

**B. Consistency With Rule 17Ad-22(d)(4)**

Rule 17Ad-22(d)(4) requires, in relevant part, that a registered clearing agency that is not a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures.<sup>21</sup> The Commission believes that the NIA Policy would do this through establishing revised and clarified definitions, personnel responsibilities, and documentation procedures related to the identification, review, and approval of New Initiatives.

Specifically, the revised NIA Policy would ensure that ICC's system of approving New Initiatives defines such initiatives (as noted above) as being those that most significantly impact key areas and functions of ICC, and therefore helps ensure that ICC will appropriately address, and therefore enhance its ability to mitigate, the potential operational and other risks associated with implementing such New Initiatives. Further, by clearly identifying and transparently communicating the role of ICC's management across multiple departments and functions, the Commission believes that the NIA Policy would enhance ICC's ability to identify sources of operational risk by involving the most relevant and responsible parties in focusing on the most impactful initiatives.

Additionally, the revisions to the NIA Policy would create a system in which new initiatives would be assessed by relevant stakeholders throughout ICC and through which such assessments would be documented. For instance, the NIAC would utilize detailed matrixes and forms to evidence that requisite approvals for new initiatives were obtained, risks and mitigation plans were considered, and all appropriate conditions were met prior to the implementation of a New Initiative. The Commission believes that such documentation would enhance ICC's ability to minimize operational risk by requiring thorough reviews and justifications of its actions. As a result, the Commission finds that the proposed rule, taken as a whole, enhances ICC's process of identifying and minimizing sources of operational risk associated with New Initiatives and is consequently consistent with Rule 17Ad-22(d)(4).<sup>22</sup>

<sup>21</sup> 17 CFR 240.17Ad-22(d)(4).

<sup>22</sup> *Id.*

**C. Consistency With Rule 17Ad-22(d)(8)**

Rule 17Ad-22(d)(8)<sup>23</sup> requires, in relevant part, that a registered clearing agency implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act.<sup>24</sup> The NIA Policy proposed by ICC describes the roles of key participants in the identification, review, approval, and assessment of new initiatives. In particular, the NIA Policy describes the steering committee's role in prioritizing the implementation of initiatives as well as NIAC's role and composition, including the participation of the heads of departments and representatives of Enterprise Risk, Quality Systems, and Systems Operations. Additionally, the proposal clarifies that the NIA Policy contains procedures for notifying and seeking input from all relevant departments on the introduction of New Initiatives. By setting forth clearly delineated managerial roles and requiring information sharing across ICC related to New Initiatives, the Commission finds that the proposed rule change enhances and fosters governance arrangements that are clear and transparent and is therefore consistent with the requirements of Rule 17Ad-22(d)(8).<sup>25</sup>

**IV. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular with the requirements of Section 17A of the Act<sup>26</sup> and Rules 17Ad-22(d)(4) and 17Ad-22(d)(8)<sup>27</sup> thereunder.

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>28</sup> that the proposed rule change (SR-ICC-2018-011) be, and hereby is, approved.<sup>29</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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<sup>23</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>24</sup> 15 U.S.C. 78q-1.

<sup>25</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>26</sup> 15 U.S.C. 78q-1.

<sup>27</sup> 17 CFR 240.17Ad-22(d)(4) and (d)(8).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-85101; File No. SR-C2-2019-001]

**Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange's Tenth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of Its Parent Corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent")**

February 11, 2019.

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 January 28, 2019, Cboe C2 Exchange, Inc. (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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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**

Cboe C2 Exchange, Inc. (the "Exchange" or "C2 Options") proposes to amend the Exchange's Tenth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of its parent corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent"). The text of the proposed amendments to the Exchange Bylaws is included in Exhibit 5A, and the text of the proposed amendments to the Parent Bylaws is included in Exhibit 5B.

The text of the proposed rule change is also 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.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

## 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

The proposed rule change amends the Exchange Bylaws to (1) amend the provision regarding which offices may be held by the same person and (2) amend the description of the duties of President of the Exchange. The proposed rule change also amends the Parent Bylaws to (1) amend the description of the duties of President of the Parent, (2) amend language relating to the definition of "director independence," and (3) make a non-substantive update to the zip code for the registered office the Corporation.

#### Offices Held by Same Person

Section 5.1(b) of the Exchange Bylaws currently provides that two or more offices may be held by the same person, except the offices of Chief Executive Officer and President.<sup>5</sup> The Exchange proposes to amend Section 5.1(b) of the Exchange Bylaws to eliminate this restriction, and thus permit the same person to hold the offices of Chief Executive Officer and President. This proposal will provide the Exchange with the flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President.

#### Description of President

Section 5.3 of the Parent Bylaws and Section 5.3 of the Exchange Bylaws each provide that the President of the Parent or Exchange, as applicable, shall be the chief operating officer of the Parent or Exchange, as applicable. The Exchange proposes to amend Section 5.3 of each of the Parent Bylaws and Section 5.3 of

the Exchange Bylaws to provide that the President of the Parent or Exchange, as applicable, may be the chief operating officer of the Parent or Exchange, as applicable. Pursuant to this proposed change, the President of the Parent or Exchange may also serve as the chief operating officer,<sup>6</sup> but, rather than requiring that one individual serve in both capacities, Parent and the Exchange will each have flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of the President and duties of a chief operating officer. In either case, Parent and the Exchange each will have one or more persons performing the necessary duties of each role.

#### Definition of Director Independence

Cboe recently determined to remove from listing its common stock, par value \$0.01 per share (the "Common Stock"), on the Nasdaq Stock Market LLC ("Nasdaq") and to designate BZX as the primary listing venue for Parent's Common Stock, which became effective in September 2018. In connection with the delisting and primary listing venue designation, the Exchange proposes to update certain corporate governance documents, including the Parent Bylaws. Particularly, the Exchange proposes to amend Section 3.3 of the Parent Bylaws to change the definition of director independence from referencing the listing standards of the New York Stock Exchange and Nasdaq to language referencing the listing standards of each national securities exchange on which the common stock of Parent is listed.

#### Registered Office Zip Code

The Exchange proposes to amend Section 1.1 of the Parent Bylaws to update the zip code of the Parent's registered agent from 19805 to 19801. This change is in accordance with an update from the U.S. Postal Service.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>8</sup> which provides that the

Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed changes are not material and will have a de minimis impact on the governance, ownership, or operations of the Exchange.

The proposed rule change to permit the same person to hold the offices of Chief Executive Officer and President of the Exchange will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide the Exchange with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President. The Exchange will continue to have a Chief Executive Officer and President—the proposed change merely permits a single person rather than multiple people to hold these offices. This will ensure continued orderly operation of the Exchange in a manner the Exchange deems most appropriate.<sup>9</sup>

The proposed rule change to permit each of Parent and the Exchange to appoint different persons to serve as President and chief operating officer of each entity will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide each entity with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of President and a chief operating officer. Parent and the Exchange each will continue to have the necessary duties of each role performed—the proposed change merely permits multiple people rather than a single person to perform these duties. This will ensure continued orderly operation of the Exchange in a manner Parent and the Exchange deem most appropriate.

The Exchange believes in light of the delisting of Parent's Common Stock from Nasdaq, it is appropriate to remove the requirement to comply with the independence requirements contained in the listing standards of Nasdaq, as well as the independence requirements contained in the listing standards of NYSE. The Exchange notes that the independence requirements of BZX are

<sup>5</sup> Section 5.1(b) also prohibits the Chief Executive Officer and President from also being the Secretary or Assistant Secretary, which prohibition the proposal does not substantively amend.

<sup>6</sup> This is consistent with the provision in each of the Parent Bylaws and Exchange Bylaws that provide that two or more offices may be held by the same person, subject to certain exceptions. See Section 5.1 of the Parent Bylaws and Section 5.1 of the Exchange Bylaws.

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

<sup>8</sup> 15 U.S.C. 78f(b)(1).

<sup>9</sup> The proposed change also conforms this provision to the corresponding provision in Parent's Bylaws. See Section 5.1 of Parent's Bylaws.

substantially similar to the independence requirements contained in the listing standards of Nasdaq and NYSE.

The Exchange believes that by ensuring its parent company's governance documents accurately reflect the correct legal address of Parent's registered office, the proposed rule change would reduce potential investor or market participant confusion.

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

The Exchange 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. The proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Parent Bylaws and Exchange Bylaws to reflect the changes described above.

#### *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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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) by its terms, 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 operative pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6),<sup>13</sup> 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 proposal may become operative upon filing. The Exchange states that the proposed changes relating to the ability of the same person to hold multiple officer titles and the amended independence requirements are consistent with other national securities exchanges and will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, including protecting investors and the public interest. Further, the proposed change of updating the zip code of the Parent's registered office does not raise any regulatory issues. For the foregoing reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>14</sup>

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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2019-001 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-C2-2019-001. 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 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 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2019-001 and should be submitted on or before March 8, 2019.

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

**Eduardo A. Aleman,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-85088; File No. SR-NYSEArca-2019-02]

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF Under NYSE Arca Rule 8.200-E**

February 11, 2019.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 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).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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