determined to be a Designated BCP/DR Participant would be applied prospectively with reasonable advance notice as announced via Regulatory Circular. C2 would first announce the criteria by which market participants would be determined to be Designated BCP/DR Participants by November 1, 2015.

C2 has attempted to model the provisions of proposed Rule 6.45(b)(iv)(A) based on provisions of Regulation SCI, which require C2 to establish standards for the designation of those members or participants that C2 reasonably determines are, taken as a whole, the minimum number of members or participants necessary for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans.⁹ Also consistent with Regulation SCI, proposed Rule 6.45(b)(iv)(B) (Fair and Orderly Market Conditions) would make clear that nothing in proposed Rule 6.45(b) would require C2 to assume that average levels of liquidity, depth, or other characteristics of a usual trading session must be present in order to achieve a fair and orderly market in the event of the activation of C2's business continuity and disaster recovery plans.¹⁰

Proposed Rule 6.45(b)(iv)(C) (Business Continuity and Disaster Recovery Plans Testing), would provide that C2 shall require Designated BCP/DR Participants and may require other market participants to participate in scheduled business continuity and disaster recovery

⁹ See 17 C.F.R. § 242.1004(a)-(b).

¹⁰ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 F.R. at 72353 (December 5, 2014) (Regulation Systems Compliance and Integrity) (File No. S7-01-13).

plans tests in the manner and frequency prescribed by C2. Proposed Rule 6.45(b)(iv)(C) would set forth C2's authority to conduct testing of its business continuity and disaster recovery plans and obtain assistance from Designated BCP/DR Participants and other market participants in conducting such tests. C2 notes that the provisions of proposed Rule 6.45(b)(iv)(C) are consistent with C2's current rules¹¹ as well as provisions of Regulation SCI pertaining to business continuity and disaster recovery plan testing.¹² Proposed Rule 6.45(b)(iv)(C)(1) (Documentation and Reports), would provide that C2 may require Designated BCP/DR Participants and/or other market participants to provide documentation and reports regarding tests conducted pursuant to Rule 6.45, including related data and information, as may be requested by C2, and in the manner and frequency prescribed by C2. Proposed Rule 6.45(b)(iv)(C)(2) (Notice), would provide that C2 will provide reasonable prior notice of scheduled business continuity and disaster recovery plans tests to Trading Permit Holders, which notice shall describe the general nature of the test(s) and identify the Trading Permit Holders required to participate and shall be announced via Regulatory Circular.

2. Statutory Basis

C2 believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to C2 and, in particular, the requirements of Section 6(b) of the Act¹³ and Regulation SCI.¹⁴ Specifically, C2 believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirements that the rules of an exchange be designed to prevent

¹¹ See Rules 6.34 (Participant Electronic Connectivity); 6.45(d) (Trading Permit Holder Preparations).

¹² See 17 C.F.R. § 242.1004(a)-(b).

¹³ 15 U.S.C. 78f(b).

¹⁴ See 17 C.F.R. §242.1001(a) and 1004.

¹⁵ 15 U.S.C. 78f(b)(5).

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, C2 believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ 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 is designed to promote C2's ability to ensure the continued operation of a fair and orderly market in the event of a systems failure, disaster, or other unusual circumstances that might threaten the ability to conduct business on C2. C2 recognizes that switching operations to the back-up data center may occur in times of uncertainty or great volatility in the markets. It is at these times that the investors may have the greatest need for viable, trustworthy marketplaces. The proposed rule changes seek to ensure that such a marketplace will exist when most needed. Accordingly, C2 believes that the proposed rule protects investors in the most fundamental sense by helping to ensure that a fair and orderly market will exist at a time when such a market may be most needed.

C2 also believes that the proposed rule change promotes just and equitable principles of trade by adding detail and clarity to the Rules. The proposed rule change seeks to provide additional clarity to C2's disaster recovery rules, putting all market participants on notice as to how C2 will function in case of significant systems disruption or other disaster situation. C2 is continuously updating the Rules to provide additional detail, clarity, and transparency regarding

¹⁶ Id.

its operations and trading systems and regulatory authority. C2 believes that the adoption of detailed, clear, and transparent rules reduces burdens on competition and promotes just and equitable principles of trade. C2 also believes that adding greater detail to the Rules regarding C2's ability to ensure the continuous operation of the market and preserve the ability to conduct business on C2 will increase confidence in the markets and encourage wider participation in the markets and greater investment. Finally, C2 notes that proposed Rule 6.45 is designed to harmonize C2's disaster recovery rules with Regulation SCI under the 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. Rather, the proposed rule change will help ensure that competitive markets remain operative in the event of a systems failure or other disaster event. C2 notes that the proposed rule change is designed to clarify C2's authority to require market participants to participate in, and provide necessary liquidity to ensure fair and orderly markets. C2 further notes that the proposed rule change is designed to ensure competitive markets in that it is designed around the mandates of Regulation SCI, which each of the national securities exchanges is required to satisfy.

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

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 for 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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change does not present any novel or substantive issues. The proposed rule change is substantially the same as CBOE Rule 6.18,²¹ except for provisions relating to the loss of a trading floor and the specific factors for designating BCP/DR Participants. The Commission notes that C2 does not have a trading floor and further, that the factors proposed by C2 are those that C2 reasonably determined are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of the Exchange's business

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 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 Commission deems this requirement to have been met.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ CBOE Rule 6.18 was recently amended in CBOE-2015-088, which was filed on October 8, 2015, and effective upon filing. See Securities Exchange Act Release No. 76203 (October 20, 2015), 80 FR 65258 (October 26, 2015). In CBOE-2015-088, CBOE amended CBOE Rule 6.18 to further describe CBOE's back-up systems, the circumstances under which they may be used, and the testing that CBOE may conduct to ensure the availability, functionality and performance of such systems, as well incorporate provisions for Regulation SCI.

continuity and disaster recovery plans. These factors are designed to harmonize C2's rule with Regulation SCI. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to incorporate changes required under Regulation SCI, such as establishing standards for designating BCP/DR Participants, prior to the November 3, 2015 compliance date. Therefore, the Commission designates the proposed rule change to be operative upon filing.²²

At any time within 60 days of the filing of the 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 e-mail to rule-comments@sec.gov. Please include File Number SR-C2-2015-030 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 20549-1090.

²² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-C2-2015-030. 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, D.C. 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-C2-2015-030, 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.²³

Robert W. Errett,
Deputy Secretary.

BILLING CODE 8011-01p

²³ 17 CFR 200.30-3(a)(12).

