

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No.* SR - 2015 - * 010

Amendment No. (req. for Amendments *)

Filing by C2 Options Exchange, Incorporated

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant
 to the Securities Exchange Act of 1934

Section 806(e)(1) *

☐

Section 806(e)(2) *

☐

Section 3C(b)(2) *

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Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal relating to Exchange Liability

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Corinne Last Name * Klott
 Title * Attorney
 E-mail * klott@cboe.com
 Telephone * (312) 786-7793 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 05/05/2015

By Corinne Klott

(Name *)

Attorney

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1430753783318,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of Proposed Rule Change

(a) The C2 Options Exchange, Incorporated (“C2” or “Exchange”) proposes to amend its Rule 6.42 governing Exchange liability and payments to Permit Holders¹ in connection with certain types of losses that Permit Holders may allege arose out of business conducted on or through the Exchange or in connection with the use of the Exchange’s facilities. The Exchange also proposes conforming changes to Rules 2.2 and 6.44. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The C2’s President (or designee) pursuant to delegated authority approved the proposed rule change on July 1, 2014.

(b) Questions and comments on the proposed rule change may be referred to Joanne Moffic-Silver, 400 South LaSalle Street, Chicago, Illinois 60605; Telephone: (312) 786-7462; Fax: (312) 786-7919 or Corinne Klott at (312) 786-7793.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

C2 proposes to amend Rule 6.42 to eliminate any implication of liability with respect to the Exchange and its subsidiaries or affiliates, or any of their directors, officers, committee members, other officials, employees, contractors, or agents, (including the Exchange, collectively, “Covered Persons”) for losses arising out of the use or enjoyment of Exchange

¹ Permit Holders are also referred to in the Exchange Rules and herein this rule change filing as “Participants.” See, e.g., the Rule 1.1 definition of “Participant.”

facilities. The proposed rule change is consistent with and supplements existing law, and would ensure that self-regulatory organizations (“SROs”) can operate within the sphere of their regulatory duties without fear of endless, costly litigation and potential catastrophic loss.² As discussed below, the proposed rule change is also consistent with the rules of other exchanges limiting exchange liability (see, e.g., EDGA Exchange, Inc. (“EDGA”) Rule 11.14 BOX Options Exchange, LLC (“BOX”) Rule 7230, International Securities Exchange, LLC (“ISE”) Rule 705, and New York Stock Exchange LLC (“NYSE”) Rule 18).

Under C2’s proposal, although the Exchange would not be liable for losses, it would have the discretion to compensate Permit Holders for losses alleged to have resulted from the Exchange’s failure to correctly process an order or quote due to the acts or omissions of the Exchange or due to the failure of its systems or facilities (each, a “Loss Event”), up to specified limits. The proposed rule change would also establish timeframes within which Permit Holders would be required to bring requests for compensation (and provide supporting documentation), provide factors the Exchange may consider in determining whether to provide compensation in response to such requests, and establish that the Exchange’s determinations on compensation are final and not appealable. The proposed rule change would also provide that claims arising under a previous version of Rule 6.42 for

² Courts have recognized the importance of protecting exchanges from such loss in deciding that SROs must be absolutely immune from civil actions for losses arising out of the SRO function. See Dexter v. Depository Trust & Clearing Corp., 406 F. Supp. 2d 260, 263 (S.D.N.Y. 2005) (absolute immunity possessed by SROs “is an integral part of the American system of self-regulation”), aff’d 219 F. App’x 91 (2d Cir. 2007). Without such protection, an SRO’s “exercise of its quasi-governmental functions would be unduly hampered by disruptive and recriminatory lawsuits.” D’Alessio v. NYSE, 258 F.3d 93, 105 (2d Cir. 2001). It is critical that SROs, which stand in the shoes of the SEC in performing their quasi-governmental regulatory function, be free from “the fear of burdensome damage suits that would inhibit the exercise of their independent judgment.” Dexter, 406 F.Supp. 2d at 263.

losses occurring more than one year prior to July 1, 2015 (the “Effective Date”) would not be considered valid, and that claims for any losses occurring prior to the Effective Date must be brought within one month of the Effective Date to be considered valid. Specific changes to Exchange Rules are discussed below.

Proposed Amendment to Rule Title

The proposed rule change would change the title of Rule 6.42 from “Exchange Liability” to “Exchange Liability Disclaimers and Limitations.” The proposed amendment to the Rule title would clarify that the Rule does not impose liability on the Exchange, but rather disclaims Exchange liability for any losses that arise out of the use or enjoyment of the facilities afforded by the Exchange, any interruption in or failure or unavailability of any such facilities, or any action taken or omitted to be taken in respect to the business of the Exchange, the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities (the “General Disclaimer”).

Proposed Amendments to Scope of General Disclaimer

Proposed amendments to Rule 6.42(a) would clarify that “contractors” are included within the term “Covered Persons,” and are therefore included within the General Disclaimer. This proposed change is needed because the Exchange at times contracts with outside firms to provide products and services to the Exchange for use by Permit Holders in connection with regulated business conducted on or through the Exchange and that arise out of the use or enjoyment of the facilities afforded by the Exchange and/or the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities. C2 notes that this proposed rule change is consistent with the exclusion from liability for contractors found in EDGA Rule 11.14, BOX Rule 7230 and ISE Rule 705.

Proposed amendments to Rule 6.42(a) would also clarify that “other officials” of the Exchange or “any subsidiaries or affiliates of the Exchange” are included within the term “Covered Persons,” and are therefore included within the General Disclaimer. We note that this proposed rule change to include other officials and subsidiaries is consistent with the existing provisions of Rule 6.44.³ The term “Covered Persons” would also include such subsidiaries’ and affiliates’ directors, officers, committee members, other officials, employees, contractors, or agents.

The proposed rule change would also clarify that implicit in the General Disclaimer is the Exchange’s disclaimer of any warranties, express or implied, with respect to the use or enjoyment of facilities afforded by the Exchange, including without limitation, of any data provided by the Exchange. The current language of the rule states that the Exchange does not warrant “the use of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to reports of transactions in or quotations for securities traded on the Exchange or underlying securities, or reports of interest rate measures or index values or related data.” Under the proposed rule change, the Exchange would make explicit that the General Disclaimer is intended to contain within it a disclaimer of any warranties as to the use or enjoyment of the facilities offered by the Exchange. The proposed rule change would thereby clarify that such use or enjoyment of

³ Exchange Rule 6.44 currently limits the rights of any Participant or any person associated with a Participant to institute a lawsuit or other legal proceeding against the Exchange or any director, officer, employee, agent or contractor or other official of the Exchange or any subsidiary of the Exchange for any actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary, except to the extent such actions or omissions constitute violations of the federal securities laws for which a private right of action exist. The rule also permits appeals of Exchange disciplinary actions as provided in Exchange Rule. Proposed amendments to Rule 6.44 (discussed below) would clarify that this limitation applies to committee members and affiliates of the Exchange.

Exchange facilities by Permit Holders is provided “as is,” without specific warranties of merchantability or of fitness for a particular purpose. For the avoidance of doubt, the explicit list of the types of data for which the Exchange disclaims any warranties would also include, without limitation, “any current or closing index value, any current or closing value of interest rate options, or any report of transactions in or quotations for options or other securities, including underlying securities.”⁴

The proposed rule change would also clarify that all limitations on liability and disclaimers within paragraph (a) of Rule 6.42 are in addition to, and not in limitation of, any limitations on liability otherwise existing under law. This proposed rule change is intended to ensure that the protection of Rule 6.42 does not circumscribe protections that otherwise would exist under the principles of law.⁵ This and other limitations on liability operate independently from, and in addition to, both the current and proposed amended versions of Rule 6.42 and C2’s other rules.

Proposed Limits on Discretionary Payments for Alleged Losses

Currently, Rule 6.42(b) provides that whenever custody of an unexecuted order is transmitted by a Permit Holder to or through the Exchange’s System or to any other automated facility of the Exchange whereby the Exchange assumes responsibility for the transmission or execution of the order, and provided that the Exchange has acknowledged receipt of such order, the Exchange’s liability for the negligent acts or omissions of its

⁴ The Exchange also proposes to replace the phrase “facilities or services” with simply “facilities” in two locations within the existing text of Rule 6.42(a). The Exchange believes use of the term “services” is duplicative of the term “facilities” and is therefore unnecessary.

⁵ For example, as C2 is organized under Delaware law, the principals of Delaware law also apply.

employees or for the failure of its systems or facilities shall not exceed certain limits set forth in Rule 6.42(b). The Exchange first proposes to provide that Rule 6.42(b) applies to quotes as well as unexecuted orders. Additionally, the Exchange proposes to eliminate the word “automated” from “automated facility of the Exchange”, as not all facilities of the Exchange may be considered automated and the Exchange did not intend to restrict the scope of rule as such. The Exchange also seeks to amend Rule 6.42(b) to explicitly provide that, although the Exchange would not be liable with respect to regulated Exchange business for losses that arise out of the use or enjoyment of the facilities afforded by the Exchange and/or the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities, as provided in Rule 6.42(a),⁶ the Exchange may make discretionary

⁶ Specifically, Rule 6.42(a), as proposed to be amended, would provide as follows:

Neither the Exchange nor any of its directors, officers, committee members, other officials, employees, contractors, or agents, nor any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents (“Covered Persons”) shall be liable to Participants or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities afforded by the Exchange, any interruption in or failure or unavailability of any such facilities, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agents acting within the scope of their authority. Without limiting the generality of the foregoing, and subject to the same exception, no Covered Person shall have any liability to any person or entity for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, any current or closing value of interest rate options, or any reports of transactions in or quotations for options or other securities, including underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use or enjoyment of the facilities afforded by the Exchange, including without limitation, of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to any data described in the preceding sentence, and the Exchange makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and

payments to Permit Holders for certain losses alleged to have occurred due to Loss Events. Specifically, the proposed rule change would permit the Exchange to make discretionary payments to Permit Holders for their losses alleged to have resulted from Loss Events up to the following limits. As to any one or more requests for compensation made by a single Permit Holder that arose out of one or more Loss Events occurring on a single trading day, the Exchange could compensate the Permit Holder up to but not exceeding the larger of \$100,000 or the amount of any recovery obtained by the Exchange under applicable insurance maintained by the Exchange. As to the aggregate of all requests for compensation made by all Permit Holders that arose out of one or more Loss Events occurring: (i) on a single trading day, the Exchange could compensate the Permit Holders, in the aggregate, up to but not exceeding the larger of \$250,000 or the amount of recovery obtained by the Exchange under any applicable insurance policy; and (ii) during a single calendar month, the Exchange could compensate the Permit Holders, in the aggregate, up to but not exceeding the larger of \$500,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange. The proposed rule change would also state that no request for compensation by a Permit Holder may be in an amount less than \$100. Losses incurred on the same trading day and arising out of the same underlying act or omission of the Exchange or failure of the Exchange's systems or facilities may be aggregated to meet the \$100 minimum.⁷ This is intended as a de minimis threshold to avoid

not in limitation of, the provisions of Article Eighth of the Exchange's Certificate of Incorporation or any limitations otherwise available under law.

⁷ For example, if a Permit Holder incurs a loss of \$30 on one day due to a certain glitch in the Exchange's systems and a loss of \$75 on the same day due to a separate unrelated glitch in the Exchange's systems, the Permit Holder could not request compensation for either loss. However, if for example, the Permit Holder incurs a loss of \$105 on one day due to a certain glitch in the Exchange's system, the Permit

requiring the Exchange to devote the resources to considering relatively small requests for payment. The proposed rule change also would state that nothing in Rule 6.42 would obligate the Exchange to seek recovery under any applicable insurance policy. The proposed changes to Rule 6.42(b) would therefore, consistent with Rule 6.42(a), permit the Exchange to make discretionary payments to Permit Holders to compensate them for such losses, up to specified limits, even though the Exchange would not be legally liable to pay for such losses.

Timeframes within Which to Notify Exchange and Submit Requests

Proposed new Rule 6.42(c) would establish timeframes within which a valid request for compensation must be brought under the Rule. Under the proposed rule change, notice of all requests would be required to be in writing and to be submitted to the Exchange no later than 12:00 p.m. Central Time on the next business day following the Loss Event giving rise to such request. All requests would be required to be in writing and to be submitted, along with supporting documentation, by 5:00 p.m. Central Time on the third business day following the Loss Event giving rise to each such request.⁸ Additional information related to the request as demanded by the Exchange is also required to be provided. The proposed rule

Holder may request compensation. In this second example, the Permit Holder may request compensation even if such losses were incurred over a number of different transactions so long as it was the result of the same systems issue.

⁸ Other exchanges have similar submission requirements. See, e.g., NYSE Rule 18 – Compensation in Relation to Exchange System Failure, which provides in relevant part that NYSE members provide oral notice to NYSE’s Division of Floor Operations by the market opening on the next business day following the system failure and written notice by the end of the third business day following the system failure (T+3). See also, ISE Rule 705(d)(3) – Limitation of Liability, which provides that all claims for compensation must be made in writing and submitted no later than the opening of trading on the next business day following the event that gave rise to such claim.

change would also specify that the Exchange would not consider requests for which timely notice and submission had not been provided as required under amended Rule 6.42(c).

The proposed provisions of new Rule 6.42(c) would benefit Permit Holders by providing them with clear timeframes within which to submit notices of requests, requests for compensation, and supporting documentation. The proposed changes would also provide the Exchange with certainty as to the deadlines by which notices of requests and completed requests would be required to be submitted in order for the Exchange to consider them for compensation under Rule 6.42.

Exchange Treatment of Aggregate Requests Exceeding Maximum Amount Permitted to be Paid

Currently, Rule 6.42(c) provides that if all of the claims cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided in paragraph (b) [of Rule 6.42], then such maximum amount would be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, written notice of which has been given to the Exchange no later than the opening of trading on the next business day following the day on which the use or enjoyment of Exchange facilities giving rise to the claim occurred, based upon the proportion that each claim bears to the sum of all such claims. The Exchange proposes to amend existing Rule 6.42(c), which would be renumbered to Rule 6.42(d), to state that, “if all of the timely requests submitted pursuant to paragraph (c) [of Rule 6.42] that are granted cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of payments authorized in paragraph (b) [of Rule 6.42], then such maximum amount shall be allocated among all such requests arising on a single trading day or during a single calendar month, as applicable, based upon the proportion that each such request bears to the sum of all such requests.” The

Exchange notes that it is proposing to replace the term “claim” with the term “request”, as well as replace the reference to “liability” with “payments authorized” to eliminate any implication of liability with respect to the Exchange and other Covered Person resulting from the use or enjoyment of the facilities offered by the Exchange, any interruption in or failure or unavailability or any such facilities, or any action taken or omitted to be taken in respect of the business of the Exchange.

Additionally, the Exchange notes that proposed Rule 6.42(d) would continue to provide a fair way of allocating the limited payment that the rule would permit the Exchange to make when the total amount of eligible requests exceed that maximum amount. The proposal would also revise the timeframe in which requests for payment must be made by a Permit Holder.

Exchange Review of Timely Requests

Proposed new Rule 6.42(e) would provide that the Exchange, in determining whether to make payment in response to a request for compensation, may determine whether the amount requested should be reduced based on the actions or inactions of the requesting Permit Holder. The proposed rule change would permit the Exchange to consider, without limitation, whether the actions or inactions of the Permit Holder contributed to the Loss Event; whether the Permit Holder made appropriate efforts to mitigate its loss; whether the Permit Holder realized any gains as a result of a Loss Event; whether the losses of the Permit Holder, if any, were offset by hedges of positions either on the Exchange or on another affiliated or unaffiliated market; and whether the Permit Holder provided sufficient information to document the request and as demanded by the Exchange. Proposed Rule 6.42(e) would therefore provide reasonable factors that the Exchange may consider in

determining whether to pay compensation in response to a request and in determining the amount of any such compensation.⁹

The Exchange represents that the determination to compensate a Permit Holder will be made on an equitable and non-discriminatory basis and without regard to the Exchange capacity of the Permit Holder, such as whether the Permit Holder is a Designated Primary Market-Maker. Additionally, the Exchange represents that the Exchange will maintain a record of Permit Holder requests including documentation detailing the Exchange's findings and details for approving or denying requests in accordance with its obligations under Section 17 of the Act.

Finality of Exchange Determinations under Rule

Proposed new Rule 6.42(f) would provide that all determinations by the Exchange pursuant to Rule 6.42 shall be final and not subject to appeal under Chapter XIX of the Exchange Rules.¹⁰ The proposed rule would also provide that nothing in Rule 6.42, nor any payment made pursuant to Rule 6.42, shall in any way limit, waive, or proscribe any defenses a Covered Person may have to any claim, demand, liability, action or cause of action, whether such defense arises in law or equity, or whether such defense is asserted in a judicial,

⁹ Another exchange considered similar factors in determining whether to pay compensation and in determining the amount of any such compensation. See, NYSE Rule 18, which provides in relevant part that the NYSE Compensation Review Panel in its review will determine whether the amount should be reduced based on the actions or inactions of the member organization, including whether the member organization made appropriate efforts to mitigate its loss.

¹⁰ The Exchange notes that another exchange has a similar provision indicating that all determinations are final. See, NYSE Rule 18, which provides in relevant part that all determinations made pursuant to NYSE Rule 18 by NYSE's Compensation Review Panel, CEO or his or her designee are final.

administrative, or other proceeding.¹¹ These proposed changes are consistent with the discretionary nature of any payments that would be made under proposed Rule 6.42(b).

Treatment of Losses Occurring Prior to Effective Date of Rule

Proposed new paragraph 6.42(g) would establish July 1, 2105, as the Effective Date of revised Rule 6.42. Under proposed paragraph 6.42(g), claims for liability under prior versions of Rule 6.42 would not be considered valid if brought with respect to any acts, omissions or transactions occurring more than one year prior to the Effective Date, or if brought more than one month after the Effective Date. Proposed Rule 6.42(g) would thereby provide certainty to the Exchange as to any expense it might incur due to losses arising due to Loss Events that occurred prior to the Effective Date of the proposed rule change, while also putting Permit Holders on notice that they must file any claims for such losses by a date certain.

Deletion of Existing Interpretation under Rule 6.42

The proposed rule change would delete existing interpretation .01 under Rule 6.42. Interpretation .01 disclaims The Options Clearing Corporation liability to Permit Holders and their associated persons with respect to their use, non-use or inability to use the linkage that was part of the old Options Intermarket Linkage Plan (the “Old Linkage”). Because the Old Linkage is no longer operable, interpretation .01 is no longer necessary.¹²

Conforming Changes to Other Rules

¹¹ Another exchange has a similar provision. See e.g., NASDAQ Stock Market LLC (“Nasdaq”) Rule 4626(b)(6), which provides that nothing in its Limitation of Liability rule shall waive Nasdaq’s limitations on, or immunities from, liability as set forth in its Rules or agreements, or that otherwise apply as a matter of law.

¹² The old Options Intermarket Linkage Plan was replaced by the Options Order Protection and Locked/Crossed Markets Plan in 2009. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

The proposed rule change would make conforming changes to Exchange Rules 2.2 and 6.44. Rule 2.2 requires a Permit Holder who fails to prevail in lawsuit or other legal proceeding instituted against the Exchange or certain related parties to pay for the Exchange's reasonable costs of defending such lawsuit or proceeding if those costs exceed \$50,000. Rule 6.44 limits the legal proceedings a Permit Holder may bring against the Exchange and certain related persons for actions or omissions.

Under the proposed amendments to Rule 2.2, contractors would be included within the list of related parties protected by that rule, just as they would be included as Covered Persons under proposed Rule 6.42. As stated above, this proposed change is necessary because the Exchange at times contracts with outside firms to provide products or services to Permit Holders in connection with regulated business conducted on or through the Exchange and that arise out of the use or enjoyment of the facilities afforded by the Exchange and/or the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities.

In addition, under the proposed amendments to Rule 2.2, other officials and contractors of the Exchange and any subsidiaries and affiliates of the Exchange and any such subsidiaries' and affiliates' directors, officers, committee members, other officials, employees, contractors, or agents would be explicitly identified/included within the list of related parties protected by the rule,¹³ just as they are proposed to be specifically identified/included within the list of Covered Persons under Rule 6.42. Committee members

¹³ Specifically, the phrase "the Exchange or any of its directors, officers, committee members, employees or agents" is proposed to be replaced with the phrase "the Exchange or any of its directors, officers, committee members, other officials, employees, contractors, or agents, or any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents" in Rule 2.2.

and affiliates of the Exchange and any subsidiaries' and affiliates' directors, officers, committee members, other officials, employees, contractors and agents would also be explicitly identified/included within the list of related parties under Rule 6.44.¹⁴ These changes are intended to conform the text of the three rules and to include affiliates within all three rules. Moreover, under the proposed amendments to Rule 6.44, committee members would be explicitly identified/included within the list of related parties protected by the rule, just as they are already specifically identified/included within the list of Covered Persons under existing Rule 6.42 and the similar provision in Rule 2.2. This change is intended to conform the rule text of the three rules. Finally, under the proposed amendments to Rule 6.44, the title to the rule will be revised.¹⁵

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act")¹⁶ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁷ in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of

¹⁴ Specifically, the phrase "the Exchange or any director, officer, employee, contractor, agent or other official of the Exchange or any subsidiary of the Exchange" is proposed to be replaced with the phrase "the Exchange or any of its directors, officers, committee members, other officials, employees, contractors, or agents, or any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents" in Rule 6.44.

¹⁵ Specifically, the title "Legal Proceedings Against the Exchange and its Directors, Officers, Employees, Contractors or Agents" is proposed to be changed to simply "Legal Proceedings Against the Exchange."

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal would amend Exchange Rule 6.42 to eliminate any implication of liability with respect to the Exchange and other Covered Person resulting from the use or enjoyment of the facilities offered by the Exchange, any interruption in or failure or unavailability or any such facilities, or any action taken or omitted to be taken in respect of the business of the Exchange. The proposed rule change is consistent with and supplements existing law, and would assist the Exchange in fulfilling its role as a national securities exchange by avoiding the risk of tempering this critical regulatory function to avoid the disruption and expense of unnecessary litigation or potential catastrophic loss.

The proposal would also permit the Exchange to compensate Permit Holders for their losses incurred due to a Loss Event, even though the Exchange would not have legal liability for those losses. The proposed rule change would therefore facilitate the ability of the Exchange to make discretionary payments to redress a situation in which Permit Holders suffer losses due to a Loss Event. As stated above, the Exchange represents that the determination to compensate a Permit Holder will be made on an equitable and non-discriminatory basis without regard to the Exchange capacity of the Permit Holder, such as whether the Permit Holder is a Designated Primary Market-Maker. The Exchange therefore believes the proposed rule change is consistent with the Act, and Section 6(b)(5) of the Act in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange also believes these policies would promote fairness in the national market system. The proposed rule change would allow C2 to address Permit Holder requests

for compensation under various circumstances and would allow C2 to act in a fashion similar to many of its competitors. As stated above, several exchanges have substantially similar rules to those proposed here, and the Exchange believes that the proposed rule change would place C2 in a similar position to address Permit Holder requests.¹⁸ The Exchange believes that to the extent there are any differences, such differences are not substantive and are still consistent with the scope of prior self-regulatory organization rulemaking.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the Exchange believes that these policies would promote fairness in the national market system. The proposed rule change would allow C2 to address Permit Holder requests for compensation under various circumstances and would allow C2 to act in a fashion similar to many of its competitors. In addition, as stated above, several exchanges have substantially similar rules to those proposed here, except as otherwise noted, and the Exchange believes that the proposed rule change would place C2 in a similar position to address Permit Holder requests.¹⁹

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

¹⁸ See BOX Rule 7230 and EDGA Rule 11.14; see also Nasdaq Rule 4626, ISE Rule 705, and BATS Exchange, Inc. Rule 11.16.

¹⁹ Id.

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) This proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Exchange Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

(b) The Exchange asserts that 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 after its filing date, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange provided the Commission with written notice of its 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 the filing of the proposed rule change as required by Rule 19b-4(f)(6).

As indicated above, the proposal would amend Exchange Rule 6.42 to eliminate any implication of liability with respect to the Exchange and other Covered Person resulting from the use or enjoyment of the facilities offered by the Exchange, any interruption in or failure or unavailability or any such facilities, or any action taken or omitted to be taken in respect of the business of the Exchange. The proposed rule change is consistent with and supplements existing law, and would assist the Exchange in fulfilling its role as a national securities exchange by avoiding the risk of tempering this critical regulatory function to avoid unnecessary lawsuits or potential catastrophic loss. The proposal would also permit the Exchange to compensate Permit Holders for their losses incurred due to a Loss Event, even

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

though the Exchange would not have legal liability for those losses on an equitable and non-discriminatory basis. The proposed rule change would allow C2 to address Permit Holder requests for compensation under various circumstances and would allow C2 to act in a fashion similar to many of its competitors. As stated above, several exchanges have substantially similar rules to those proposed here, and the Exchange believes that the proposed rule change would place C2 in a similar position to address Permit Holder requests.²² As such and except as otherwise noted, the Exchange also believes the proposed rule change does not present any new, unique or substantive issues that have not been addressed in prior self-regulatory organization rulemaking. The Exchange believes that to the extent there are any differences, such differences are not substantive and are still consistent with the scope of prior self-regulatory organization rulemaking.

(c) Not applicable.

(d) Not applicable.

Item 8. Proposed Rule Change Based on Rules of another Self-Regulatory Organization or the Commission

The proposed rule change is based in part on provisions of the rules of several other exchanges. For example, similar to EGDA Rule 11.14, BOX Rule 7230, and ISE Rule 705, the proposed rule change would disclaim liability generally for losses arising out of the use or enjoyment of the facilities of the Exchange, without regard to how the acts or omissions of the Exchange might be argued to have contributed to such losses.²³

The proposed rule change would also permit the Exchange to make discretionary payments in response to losses alleged to have occurred due to Loss Events. This is

²² See note 18, supra.

²³ See note 6, supra.

consistent with EDGA Rule 11.14, BOX Rule 7230 and ISE Rule 705. The Exchange notes that the specific limits to such discretionary payments are consistent with the limits on payments under NYSE Arca Options Rule 14.2. The Exchange also notes that the proposed requirements for submitting notice of requests for compensation and requests, as well as factors considered in determining whether to pay compensation in response to a request and in determining the amount of any such compensation are similar to other exchanges' provisions, such as NYSE Rule 18. Finally, the Exchange notes the provision indicating that all determinations shall be final and not subject to appeal is similar to other exchanges' provisions, such as NYSE Rule 18. The Exchange therefore believes the proposed rule change does not differ substantially from the existing rules of other exchanges, nor does it raise any new or unique substantive issues from those raised in similar proposals.²⁴

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Form of Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Text of Proposed Rule Change.

²⁴ See, e.g., Securities Exchange Act Release No. 66982 (May 14, 2012), 77 FR 29718 (May 18, 2012) (SR-BOX-2012-001) (notice of filing and immediate effectiveness of proposed rule change to update rules based on the Boston Options Exchange Group, LLC ("BOX Group") rules and recent BOX Group filings).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-C2-2015-010]

[Insert date]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Limitation of Liability

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], 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, II, and III 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 Rule 6.42 governing Exchange liability and payments to Permit Holders³ in connection with certain types of losses that Permit Holders may allege arose out of the business conducted on or through the Exchange or in connection with the use of the Exchange’s facilities. The Exchange also proposes conforming changes to Rules 2.2 and 6.44. The text of the proposed rule change is available on the Exchange’s website

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Permit Holders are also referred to in the Exchange Rules and herein this rule change filing as “Participants.” See e.g., the Rule 1.1 definition of “Participant.”

(<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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.

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 6.42 to eliminate any implication of liability with respect to the Exchange and its subsidiaries or affiliates, or any of their directors, officers, committee members, other officials, employees, contractors, or agents, (including the Exchange, collectively, "Covered Persons") for losses arising out of the use or enjoyment of Exchange facilities. The proposed rule change is consistent with and supplements existing law, and would ensure that self-regulatory organizations ("SROs") can operate within the sphere of their regulatory duties without fear of endless, costly litigation and potential catastrophic loss.⁴ As discussed below, the proposed rule change is also

⁴ Courts have recognized the importance of protecting exchanges from such loss in deciding that SROs must be absolutely immune from civil actions for losses arising out of the SRO function. See Dexter v. Depository Trust & Clearing Corp., 406 F. Supp. 2d 260, 263 (S.D.N.Y. 2005) (absolute immunity possessed by SROs "is an integral part of the American system of self-regulation"), aff'd 219 F. App'x 91 (2d Cir. 2007). Without such protection, an SRO's "exercise of its quasi-governmental functions would be unduly hampered by disruptive and recriminatory lawsuits." D'Alessio v. NYSE, 258 F.3d 93, 105 (2d Cir. 2001). It

consistent with the rules of other exchanges limiting exchange liability (see, e.g., EDGA Exchange, Inc. (“EDGA”) Rule 11.14 BOX Options Exchange, LLC (“BOX”) Rule 7230, International Securities Exchange, LLC (“ISE”) Rule 705, and New York Stock Exchange LLC (“NYSE”) Rule 18).

Under C2’s proposal, although the Exchange would not be liable for losses, it would have the discretion to compensate Permit Holders for losses alleged to have resulted from the Exchange’s failure to correctly process an order or quote due to the acts or omissions of the Exchange or due to the failure of its systems or facilities (each, a “Loss Event”), up to specified limits. The proposed rule change would also establish timeframes within which Permit Holders would be required to bring requests for compensation (and provide supporting documentation), provide factors the Exchange may consider in determining whether to provide compensation in response to such requests, and establish that the Exchange’s determinations on compensation are final and not appealable. The proposed rule change would also provide that claims arising under a previous version of Rule 6.42 for losses occurring more than one year prior to July 1, 2015 (the “Effective Date”) would not be considered valid, and that claims for any losses occurring prior to the Effective Date must be brought within one month of the Effective Date to be considered valid. Specific changes to Exchange Rules are discussed below.

Proposed Amendment to Rule Title

is critical that SROs, which stand in the shoes of the SEC in performing their quasi-governmental regulatory function, be free from “the fear of burdensome damage suits that would inhibit the exercise of their independent judgment.” Dexter, 406 F.Supp. 2d at 263.

The proposed rule change would change the title of Rule 6.42 from “Exchange Liability” to “Exchange Liability Disclaimers and Limitations.” The proposed amendment to the Rule title would clarify that the Rule does not impose liability on the Exchange, but rather disclaims Exchange liability for any losses that arise out of the use or enjoyment of the facilities afforded by the Exchange, any interruption in or failure or unavailability of any such facilities, or any action taken or omitted to be taken in respect to the business of the Exchange, the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities (the “General Disclaimer”).

Proposed Amendments to Scope of General Disclaimer

Proposed amendments to Rule 6.42(a) would clarify that “contractors” are included within the term “Covered Persons,” and are therefore included within the General Disclaimer. This proposed change is needed because the Exchange at times contracts with outside firms to provide products and services to the Exchange for use by Permit Holders in connection with regulated business conducted on or through the Exchange and that arise out of the use or enjoyment of the facilities afforded by the Exchange and/or the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities. C2 notes that this proposed rule change is consistent with the exclusion from liability for contractors found in EDGA Rule 11.14, BOX Rule 7230 and ISE Rule 705. Proposed amendments to Rule 6.42(a) would also clarify that “other officials” of the Exchange or “any subsidiaries or affiliates of the Exchange” are included within the term “Covered Persons,” and are therefore included within the General Disclaimer. We note that this proposed rule change to include other

officials and subsidiaries is consistent with the existing provisions of Rule 6.44.⁵ The term “Covered Persons” would also include such subsidiaries’ and affiliates’ directors, officers, committee members, other officials, employees, contractors, or agents.

The proposed rule change would also clarify that implicit in the General Disclaimer is the Exchange’s disclaimer of any warranties, express or implied, with respect to the use or enjoyment of facilities afforded by the Exchange, including without limitation, of any data provided by the Exchange. The current language of the rule states that the Exchange does not warrant “the use of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to reports of transactions in or quotations for securities traded on the Exchange or underlying securities, or reports of interest rate measures or index values or related data.” Under the proposed rule change, the Exchange would make explicit that the General Disclaimer is intended to contain within it a disclaimer of any warranties as to the use or enjoyment of the facilities offered by the Exchange. The proposed rule change would thereby clarify that such use or enjoyment of Exchange facilities by Permit Holders is provided “as is,” without specific warranties of merchantability or of fitness for a particular purpose. For the avoidance of doubt, the

⁵ Exchange Rule 6.44 currently limits the rights of any Participant or any person associated with a Participant to institute a lawsuit or other legal proceeding against the Exchange or any director, officer, employee, agent or contractor or other official of the Exchange or any subsidiary of the Exchange for any actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary, except to the extent such actions or omissions constitute violations of the federal securities laws for which a private right of action exist. The rule also permits appeals of Exchange disciplinary actions as provided in Exchange Rule. Proposed amendments to Rule 6.44 (discussed below) would clarify that this limitation applies to committee members and affiliates of the Exchange.

explicit list of the types of data for which the Exchange disclaims any warranties would also include, without limitation, “any current or closing index value, any current or closing value of interest rate options, or any report of transactions in or quotations for options or other securities, including underlying securities.”⁶

The proposed rule change would also clarify that all limitations on liability and disclaimers within paragraph (a) of Rule 6.42 are in addition to, and not in limitation of, any limitations on liability otherwise existing under law. This proposed rule change is intended to ensure that the protection of Rule 6.42 does not circumscribe protections that otherwise would exist under the principles of law.⁷ This and other limitations on liability operate independently from, and in addition to, both the current and proposed amended versions of Rule 6.42 and C2’s other rules.

Proposed Limits on Discretionary Payments for Alleged Losses

Currently, Rule 6.42(b) provides that whenever custody of an unexecuted order is transmitted by a Permit Holder to or through the Exchange’s System or to any other automated facility of the Exchange whereby the Exchange assumes responsibility for the transmission or execution of the order, and provided that the Exchange has acknowledged receipt of such order, the Exchange’s liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed certain limits set forth in Rule 6.42(b). The Exchange first proposes to provide that Rule 6.42(b) applies to

⁶ The Exchange also proposes to replace the phrase “facilities or services” with simply “facilities” in two locations within the existing text of Rule 6.42(a). The Exchange believes use of the term “services” is duplicative of the term “facilities” and is therefore unnecessary.

⁷ For example, as C2 is organized under Delaware law, the principals of Delaware law also apply.

quotes as well as unexecuted orders. Additionally, the Exchange proposes to eliminate the word “automated” from “automated facility of the Exchange”, as not all facilities of the Exchange may be considered automated and the Exchange did not intend to restrict the scope of rule as such. The Exchange also seeks to amend Rule 6.42(b) to explicitly provide that, although the Exchange would not be liable with respect to regulated Exchange business for losses that arise out of the use or enjoyment of the facilities afforded by the Exchange and/or the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities, as provided in Rule 6.42(a),⁸

⁸ Specifically, Rule 6.42(a), as proposed to be amended, would provide as follows:

Neither the Exchange nor any of its directors, officers, committee members, other officials, employees, contractors, or agents, nor any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents (“Covered Persons”) shall be liable to Participants or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities afforded by the Exchange, any interruption in or failure or unavailability of any such facilities, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agents acting within the scope of their authority. Without limiting the generality of the foregoing, and subject to the same exception, no Covered Person shall have any liability to any person or entity for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, any current or closing value of interest rate options, or any reports of transactions in or quotations for options or other securities, including underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use or enjoyment of the facilities afforded by the Exchange, including without limitation, of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to any data described in the preceding sentence, and the Exchange makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, the provisions of Article Eighth of the Exchange's Certificate of Incorporation or any limitations otherwise available under law.

the Exchange may make discretionary payments to Permit Holders for certain losses alleged to have occurred due to Loss Events. Specifically, the proposed rule change would permit the Exchange to make discretionary payments to Permit Holders for their losses alleged to have resulted from Loss Events up to the following limits. As to any one or more requests for compensation made by a single Permit Holder that arose out of one or more Loss Events occurring on a single trading day, the Exchange could compensate the Permit Holder up to but not exceeding the larger of \$100,000 or the amount of any recovery obtained by the Exchange under applicable insurance maintained by the Exchange. As to the aggregate of all requests for compensation made by all Permit Holders that arose out of one or more Loss Events occurring: (i) on a single trading day, the Exchange could compensate the Permit Holders, in the aggregate, up to but not exceeding the larger of \$250,000 or the amount of recovery obtained by the Exchange under any applicable insurance policy; and (ii) during a single calendar month, the Exchange could compensate the Permit Holders, in the aggregate, up to but not exceeding the larger of \$500,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange. The proposed rule change would also state that no request for compensation by a Permit Holder may be in an amount less than \$100. Losses incurred on the same trading day and arising out of the same underlying act or omission of the Exchange or failure of the Exchange's systems or facilities may be aggregated to meet the \$100 minimum.⁹ This is intended as a de

⁹ For example, if a Permit Holder incurs a loss of \$30 on one day due to a certain glitch in the Exchange's systems and a loss of \$75 on the same day due to a separate unrelated glitch in the Exchange's systems, the Permit Holder could not request compensation for either loss. However, if for example, the Permit Holder

minimis threshold to avoid requiring the Exchange to devote the resources to considering relatively small requests for payment. The proposed rule change also would state that nothing in Rule 6.42 would obligate the Exchange to seek recovery under any applicable insurance policy. The proposed changes to Rule 6.42(b) would therefore, consistent with Rule 6.42(a), permit the Exchange to make discretionary payments to Permit Holders to compensate them for such losses, up to specified limits, even though the Exchange would not be legally liable to pay for such losses.

Timeframes within Which to Notify Exchange and Submit Requests

Proposed new Rule 6.42(c) would establish timeframes within which a valid request for compensation must be brought under the Rule. Under the proposed rule change, notice of all requests would be required to be in writing and to be submitted to the Exchange no later than 12:00 p.m. Central Time on the next business day following the Loss Event giving rise to such request. All requests would be required to be in writing and to be submitted, along with supporting documentation, by 5:00 p.m. Central Time on the third business day following the Loss Event giving rise to each such request.¹⁰ Additional information related to the request as demanded by the Exchange is

incurs a loss of \$105 on one day due to a certain glitch in the Exchange's system, the Permit Holder may request compensation. In this second example, the Permit Holder may request compensation even if such losses were incurred over a number of different transactions so long as it was the result of the same systems issue.

¹⁰ Other exchanges have similar submission requirements. See, e.g., NYSE Rule 18 – Compensation in Relation to Exchange System Failure, which provides in relevant part that NYSE members provide oral notice to NYSE's Division of Floor Operations by the market opening on the next business day following the system failure and written notice by the end of the third business day following the system failure (T+3). See also, ISE Rule 705(d)(3) – Limitation of Liability, which provides that all claims for compensation must be made in writing and

also required to be provided. The proposed rule change would also specify that the Exchange would not consider requests for which timely notice and submission had not been provided as required under amended Rule 6.42(c).

The proposed provisions of new Rule 6.42(c) would benefit Permit Holders by providing them with clear timeframes within which to submit notices of requests, requests for compensation, and supporting documentation. The proposed changes would also provide the Exchange with certainty as to the deadlines by which notices of requests and completed requests would be required to be submitted in order for the Exchange to consider them for compensation under Rule 6.42.

Exchange Treatment of Aggregate Requests Exceeding Maximum Amount Permitted to be Paid

Currently, Rule 6.42(c) provides that if all of the claims cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided in paragraph (b) [of Rule 6.42], then such maximum amount would be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, written notice of which has been given to the Exchange no later than the opening of trading on the next business day following the day on which the use or enjoyment of Exchange facilities giving rise to the claim occurred, based upon the proportion that each claim bears to the sum of all such claims. The Exchange proposes to amend existing Rule 6.42(c), which would be renumbered to Rule 6.42(d), to state that, “if all of the timely requests submitted pursuant to paragraph (c) [of Rule 6.42] that are granted cannot be fully satisfied because in the aggregate they exceed the applicable

submitted no later than the opening of trading on the next business day following the event that gave rise to such claim.

maximum amount of payments authorized in paragraph (b) [of Rule 6.42], then such maximum amount shall be allocated among all such requests arising on a single trading day or during a single calendar month, as applicable, based upon the proportion that each such request bears to the sum of all such requests.” The Exchange notes that it is proposing to replace the term “claim” with the term “request”, as well as replace the reference to “liability” with “payments authorized” to eliminate any implication of liability with respect to the Exchange and other Covered Person resulting from the use or enjoyment of the facilities offered by the Exchange, any interruption in or failure or unavailability or any such facilities, or any action taken or omitted to be taken in respect of the business of the Exchange.

Additionally, the Exchange notes that proposed Rule 6.42(d) would continue to provide a fair way of allocating the limited payment that the rule would permit the Exchange to make when the total amount of eligible requests exceed that maximum amount. The proposal would also revise the timeframe in which requests for payment must be made by a Permit Holder.

Exchange Review of Timely Requests

Proposed new Rule 6.42(e) would provide that the Exchange, in determining whether to make payment in response to a request for compensation, may determine whether the amount requested should be reduced based on the actions or inactions of the requesting Permit Holder. The proposed rule change would permit the Exchange to consider, without limitation, whether the actions or inactions of the Permit Holder contributed to the Loss Event; whether the Permit Holder made appropriate efforts to mitigate its loss; whether the Permit Holder realized any gains as a result of a Loss Event;

whether the losses of the Permit Holder, if any, were offset by hedges of positions either on the Exchange or on another affiliated or unaffiliated market; and whether the Permit Holder provided sufficient information to document the request and as demanded by the Exchange. Proposed Rule 6.42(e) would therefore provide reasonable factors that the Exchange may consider in determining whether to pay compensation in response to a request and in determining the amount of any such compensation.¹¹

The Exchange represents that the determination to compensate a Permit Holder will be made on an equitable and non-discriminatory basis and without regard to the Exchange capacity of the Permit Holder, such as whether the Permit Holder is a Designated Primary Market-Maker. Additionally, the Exchange represents that the Exchange will maintain a record of Permit Holder requests including documentation detailing the Exchange's findings and details for approving or denying requests in accordance with its obligations under Section 17 of the Act.

Finality of Exchange Determinations under Rule

Proposed new Rule 6.42(f) would provide that all determinations by the Exchange pursuant to Rule 6.42 shall be final and not subject to appeal under Chapter XIX of the Exchange Rules.¹² The proposed rule would also provide that nothing in Rule 6.42, nor

¹¹ Another exchange considered similar factors in determining whether to pay compensation and in determining the amount of any such compensation. See, NYSE Rule 18, which provides in relevant part that the NYSE Compensation Review Panel in its review will determine whether the amount should be reduced based on the actions or inactions of the member organization, including whether the member organization made appropriate efforts to mitigate its loss.

¹² The Exchange notes that another exchange has a similar provision indicating that all determinations are final. See, NYSE Rule 18, which provides in relevant part that all determinations made pursuant to NYSE Rule 18 by NYSE's Compensation Review Panel, CEO or his or her designee are final.

any payment made pursuant to Rule 6.42, shall in any way limit, waive, or proscribe any defenses a Covered Person may have to any claim, demand, liability, action or cause of action, whether such defense arises in law or equity, or whether such defense is asserted in a judicial, administrative, or other proceeding.¹³ These proposed changes are consistent with the discretionary nature of any payments that would be made under proposed Rule 6.42(b).

Treatment of Losses Occurring Prior to Effective Date of Rule

Proposed new paragraph 6.42(g) would establish July 1, 2105, as the Effective Date of revised Rule 6.42. Under proposed paragraph 6.42(g), claims for liability under prior versions of Rule 6.42 would not be considered valid if brought with respect to any acts, omissions or transactions occurring more than one year prior to the Effective Date, or if brought more than one month after the Effective Date. Proposed Rule 6.42(g) would thereby provide certainty to the Exchange as to any expense it might incur due to losses arising due to Loss Events that occurred prior to the Effective Date of the proposed rule change, while also putting Permit Holders on notice that they must file any claims for such losses by a date certain.

Deletion of Existing Interpretation under Rule 6.42

The proposed rule change would delete existing interpretation .01 under Rule 6.42. Interpretation .01 disclaims The Options Clearing Corporation liability to Permit Holders and their associated persons with respect to their use, non-use or inability to use

¹³ Another exchange has a similar provision. See e.g., NASDAQ Stock Market LLC (“Nasdaq”) Rule 4626(b)(6), which provides that nothing in its Limitation of Liability rule shall waive Nasdaq's limitations on, or immunities from, liability as set forth in its Rules or agreements, or that otherwise apply as a matter of law.

the linkage that was part of the old Options Intermarket Linkage Plan (the “Old Linkage”). Because the Old Linkage is no longer operable, interpretation .01 is no longer necessary.¹⁴

Conforming Changes to Other Rules

The proposed rule change would make conforming changes to Exchange Rules 2.2 and 6.44. Rule 2.2 requires a Permit Holder who fails to prevail in lawsuit or other legal proceeding instituted against the Exchange or certain related parties to pay for the Exchange’s reasonable costs of defending such lawsuit or proceeding if those costs exceed \$50,000. Rule 6.44 limits the legal proceedings a Permit Holder may bring against the Exchange and certain related persons for actions or omissions.

Under the proposed amendments to Rule 2.2, contractors would be included within the list of related parties protected by that rule, just as they would be included as Covered Persons under proposed Rule 6.42. As stated above, this proposed change is necessary because the Exchange at times contracts with outside firms to provide products or services to Permit Holders in connection with regulated business conducted on or through the Exchange and that arise out of the use or enjoyment of the facilities afforded by the Exchange and/or the calculation or dissemination of specified values, or quotes or transaction reports for options or other securities.

In addition, under the proposed amendments to Rule 2.2, other officials and contractors of the Exchange and any subsidiaries and affiliates of the Exchange and any such subsidiaries’ and affiliates’ directors, officers, committee members, other officials,

¹⁴ The old Options Intermarket Linkage Plan was replaced by the Options Order Protection and Locked/Crossed Markets Plan in 2009. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

employees, contractors, or agents would be explicitly identified/included within the list of related parties protected by the rule,¹⁵ just as they are proposed to be specifically identified/included within the list of Covered Persons under Rule 6.42. Committee members and affiliates of the Exchange and any subsidiaries' and affiliates' directors, officers, committee members, other officials, employees, contractors and agents would also be explicitly identified/included within the list of related parties under Rule 6.44.¹⁶ These changes are intended to conform the text of the three rules and to include affiliates within all three rules. Moreover, under the proposed amendments to Rule 6.44, committee members would be explicitly identified/included within the list of related parties protected by the rule, just as they are already specifically identified/included within the list of Covered Persons under existing Rule 6.42 and the similar provision in Rule 2.2. This change is intended to conform the rule text of the three rules. Finally, under the proposed amendments to Rule 6.44, the title to the rule will be revised.¹⁷

¹⁵ Specifically, the phrase “the Exchange or any of its directors, officers, committee members, employees or agents” is proposed to be replaced with the phrase “the Exchange or any of its directors, officers, committee members, other officials, employees, contractors, or agents, or any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents” in Rule 2.2.

¹⁶ Specifically, the phrase “the Exchange or any director, officer, employee, contractor, agent or other official of the Exchange or any subsidiary of the Exchange” is proposed to be replaced with the phrase “the Exchange or any of its directors, officers, committee members, other officials, employees, contractors, or agents, or any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents” in Rule 6.44.

¹⁷ Specifically, the title “Legal Proceedings Against the Exchange and its Directors, Officers, Employees, Contractors or Agents” is proposed to be changed to simply “Legal Proceedings Against the Exchange.”

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”)¹⁸ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁹ in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal would amend Exchange Rule 6.42 to eliminate any implication of liability with respect to the Exchange and other Covered Person resulting from the use or enjoyment of the facilities offered by the Exchange, any interruption in or failure or unavailability or any such facilities, or any action taken or omitted to be taken in respect of the business of the Exchange. The proposed rule change is consistent with and supplements existing law, and would assist the Exchange in fulfilling its role as a national securities exchange by avoiding the risk of tempering this critical regulatory function to avoid the disruption and expense of unnecessary litigation or potential catastrophic loss.

The proposal would also permit the Exchange to compensate Permit Holders for their losses incurred due to a Loss Event, even though the Exchange would not have legal liability for those losses. The proposed rule change would therefore facilitate the ability of the Exchange to make discretionary payments to redress a situation in which Permit Holders suffer losses due to a Loss Event. As stated above, the Exchange represents that the determination to compensate a Permit Holder will be made on an equitable and non-

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

discriminatory basis without regard to the Exchange capacity of the Permit Holder, such as whether the Permit Holder is a Designated Primary Market-Maker. The Exchange therefore believes the proposed rule change is consistent with the Act, and Section 6(b)(5) of the Act in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange also believes these policies would promote fairness in the national market system. The proposed rule change would allow C2 to address Permit Holder requests for compensation under various circumstances and would allow C2 to act in a fashion similar to many of its competitors. As stated above, several exchanges have substantially similar rules to those proposed here, and the Exchange believes that the proposed rule change would place C2 in a similar position to address Permit Holder requests.²⁰ The Exchange believes that to the extent there are any differences, such differences are not substantive and are still consistent with the scope of prior self-regulatory organization rulemaking.

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

The Exchange believes that this proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the Exchange believes that these policies would promote fairness in the national market system. The proposed rule change would allow C2 to address Permit Holder requests for compensation under various circumstances and would allow

²⁰ See BOX Rule 7230 and EDGA Rule 11.14; see also Nasdaq Rule 4626, ISE Rule 705, and BATS Exchange, Inc. Rule 11.16.

C2 to act in a fashion similar to many of its competitors. In addition, as stated above, several exchanges have substantially similar rules to those proposed here, except as otherwise noted, and the Exchange believes that the proposed rule change would place C2 in a similar position to address Permit Holder requests.²¹

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

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate,

it has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6)²³ thereunder. 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.

²¹ Id.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

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-C2-2015-010 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-C2-2015-010. 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 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-C2-2015-010 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.²⁴

Secretary

²⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Text of Proposed Rule Change

(additions are underlined; deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated

Rules

* * * * *

Rule 2.2. Exchange's Costs of Defending Legal Proceedings

Any Participant or person associated with a Participant who fails to prevail in a lawsuit or other legal proceeding instituted by such person against the Exchange or any of its directors, officers, committee members, other officials, employees, contractors, or agents, or any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents, and related to the business of the Exchange, shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding, but only in the event that such expenses exceed Fifty Thousand Dollars (\$50,000.00). This provision shall not apply to disciplinary actions by the Exchange, to administrative appeals of Exchange actions or in any specific instance where the Board has granted a waiver of this provision.

* * * * *

Rule 6.42. Exchange Liability Disclaimers and Limitations

(a) [Except to the extent provided in paragraph (b) of this Rule, and except as otherwise expressly provided in the Rules, neither] Neither the Exchange nor any of its directors, officers, committee members, other officials, employees, contractors, or agents, nor any subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents ("Covered Persons") shall be liable to [Permit Holders] Participants or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities [or services] afforded by the Exchange, any interruption in or failure or unavailability of any such facilities [or services], or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agents acting within the scope of their authority. Without limiting the generality of the foregoing, and subject to the same exception, [the Exchange] no Covered Person shall have [no] any liability to any person or entity for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, any current or closing value of interest rate options, or any reports of transactions in or

quotations for options or other securities, including underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use or enjoyment of the facilities afforded by the Exchange, including without limitation, of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to [reports of transactions in or quotations for securities traded on the Exchange or underlying securities, or reports of interest rate measures or index values or related data] any data described in the preceding sentence, and the Exchange makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, the provisions of Article Eighth of the Exchange's Certificate of Incorporation or any limitations otherwise available under law.

(b) Whenever custody of an unexecuted order or quote is transmitted by a Participant to or through the Exchange's System or to any other [automated] facility of the Exchange whereby the Exchange assumes responsibility for the transmission or execution of the order or quote, provided that the Exchange has acknowledged receipt of such order or quote, the Exchange's liability for the negligent acts or omissions of its employees or for] may, in its sole discretion, compensate one or more Participants for their losses alleged to have resulted from the failure to process an order or quote correctly due to the acts or omissions of the Exchange or due to the failure of its systems or facilities [shall not exceed the limits provided in this paragraph (b), and no assets of the Exchange shall be applied or shall be] (each, a "Loss Event"), subject to [such liability in excess of] the following limits:

(1) As to any one or more [claims] requests for compensation made by a single Participant [growing out of the use or enjoyment of the facilities afforded by the Exchange] that arose out of one or more Loss Events occurring on a single trading day, the Exchange [shall not be liable in excess of] may compensate the Participant up to but not exceeding the larger of \$100,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;

(2) As to the aggregate of all [claims] requests for compensation made by all Participants [growing out of the use or enjoyment of the facilities afforded by the Exchange] that arose out of one or more Loss Events occurring on a single trading day, the Exchange [shall not be liable in excess of] may compensate the Participants, in the aggregate, up to but not exceeding the larger of \$250,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange;

(3) As to the aggregate of all [claims] requests for compensation made by all Participants [growing out of the use or enjoyment of the facilities afforded by the Exchange] that arose out of one or more Loss Events occurring during a single calendar month, the Exchange [shall not be liable in excess of] may compensate the Participants, in the aggregate, up to but not exceeding the larger of \$500,000 or the amount of the recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

A Participant may not make a request for compensation under this Rule for less than \$100. Losses incurred on the same trading day and arising out of the same underlying act or omission of the Exchange or failure of the Exchange's systems or facilities may be aggregated to meet the \$100 minimum. Nothing in this Rule shall obligate the Exchange to seek recovery under any applicable insurance policy.

(c) Notice of all requests for compensation pursuant to this Rule shall be in writing and must be submitted no later than 12:00 p.m. CT on the next business day following the Loss Event giving rise to such requests. All requests shall be in writing and must be submitted along with supporting documentation by 5:00 p.m. CT on the third business day following the Loss Event giving rise to each such request. Additional information related to the request as demanded by the Exchange is also required to be provided. The Exchange shall not consider requests for which timely notice and submission have not been provided as required under this paragraph (c).

(d) [If all of the claims arising out of the use or enjoyment of the facilities afforded by the Exchange] If all of the timely requests submitted pursuant to paragraph (c) above that are granted cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of [liability provided for] payments authorized in paragraph (b) above, then such maximum amount shall be allocated among all such [claims] requests arising on a single trading day or during a single calendar month, as applicable, [written notice of which has been given to the Exchange no later than the opening of trading on the next business day following the day on which the use or enjoyment of Exchange facilities giving rise to the claim occurred,] based upon the proportion that each such [claim] request bears to the sum of all such [claims] requests.

(e) In determining whether to make payment of a request pursuant to paragraph (b) above, the Exchange may determine whether the amount requested should be reduced based on the actions or inactions of the requesting Participant, including, without limitation, whether the actions or inactions of the Participant contributed to the Loss Event; whether the Participant made appropriate efforts to mitigate its loss; whether the Participant realized any gains as a result of a Loss Event; whether the losses of the Participant, if any, were offset by hedges of positions either on the Exchange or on another affiliated or unaffiliated market; and whether the Participant provided sufficient information to document the request and as demanded by the Exchange.

(f) All determinations made pursuant to this Rule by the Exchange shall be final and not subject to appeal under Chapter 19 of the Rules or otherwise. Nothing in this Rule, nor any payment pursuant to this Rule, shall in any way limit, waive or proscribe any defenses a Covered Person may have to any claim, demand, liability, action or cause of action, whether such defense arises in law or equity, or whether such defense is asserted in a judicial, administrative, or other proceeding.

(g) This Rule shall be effective as of July 1, 2015 (the "Effective Date"). No claim for liability under any previous version of this Rule shall be valid if brought with respect to

any acts, omissions or transactions occurring more than one year prior to the Effective Date of this Rule, or if brought more than one month after the Effective Date of this Rule.

[. . . Interpretations and Policies

.01 The Clearing Corporation shall have no liability to Permit Holders or to their associated persons with respect to the use, non-use or inability to use the Linkage, including, without limitation, the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, or otherwise.]

* * * * *

Rule 6.44. Legal Proceedings Against the Exchange [and its Directors, Officers, Employees, Contractors or Agents]

No Participant or person associated with a Participant shall institute a lawsuit or other legal proceeding against the Exchange or any of its directors, officers, committee members, other officials, employees, contractors, or agents [or other official of the Exchange], or any [subsidiary] subsidiaries or affiliates of the Exchange or any of their directors, officers, committee members, other officials, employees, contractors, or agents, for actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary or affiliate, except to the extent such actions or omissions constitute violations of the federal securities laws for which a private right of action exists. This provision shall not apply to appeals of disciplinary actions or other actions by the Exchange as provided for in the Rules.