



Joanne Moffic-Silver
Phone: 312 786-7462
Fax: 312 786-7919
mofficj@cboe.com

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Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609



Re: **Petition to Amend Rule 146(b) to Designate Securities Listed on C2 Options Exchange, Incorporated as Covered Securities for the Purpose of Section 18 of the Securities Act of 1933**

Dear Ms. Murphy:

By this Petition, C2 Options Exchange, Incorporated (“C2” or the “Exchange”) requests that the Securities and Exchange Commission (the “Commission”) institute a rulemaking proceeding¹ to amend Rule 146(b)² pursuant to the Securities Act of 1933³ (the “Securities Act”) to designate securities listed on C2 as “covered securities” for the purpose of Section 18 of the Securities Act.⁴ Under Section 18, the Commission is permitted to designate as “covered securities,” the offering of which are exempt from state regulation, securities that are

“(A) listed, or authorized for listing, on the New York Stock Exchange (“NYSE”) or the American Stock Exchange⁵, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market⁶ (or any successor to such entities) (collectively, the “Named Markets”);⁷
(B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or
(C) is a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B).”⁸

¹ See Securities and Exchange Commission Rules of Practice, Rule 192, 17 CFR 201.192.

² 17 CFR 230.146(b).

³ 15 U.S.C. 77a *et seq.*

⁴ 15 U.S.C. 77r.

⁵ Now known as NYSE Amex LLC (“Amex”).

⁶ Now known as NASDAQ Stock Market LLC (“NASDAQ”).

⁷ In 1998, the Commission, on its own initiative, determined that it had the statutory authority to designate securities listed, or authorized for listing, on the Named Markets as “covered securities.” Securities Act Release No. 7494, 63 FR 3032 (January 21, 1998).

⁸ 15 U.S.C. 77r.

Background

In 1996, Congress adopted The National Securities Markets Improvement Act of 1996 (“NSMIA”)⁹ because “the system of dual Federal and state securities regulation [had] resulted in a degree of duplicative and unnecessary regulation”¹⁰ and “this duplicative regulation tends to raise the cost of capital to American issuers of securities without providing commensurate protection to investors or to our markets.”¹¹ On October 11, 1996, NSMIA was signed into law. NSMIA modified Section 18 of the Securities Act to provide exclusive federal regulation of securities listed on one of the Named Markets. Further, “in order to avoid competitive disparities, Congress provided the Commission with the discretionary authority to extend similar preemption treatment to” securities listed on another market that has listing standards that are substantially similar to the listing standards of one of the Named Markets.¹²

When NSMIA was adopted, Congress was well aware of how the states had adopted and enforced their “blue sky” laws. As noted in the Senate Report, “states have exempted from their ‘blue sky’ regulation securities traded on the New York Stock Exchange, the American Stock Exchange and the National Market System of Nasdaq. The bill codifies these exemptions...”¹³ In fact, while the historic exemptions for the NYSE and Amex were, for the most part, based upon statutes in the different states, the Nasdaq National Market exemption resulted from the execution of a Memorandum of Understanding (“MOU”), which followed lengthy negotiations between the North American Securities Administrators Association (“NASAA”) and the National Association of Securities Dealers (“NASD”). Thereafter, NASAA entered into similar MOUs with respect to certain securities listed on various regional exchanges and the Commission, as noted below, later exercised its discretionary authority to designate these same securities as “covered securities.”

Since 1998, the Commission has exercised its discretionary authority to designate in Rule 146(b)¹⁴ as covered securities, for the purposes of Section 18 of the Securities Act, the securities listed on (i) Tier I of the NYSE Arca, Inc. (“NYSE Arca”);¹⁵ (ii) Tier I of the Philadelphia Stock Exchange, Inc. (now NASDAQ OMX PHLX LLC or “Phlx”);¹⁶ (iii) Chicago Board Options Exchange, Incorporated (“CBOE”);¹⁷ (iv) the International Securities Exchange, LLC (“ISE”);¹⁸ and (v) the Nasdaq Capital Market (formerly The Nasdaq Small Cap Market)¹⁹ (which, together with the Named Markets, are referred to herein as the “Exempt Markets”). On October 8, 2010,

⁹ Pub. L. 104-290, 110 Stat. 3416 (1996).

¹⁰ H.F. Conf. Rep. No. 864, 104th Cong., 2d Sess. (1996).

¹¹ *Id.*

¹² Securities Act Release No. 7422 (June 9, 1997), 62 FR 32705 at 32706 (June 17, 1997).

¹³ Senate Rep. No. 293, 104th Cong., 2d sess. (1996) at 14.

¹⁴ 17 CFR § 230.146.

¹⁵ Securities Act Release No. 7494, Securities Exchange Act Release No. 39542 (January 13, 1998), 63 FR 3032 (January 21, 1998).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Securities Act Release No. 8442 (July 14, 2004), 69 FR 43295 (January 20, 2004).

¹⁹ Securities Act Release No. 8791 (April 18, 2007), 72 FR 20410 (April 24, 2007).

the Nasdaq Options Market (“NOM”) filed a petition to become an Exempt Market.²⁰ On May 26, 2011, BATS Exchange, Inc. (“BATS”) filed a petition to become an Exempt Market,²¹ and on August 8, 2011, the Commission published for comment a proposed rule to add BATS to Rule 146(b).²² C2 believes that the NOM Petition is currently pending before the Commission.

The securities that are currently listed on C2 consist of standardized options issued and guaranteed by The Options Clearing Corporation (“OCC”) that are also listed on at least one of the other options exchanges that is either a Named Market or an Exempt Market.²³ The Exchange may, in the future, list standardized options issued and guaranteed by OCC that may not be listed on a Named Market or an Exempt Market.

The Exchange believes that all exchange-traded options are “covered securities” under the plain statutory language of the Securities Act. Section 18(b)(1)(C) defines a “covered security” as one that is “of the same issuer that is equal in seniority...to a security” that is listed on an Exempt Market.²⁴ Every exchange-traded option cleared by OCC is: (i) a security of the same issuer (OCC), and (ii) all OCC-issued options are “equal in seniority,” and (iii) most standardized options are listed on Exempt Markets, therefore (iv) any OCC-issued option not listed on an Exempt Market is nevertheless a “covered security” under Section 18(b)(1)(C) because it is an option of the same issuer that is equal in seniority.

While C2 therefore believes that all exchange-traded options are “covered securities” under Section 18, the Exchange nonetheless submits this Petition to the Commission to amend Rule 146(b) to designate all securities listed on C2 as “covered securities” for the purpose of Section 18 of the Securities Act.

Discussion

C2 does not have its own unique listing standards. Instead C2 rules incorporate the listing standards of CBOE,²⁵ whose securities have already been designated as “covered securities” by the Commission.²⁶ CBOE Rules 5.3 (Criteria for Underlying Securities) and 24.2 (Designation of the Index) govern CBOE listing standards. C2 Chapters 5 and 24 incorporate all of CBOE Chapter V and the majority of CBOE Chapter XXIV, including Rules 5.3 and 24.2, into the C2 Rules. In its designation that securities listed on CBOE would qualify as “covered securities” for

²⁰ See letter from Edward S. Knight, Executive Vice President, General Counsel & Chief Regulatory Officer, NSDAQ OMX, to Elizabeth M. Murphy, Secretary, Commission, dated October 8, 2010 (the “NOM Petition”).

²¹ See letter from Eric Swanson, SVP and General Counsel, BATS, to Elizabeth M. Murphy, Secretary, Commission, dated May 26, 2011 (the “BATS Petition”).

²² Securities Act Release No. 9251 (August 8, 2011), 76 FR 49698 (August 11, 2011).

²³ All standardized options issued by OCC have the equal protection of OCC’s system of clearing members’ obligations, margin deposits, and clearing funds.

²⁴ 15 U.S.C. 77r.

²⁵ See C2 Rules, Chapter 5, which incorporates into C2 Rules CBOE Chapter V, including CBOE Rule 5.3 (Criteria for Underlying Securities), which governs CBOE listing standards, and C2 Rules, Chapter 24, which incorporates into C2 Rules the majority of CBOE Chapter XXIV, including CBOE Rule 24.2 (Designation of the Index), which governs CBOE listing standards with respect to index options.

²⁶ *Id.* at 15.

the purposes Section 18 of the Act, the Commission pointed to the proposing release for such determination, in which the Commission explained that CBOE's listing requirements for standardized options are substantially similar to those of Amex.²⁷ Nonetheless, C2 has reviewed the CBOE options listing standards for classes of securities that C2 trades and determined that these CBOE options listing standards, which are incorporated into the C2 rules, are still substantially similar to corresponding Amex options listing standards.²⁸ C2 lists only standardized options and its listing standards therefore pertain only to such options.²⁹

Listing Standards for Non-Index Options Overlying Securities

In considering underlying securities, both C2 and Amex rely on the information made publicly available by the issuer and/or the markets in which the security is traded.³⁰

Equity Options

By way of example, the C2 and Amex listing rules regarding equity options are almost entirely identical and certainly substantially similar. Both C2 and Amex require initially that an underlying security on which options can be listed and traded must be an "NMS stock" as defined in Rule 600 of Regulation NMS of the Securities Exchange Act of 1934 (the "Exchange Act")³¹ and must have a substantial number of outstanding shares that are widely held and actively traded.³²

C2 and Amex have essentially identical quantitative initial listing requirements pertaining to the public float, distribution of shares, and trading volume of the security underlying equity options. Both markets require at least 7 million shares to be publicly held and at least 2,000 public shareholders.³³ Both C2 and Amex require that the market price of the underlying security be at least \$3.00 for the previous five consecutive business days before listing if the security is a "covered security," and at least \$7.50 for a majority of the three calendar months preceding selection if the security is not a "covered security."³⁴ Additionally, both markets require a trading volume of at least 2.4 million in the preceding 12 months (these criteria are known as "initial equity options listing criteria").³⁵

²⁷ Id. at 15.

²⁸ The Commission has interpreted the "substantially similar" standard to require listing standards at least as comprehensive as those of the Named Markets, and has noted that differences in language or approach do not necessarily lead to a determination that the listing standards of the petitioner exchange are not substantially similar to those of a Named Market. See Note 18.

²⁹ Moreover, C2 does not list and trade certain options products that may be listed on Amex, and therefore does not have listing standards specific to such products. Amex does not have listing standards for certain options products that CBOE has listing standards for, and that C2 lists. Regardless, as this petition demonstrates, for such products which are listed on both C2 and Amex, the CBOE and Amex listing standards are substantially similar.

³⁰ Compare CBOE Rule 5.3 Interpretation and Policy .02 with Amex Rule 915 Commentary .02.

³¹ 17 CFR 242.600.

³² Compare CBOE Rule 5.3(a) with Amex Rule 915(a).

³³ Compare CBOE Rule 5.3 Interpretation and Policy .01(a)(1)-(2) with Amex Rule 915 Commentary .01(1)-(2).

³⁴ Compare CBOE Rule 5.3 Interpretation and Policy .01(b)(2)(A)-(B) with Amex Rule 915 Commentary .01(4).

³⁵ Compare CBOE Rule 5.3 Interpretation and Policy .01(b)(1) with Amex Rule 915 Commentary .01(3).

Both C2 and Amex require that the issuer of an underlying security be in compliance with the Exchange Act.³⁶ Both markets also indicate that notwithstanding the quantitative initial equity options listing criteria, an options contract may be listed and traded if the underlying security meets guidelines for continued listing and options on such underlying security are listed and traded on at least one other national securities exchange.³⁷

Along with equity options, C2 and Amex have essentially identical quantitative initial listing requirements for options on restructured companies, American depository receipts (“ADRs”), international funds, exchange-traded fund shares (“ETFs”), trust-issued receipts (“TIRs”), and index-linked securities or exchange-traded notes (“ILS” or “ETN”).

Restructured Companies

By way of example, the C2 and Amex listing rules regarding restructured companies are almost entirely identical and certainly substantially similar. Both C2 and Amex have the same requirements for certification of a restructure security, including the stipulation that at least 40 million shares of the restructure security be issued and outstanding if other requirements are not met (the other requirements also being identical for C2 and Amex).³⁸ Both exchanges require that the aggregate market value represented by the restructure security be at least \$500 million³⁹ unless other, identical financial requirements are met, one of which being that the aggregate book value of assets attributed to the restructure security or the revenues attributed to the business of the restructure security be no less than \$50 million.⁴⁰ Both C2 and Amex require that the market price of the underlying security be at least \$3.00 if the security is a “covered security,” and at least \$7.50 if the security is not a “covered security.”⁴¹ Both exchanges consider the 2.4 million trading volume standard that is set forth in the respective initial listing standards of the exchanges,⁴² and both prohibit “when issued” trading.⁴³

American Depository Receipts

By way of example, the C2 and Amex listing rules regarding ADRs are almost entirely identical and certainly substantially similar. Both C2 and Amex require that they have in place an effective surveillance sharing agreement (“SSA”) with the primary exchange in the home country where the security underlying the ADR is traded.⁴⁴ As an alternative to the SSA requirement, both markets require that for three months prior to selection of the ADR for options trading, either (i) the combined trading volume of the ADR and other related ADRs and securities occurring in the U.S. ADR market or in markets with which the exchange has in place an effective SSA represents at least 50% of the combined worldwide trading volume of the

³⁶ Compare CBOE Rule 5.3 Interpretation and Policy .01(a)(3) with Amex Rule 915 Commentary .01(5).

³⁷ Compare CBOE Rule 5.3 Interpretation and Policy .01(c) with Amex Rule 915 Commentary .01(6).

³⁸ Compare CBOE Rule 5.3 Interpretation and Policy .05(c) with Amex Rule 9.15 Commentary .05(c).

³⁹ Compare CBOE Rule 5.3 Interpretation and Policy .05(a)(2) with Amex Rule 915 Commentary .05(a)(iii)(1).

⁴⁰ Compare CBOE Rule 5.3 Interpretation and Policy .05(a)(1) with Amex Rule 915 Commentary .05(a)(iii)(2).

⁴¹ Compare CBOE Rule 5.3 Interpretation and Policy .05(d)(ii) with Amex Rule 915 Commentary .05(d)(ii).

⁴² Compare CBOE Rule 5.3 Interpretation and Policy .05(d)(iii) with Amex Rule 915 Commentary .05(d)(iii).

⁴³ Compare CBOE Rule 5.3 Interpretation and Policy .05(b) with Amex Rule 915 Commentary .05(b).

⁴⁴ Compare CBOE Rule 5.3 Interpretation and Policy .03(i) with Amex Rule 915 Commentary .03(1).

ADR;⁴⁵ or (ii) represents at least 20% of the combined worldwide trading volume, the average daily trading volume for the security in the U.S. markets is 100,000 or more shares, and the trading volume is at least 60,000 shares per day on a majority of trading days.⁴⁶

International Funds

By way of example, the C2 and Amex listing rules regarding international funds are almost entirely identical and certainly substantially similar. Both C2 and Amex require that international funds meet the initial equity options listing criteria and that the markets either have a market information sharing agreement with the primary exchange for each of the securities held by the fund⁴⁷ or the international funds are classified as diversified funds in the Investment Company Act of 1940⁴⁸ and issuers of securities held by the fund are based in five or more countries.⁴⁹

Exchange-Traded Funds

By way of example, the C2 and Amex listing rules regarding options on exchange-traded funds are almost entirely identical and certainly substantially similar. Both C2 and Amex require that exchange-traded fund shares are traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS.⁵⁰ Both exchanges require that ETFs represent interests in (i) open-end management investment companies that hold portfolios including, but not limited to, financial instruments and money market instruments,⁵¹ (ii) currency trust shares,⁵² (iii) commodity pool ETFs,⁵³ (iv) open-end management investment companies that invest in a portfolio of securities selected by an investment adviser,⁵⁴ or (v) certain enumerated commodity trusts.⁵⁵ In the case of the listing of ETFs representing interests in open-end management investment companies that invest in a portfolio of securities selected by an investment adviser, the specific requirements for the permission of such listings are also virtually identical.⁵⁶

⁴⁵ Compare CBOE Rule 5.3 Interpretation and Policy .03(ii) with Amex Rule 915 Commentary .03(2).

⁴⁶ Compare CBOE Rule 5.3 Interpretation and Policy .03(iii) with Amex Rule 915 Commentary .03(3).

⁴⁷ Compare CBOE Rule 5.3 Interpretation and Policy .04(i) with Amex Rule 915 Commentary .04(i).

⁴⁸ 15 U.S.C. 80a et seq.

⁴⁹ Compare CBOE Rule 5.3 Interpretation and Policy .04(ii) with Amex Rule 915 Commentary .04(ii).

⁵⁰ 17 CFR 242.600.

⁵¹ Compare CBOE Rule 5.3 Interpretation and Policy .06(i) with Amex Rule 915 Commentary .06(i).

⁵² Compare CBOE Rule 5.3 Interpretation and Policy .06(ii) with Amex Rule 915 Commentary .06(ii). Currency trust shares are referred to as “funds” on Amex.

⁵³ Compare CBOE Rule 5.3 Interpretation and Policy .06(iii) with Amex Rule 915 Commentary .06(iii).

⁵⁴ Compare CBOE Rule 5.3 Interpretation and Policy .06(v) with Amex Rule 915 Commentary .06(v).

⁵⁵ Compare CBOE Rule 5.3 Interpretation and Policy .06(iv) with Amex Rule 915 Commentary .10. The CBOE and Amex lists of such enumerated commodity trusts are identical, with the exception that the CBOE list includes the Sprott Physical Gold Trust while the Amex list does not. This is not a substantial difference, particularly when viewed in conjunction with the virtually identical nature of all the other listing requirements.

⁵⁶ Compare CBOE Rule 5.3 Interpretation and Policy .06(v) with Amex Rule 915 Commentary .06(v).

Trust-Issue Receipts

By way of example, the C2 and Amex listing rules regarding options on TIRs are almost entirely identical and certainly substantially similar. Both exchanges require that TIRs must be principally traded on a national securities exchange or through a national securities association.⁵⁷ Both C2 and Amex require that not more than 20% of the weight of a TIR is represented by ADRs on securities for which the primary market is not subject to a comprehensive surveillance agreement,⁵⁸ and that a TIR either meet the initial equity options listing criteria⁵⁹ or be available each business day for issuance or cancellation.⁶⁰

Index-Linked Securities

By way of example, the C2 and Amex listing rules regarding options on ILS⁶¹ are almost entirely identical and certainly substantially similar. The C2 and Amex descriptions of the different types of securities that make up an ILS are the same.⁶² Both exchanges require that an ILS must either meet initial equity options listing criteria or be redeemable at the option of the holder at least on a weekly basis at a price related to the underlying reference asset where the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents.⁶³ Both C2 and Amex require the implementation by the respective exchanges of surveillance procedures for options on ILS, including comprehensive surveillance agreements with markets trading in non-US components.⁶⁴

As with initial listing standards, C2 and Amex have quantitative maintenance requirements that are almost entirely identical. Both exchanges require, for continued approval of an options listing, at least 6.3 million shares of the underlying security be publicly held by persons other than those required to report their security holdings under Section 16(a) of the Exchange Act,⁶⁵ at least 1,600 public shareholders for continued listing of that security's options contracts, and that the trading volume (in all markets in which the underlying security is traded) be at least 1,800,000 shares in the preceding 12 months.⁶⁶ Both require that the underlying security be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Exchange Act.⁶⁷ Neither exchange has a market price per share requirement for continued listing.

⁵⁷ Compare CBOE Rule 5.3 Interpretation and Policy .07 with Amex Rule 915 Commentary .07.

⁵⁸ Compare CBOE Rule 5.3 Interpretation and Policy .07(b) with Amex Rule 915 Commentary .07(b).

⁵⁹ Compare CBOE Rule 5.3 Interpretation and Policy .07(a)(i) with Amex Rule 915 Commentary .07(a)(i).

⁶⁰ Compare CBOE Rule 5.3 Interpretation and Policy .07(a)(ii) with Amex Rule 915 Commentary .07(a)(ii).

⁶¹ Amex refers to ILS as Section 107 Securities.

⁶² Compare CBOE Rule 5.3 Interpretation and Policy .13(1)-(2) with Amex Rule 915 Commentary .11(a)-(b).

⁶³ Compare CBOE Rule 5.3 Interpretation and Policy .13(3) with Amex Rule 915 Commentary .11(c).

⁶⁴ Compare CBOE Rule 5.3 Interpretation and Policy .13(4) with Amex Rule 915 Commentary .11(d).

⁶⁵ 15 U.S.C. 78p(a).

⁶⁶ Compare CBOE Rule 5.4 Interpretation and Policy .01(a)-(c) with Amex Rule 916 Commentary .01(1)-(3).

⁶⁷ 17 CFR 242.600. Also, compare CBOE Rule 5.4 Interpretation and Policy .01(f) with Amex Rule 9.16 Commentary .01(5).

Both C2 and Amex will rely on information made publicly available by the issuer and/or markets in which a security is traded,⁶⁸ and will use the same monitoring mechanism,⁶⁹ in order to determine if such a security no longer meets the requirements for continued listing. Both exchanges require that, when the respective exchange announces that approval of an underlying security has been withdrawn or that the issuer of an underlying security has ceased to be in compliance with Commission reporting requirements, members and member organizations (in the case of Amex) or Trading Permit Holders and TPH Organizations (in the case of C2) must, prior to effecting a transaction in option contracts in respect of such underlying security for a customer, inform such customer of that fact and of the fact that the respective exchange may prohibit further transactions in such option contracts.⁷⁰

As is true for initial listing requirements, Amex and C2 have substantially similar maintenance requirements for continued listing of options on ADRs,⁷¹ ETFs,⁷² TIRs,⁷³ Holding Company Depository Receipts (“HOLDRS”),⁷⁴ and ILS.⁷⁵

Listing Standards for Index Options Overlying Securities

Narrow-Based Indexes⁷⁶

By way of example, C2 and Amex also have substantially similar rules regarding the designation of narrow-based indexes as eligible to underlie index options. C2 and Amex have virtually identical quantitative initial listing requirements pertaining to market value, trading volume, calculation of the index, inclusion of non-U.S. component securities or ADRs, index weighting, index components, rebalancing, information barriers maintained by broker-dealers, and the dissemination of index values.

C2 and Amex both require narrow-based index options to be either capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar weighted.⁷⁷ C2’s rules requiring a minimum of ten component securities to comprise a narrow-based index is more stringent than Amex’s minimum of five component securities.⁷⁸ Both exchanges require that equal dollar-weighted indexes be rebalanced at least once every calendar quarter.⁷⁹ If an index is maintained by a broker-dealer, the index must be calculated by a third party who is not a broker-

⁶⁸ Compare CBOE Rule 5.4 Interpretation and Policy .11 with Amex Rule 916 Commentary .10.

⁶⁹ Compare CBOE Rule 5.4 Interpretation and Policy .03 with Amex Rule 916 Commentary .03.

⁷⁰ Compare CBOE Rule 5.4 Interpretation and Policy .06 with Amex Rule 916 Commentary .05.

⁷¹ Compare CBOE Rule 5.4 Interpretation and Policy .07 with Amex Rule 916 Commentary .06.

⁷² Compare CBOE Rule 5.4 Interpretation and Policy .08 with Amex Rule 916 Commentary .07.

⁷³ Compare CBOE Rule 5.4 Interpretation and Policy .09 with Amex Rule 916 Commentary .08.

⁷⁴ Compare CBOE Rule 5.4 Interpretation and Policy .10 with Amex Rule 916 Commentary .09.

⁷⁵ Compare CBOE Rule 5.4 Interpretation and Policy .16 with Amex Rule 916 Commentary .12.

⁷⁶ Narrow-based indexes are known as stock index industry groups on Amex.

⁷⁷ Compare CBOE Rule 24.2(b)(2) with Amex Rule 901C Commentary .03(b)(i). Amex also permits narrow-based index options to be modified equal-dollar weighted, while CBOE does not.

⁷⁸ Compare CBOE Rule 24.2(b)(2) with Amex Rule 901C(a).

⁷⁹ Compare CBOE Rule 24.2(b)(11) with Amex Rule 901C Commentary .03(b)(ii).

dealer, and the broker-dealer must erect an informational barrier around its personnel who have access to information concerning changes in and adjustments to the index.⁸⁰

C2 and Amex both require that each component security has a market capitalization of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market capitalization must be at least \$50 million.⁸¹ Trading volume of each component security must have been at least one million shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must have been at least 500,000 shares for each of the last six months.⁸² In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index must each have had an average monthly trading volume of at least 2,000,000 shares over the past six months.⁸³

Both C2 and Amex require that no single component security represents more than 30% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% (65% for an index consisting of fewer than 25 component securities) of the weight of the index.⁸⁴ Component securities that account for at least 90% of the weight of the index and at least 80% of the total number of component securities in the index must satisfy the listing requirements applicable to individual underlying securities.⁸⁵ Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements must not in the aggregate represent more than 20% of the weight of the index.⁸⁶ Finally, both exchanges require that the underlying index value be reported at least once every fifteen seconds during the time the index options are traded on the exchange.⁸⁷

As is true for initial listing requirements, C2 and Amex have substantially similar maintenance requirements for narrow-based index options.⁸⁸

Broad-Based Indexes⁸⁹

By way of example, with respect to listing and trading broad-based index options, C2 and Amex have virtually identical quantitative initial listing requirements pertaining to market value,

⁸⁰ Compare CBOE Rule 24.2(b)(12) with Amex Rule 901C Commentary .03(b)(iii).

⁸¹ Compare CBOE Rule 24.2(b)(3) with Amex Rule 901C Commentary .03(a)(1).

⁸² Compare CBOE Rule 24.2(b)(4) with Amex Rule 901C Commentary .03(a)(2).

⁸³ Compare CBOE Rule 24.2(b)(5) with Amex Rule 901C Commentary .03(a)(3). On CBOE, this requirement also applies to modified capitalization-weighted indexes. It is unclear if this requirement applies to modified capitalization-weighted indexes on Amex.

⁸⁴ Compare CBOE Rule 24.2(b)(6) with Amex Rule 901C Commentary .03(a)(7).

⁸⁵ Compare CBOE Rule 24.2(b)(7) with Amex Rule 901C Commentary .03(a)(4).

⁸⁶ Compare CBOE Rule 24.2(b)(9) with Amex Rule 901C Commentary .03(a)(5).

⁸⁷ Compare CBOE Rule 24.2(b)(10) with Amex Rule 901C Commentary .03(b)(iv).

⁸⁸ Compare CBOE Rule 24.2(c) with Amex Rule 901C Commentary .03(d).

⁸⁹ Broad-based indexes are known as "broad stock index groups" on Amex.

trading volume, calculation of the index, inclusion of non-U.S. component securities or ADRs, index weighting, index components, rebalancing, system capacity, information barriers maintained by broker-dealers, the dissemination of index values, and surveillance.

Both C2 and Amex require that broad-based index options be either capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar-weighted.⁹⁰ Indexes that are equal dollar-weighted must be rebalanced at least once every calendar quarter.⁹¹ If an index is maintained by a broker-dealer, the index must be calculated by a third party who is not a broker-dealer, and the broker-dealer must erect an informational barrier around its personnel who have access to information concerning changes in and adjustments to the index.⁹²

Both C2 and Amex require that the index consist of 50 or more component securities⁹³ and component securities that account for at least 95% of the weight of the index have a market capitalization of at least \$75 million, except that component securities that account for at least 65% of the weight of the index must have a market capitalization of at least \$100 million.⁹⁴ Both exchanges require that component securities that account for at least 80% of the weight of the index satisfy the listing criteria applicable to individual underlying securities.⁹⁵ Both exchanges also require that each component security that accounts for at least 1% of the weight of the index have an average daily trading volume (“ADV”) of at least 90,000 shares during the last six month period.⁹⁶ No single component security may account for more than 10% of the index’s weight, and the five highest-weighted securities may not, in the aggregate, account for more than 33% of the index’s weight.⁹⁷ Each component security must be an NMS stock,⁹⁸ and non-U.S. component securities, in the aggregate, may not make up more than 20% of the index’s weight.⁹⁹

C2 and Amex also require that the index value be disseminated at least once every fifteen seconds by a major market data vendor.¹⁰⁰ Each exchange must believe that it has adequate system capacity to support the trading of options on the index, and both exchanges use the same method to form the basis for that belief.¹⁰¹ Finally, both C2 and Amex require that they have written surveillance procedures in place with respect to surveillance of trading of options on the index.¹⁰²

⁹⁰ Compare CBOE Rule 24.2(f)(3) with Amex Rule 901C Commentary .02(a)(3).

⁹¹ Compare CBOE Rule 24.2(f)(13) with Amex Rule 901C Commentary .02(a)(13).

⁹² Compare CBOE Rule 24.2(f)(14) with Amex Rule 901C Commentary .02(a)(14).

⁹³ Compare CBOE Rule 24.2(f)(4) with Amex Rule 901C Commentary .02(a)(4).

⁹⁴ Compare CBOE Rule 24.2(f)(5) with Amex Rule 901C Commentary .02(a)(5).

⁹⁵ Compare CBOE Rule 24.2(f)(6) with Amex Rule 901C Commentary .02(a)(6).

⁹⁶ Compare CBOE Rule 24.2(f)(7) with Amex Rule 901C Commentary .02(a)(7).

⁹⁷ Compare CBOE Rule 24.2(f)(8) with Amex Rule 901C Commentary .02(a)(8).

⁹⁸ Compare CBOE Rule 24.2(f)(9) with Amex Rule 901C Commentary .02(a)(9).

⁹⁹ Compare CBOE Rule 24.2(f)(10) with Amex Rule 901C Commentary .02(a)(10).

¹⁰⁰ Compare CBOE Rule 24.2(f)(11) with Amex Rule 901C Commentary .02(a)(11).

¹⁰¹ Compare CBOE Rule 24.2(f)(12) with Amex Rule 901C Commentary .02(a)(12).

¹⁰² Compare CBOE Rule 24.2(f)(15) with Amex Rule 901C Commentary .02(a)(15).

As is true for initial listing requirements, C2 and Amex have substantially similar maintenance requirements for broad-based index options.¹⁰³

Position Limits, Exercise Limits, Margin Requirements and Settlement Terms

By way of example, both CBOE and Amex have substantially similar position and exercise limits for options on non-index securities,¹⁰⁴ broad-based index securities,¹⁰⁵ and narrow-based index options.¹⁰⁶ Both exchanges also have substantially similar margin requirements for options¹⁰⁷ and rules regarding settlement terms.¹⁰⁸ CBOE and Amex rules regarding position and exercise limits, as well as margin requirements and settlement terms, have already been determined to be substantially similar.¹⁰⁹

Conclusion

Because C2 incorporates the CBOE rules governing listing standards, because these CBOE rules have previously been determined by the Commission to be substantially similar to those of Amex and therefore securities traded on CBOE have already been designated by the Commission in Rule 146(b) as “covered securities” for the purposes of Section 18 of the Securities Act, and because these rules are still substantially similar to those of Amex, the Commission should designate all securities listed on C2 as “covered securities” for the purpose of Section 18 of the Securities Act.

The failure to designate C2 securities (or all OCC-issued options) as “covered securities” for the purpose of Section 18 of the Securities Act would be inconsistent with the Commission’s mandate under Section 11A of the Exchange Act to “assure... fair competition... among exchange markets.”¹¹⁰ Indeed, were the Commission to reject this Petition, it could create a potential unfair competitive disparity among marketplaces that would not allow C2 to list proprietary option products, which would be contrary to the Exchange Act.

For the reasons set forth herein, we respectfully petition the Commission to amend Rule 146(b) to designate securities listed on C2 as “covered securities” under Section 18 of the Securities Act. Amending Rule 146(b) to include options listed on C2 as covered securities will exempt those securities from state registration (blue sky registration) requirements as set forth under Section 18(a) of the Securities Act. This action will establish parity between C2 and the Exempt Markets and will eliminate an unfair impediment to competition.

¹⁰³ Compare CBOE Rule 24.2(g) with Amex Rule 901C Commentary .02(b).

¹⁰⁴ Compare CBOE Rules 4.11 and 4.12 (which are incorporated into C2 Rules) with Amex Rules 904 and 905.

¹⁰⁵ Compare CBOE Rules 24.4 and 24.5 with Amex Rules 904C and 905C.

¹⁰⁶ Compare CBOE Rules 24.4A and 24.5 with Amex Rules 904C and 905C.

¹⁰⁷ Compare CBOE Chapter 12 with Amex Rule 462.

¹⁰⁸ Compare CBOE Rules 4.16, 5.4, 5.5, 11.1, 24.8, 24.9 and 24.18 (all of which, like all other CBOE Rules cited in this Petition, are incorporated into C2 Rules) and C2 Rule 6.3 with Amex Rules 903, 903C, 909, 909C, 916, 916C, 951C, 980 and 980C.

¹⁰⁹ See Securities Act Release No. 7494, 63 FR 3032 (January 21, 1998).

¹¹⁰ 15 U.S.C. 78k-1.

Thank you for your time and attention to this matter. Should you have any questions or desire further information from C2, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Joanne Moffic-Silver". The signature is written in a cursive, flowing style.

Joanne Moffic-Silver
Secretary

cc: Chairman Mary L. Shapiro
Commissioner Elisse B. Walter
Commissioner Luis A. Aguilar
Commissioner Troy A. Paredes
Mr. Robert E. Cook, Director, Division of Trading and Markets
Ms. Heather Seidel, Division of Trading and Markets
Mr. Richard Holley, Division of Trading and Markets
Mr. David Liu, Division of Trading and Markets