

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97446; File No. SR-CBOE-2023-024)

May 5, 2023

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Operation of its SPXPM Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 3, 2023, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to extend the operation of its SPXPM pilot program. The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

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Rules of Cboe Exchange, Inc.

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Rule 4.13. Series of Index Options

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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Interpretations and Policies

.01-.12 No change.

.13 In addition to A.M.-settled S&P 500 Stock Index (“SPX”) options approved for trading on the Exchange pursuant to Rule 4.13, the Exchange may also list options on SPX whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (P.M.-settled third Friday-of-the-month SPX options series). The Exchange may also list options on the Mini-SPX Index (“XSP”) and Mini-RUT Index (“MRUT”) whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (“P.M.-settled”). P.M.-settled third Friday-of-the-month SPX options series and P.M.-settled XSP and MRUT options will be listed for trading for a pilot period ending [May 8] November 6, 2023.

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The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

On February 8, 2013, the Securities and Exchange Commission (the “Commission”) approved a rule change that established a Pilot Program that allows the Exchange to list options on the S&P 500 Index whose exercise settlement value is derived from closing prices on the last

trading day prior to expiration (“SPXPM”).⁵ On July 31, 2013, the Commission approved a rule change that amended the Pilot Program to allow the Exchange to list options on the Mini-SPX Index (“XSP”) whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (“P.M.-settled XSP”).⁶ On February 5, 2021, the Commission approved a rule change that amended the Pilot Program to allow the Exchange to list options on the Mini Russell 2000 Index (“MRUT” or “Mini-RUT”) whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (“P.M.-settled MRUT”)⁷ (together, SPXPM, P.M.-settled XSP, and P.M.-settled MRUT to be referred to herein as the “Pilot Products”).⁸ The Exchange has extended the pilot period numerous times, which, pursuant to Rule 4.13.13, is currently set to expire on the earlier of May 8, 2023 or the date on which the pilot

⁵ See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR-CBOE-2012-120) (the “SPXPM Approval Order”). Pursuant to Securities Exchange Act Release No. 80060 (February 17, 2017), 82 FR 11673 (February 24, 2017) (SR-CBOE-2016-091), the Exchange moved third-Friday P.M.-settled options into the S&P 500 Index options class, and as a result, the trading symbol for P.M.-settled S&P 500 Index options that have standard third Friday-of-the-month expirations changed from “SPXPM” to “SPXW.” This change went into effect on May 1, 2017, pursuant to Cboe Options Regulatory Circular RG17-054.

⁶ See Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR-CBOE-2013-055) (the “P.M.-settled XSP Approval Order”).

⁷ See Securities Exchange Act Release No. 91067 (February 5, 2021), 86 FR 9108 (SR-2020-CBOE-116) (the “P.M.-settled MRUT Approval Order”).

⁸ For more information on the Pilot Products or the Pilot Program, see the SPXPM Approval Order, the P.M.-settled XSP Approval Order, and the P.M.-settled MRUT Approval Order.

program is approved on a permanent basis.⁹ The Exchange hereby proposes to further extend the end date of the pilot period to November 6, 2023.¹⁰

During the course of the Pilot Program and in support of the extensions of the Pilot Program, the Exchange submits reports to the Commission regarding the Pilot Program that detail the Exchange's experience with the Pilot Program, pursuant to the SPXPM Approval Order,¹¹ the P.M.-settled XSP Approval Order,¹² and the P.M.-settled MRUT Approval Order.¹³ Specifically, the Exchange submits annual Pilot Program reports to the Commission that contain an analysis of volume, open interest, and trading patterns. The analysis examines trading in Pilot Products as well as trading in the securities that comprise the underlying index. Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and share trading activity. The Exchange also submits periodic interim

⁹ See Securities Exchange Act Release Nos. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014) (SR-CBOE-2014-004); 73338 (October 10, 2014), 79 FR 62502 (October 17, 2014) (SR-CBOE-2014-076); 77573 (April 8, 2016), 81 FR 22148 (April 14, 2016) (SR-CBOE-2016-036); 80386 (April 6, 2017), 82 FR 17704 (April 12, 2017) (SR-CBOE-2017-025); 83166 (May 3, 2018), 83 FR 21324 (May 9, 2018) (SR-CBOE-2018-036); 84535 (November 5, 2018), 83 FR 56129 (November 9, 2018) (SR-CBOE-2018-069); 85688 (April 18, 2019), 84 FR 17214 (April 24, 2019) (SR-CBOE-2019-023); 87464 (November 5, 2019), 84 FR 61099 (November 12, 2019) (SR-CBOE-2019-107); 88674 (April 16, 2020), 85 FR 22479 (April 22, 2020) (SR-CBOE-2020-036); 90263 (October 23, 2020), 85 FR 68611 (October 29, 2020) (SR-CBOE-2020-100); 91698 (April 28, 2021), 86 FR 23761 (May 4, 2021) (SR-CBOE-2021-027); 93455 (October 28, 2021), 86 FR 60660 (November 3, 2021) (SR-CBOE-2021-062); 94799 (April 27, 2022), 87 FR 26244 (May 3, 2022) (SR-CBOE-2022-019); and 96222 (November 3, 2023), 87 FR 67736 (November 9, 2022) (SR-CBOE-2022-054).

¹⁰ The Exchange recently proposed to make the pilot program permanent. See Securities Exchange Act Release Nos. 96703 (January 18, 2023), 88 FR 4265 (January 24, 2023) (SR-CBOE-2023-005); and 97366 (April 24, 2023) (SR-CBOE-2023-019).

¹¹ See supra note 5.

¹² See supra note 6.

¹³ See supra note 7.

reports that contain some, but not all, of the information contained in the annual reports. In providing the annual and periodic interim reports (the “pilot reports”) to the Commission, the Exchange has previously requested confidential treatment of the pilot reports under the Freedom of Information Act (“FOIA”).¹⁴

The pilot reports both contain the following volume and open interest data:

- (1) monthly volume aggregated for all trades;
- (2) monthly volume aggregated by expiration date;
- (3) monthly volume for each individual series;
- (4) month-end open interest aggregated for all series;
- (5) month-end open interest for all series aggregated by expiration date; and
- (6) month-end open interest for each individual series.

The annual reports also contain (or will contain) the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled, S&P 500 and RUT index options traded on Cboe Options, as well as the following analysis of trading patterns in the Pilot Products options series in the Pilot Program:

- (1) a time series analysis of open interest; and
- (2) an analysis of the distribution of trade sizes.

Finally, for series that exceed certain minimum parameters, the annual reports contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

- (1) a comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data includes a

¹⁴ 5 U.S.C. 552.

- calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the Cboe Volatility Index (VIX), is provided; and
- (2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data includes a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods are determined by the Exchange and the Commission. In proposing to extend the Pilot Program, the Exchange will continue to abide by the reporting requirements described herein, as well as in the SPXPM Approval Order, the P.M.-settled XSP Approval Order, and the P.M.-settled MRUT Approval Order.¹⁵ Additionally, the Exchange will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot Program is consistent with the Exchange Act. The Exchange is in the process of making public on its website all data and analyses previously submitted to the Commission under the Pilot Program,¹⁶ and will continue to

¹⁵ Pursuant to Securities Exchange Act Release No. 75914 (September 14, 2015), 80 FR 56522 (September 18, 2015) (SR-CBOE-2015-079), the Exchange added SPXPM and P.M.-settled XSP options to the list of products approved for trading during Extended Trading Hours (“ETH”). The Exchange will also include the applicable information regarding SPXPM and P.M.-settled XSP options that trade during ETH in its annual and interim reports.

¹⁶ Available at <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data>.

make public any data and analyses it submits to the Commission under the Pilot Program in the future.

The Exchange proposes the extension of the Pilot Program in order to continue to give the Commission more time to consider the impact of the Pilot Program. To this point, Cboe Options believes that the Pilot Program has been well-received by its Trading Permit Holders and the investing public, and the Exchange would like to continue to provide investors with the ability to trade SPXPM and P.M.-settled XSP and MRUT options. All terms regarding the trading of the Pilot Products shall continue to operate as described in the SPXPM Approval Order, the P.M.-settled XSP Approval Order, and the P.M.-settled MRUT Approval Order. The Exchange merely proposes herein to extend the term of the Pilot Program to November 6, 2023.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

is consistent with the Section 6(b)(5)¹⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension of the Pilot Program will continue to provide greater opportunities for investors. Further, the Exchange believes that it has not experienced any adverse effects or meaningful regulatory concerns from the operation of the Pilot Program. As such, the Exchange believes that the extension of the Pilot Program does not raise any unique or prohibitive regulatory concerns. Also, the Exchange believes that such trading has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying stocks comprising the S&P 500 index and RUT index. The extension of the Pilot Program will continue to provide investors with the opportunity to trade the desirable products of SPXPM and P.M.-settled XSP and MRUT, while also providing the Commission further opportunity to observe such trading of the Pilot Products.

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

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the continuation of the Pilot Program will impose any unnecessary or inappropriate burden on intramarket competition because it will continue to apply equally to all Cboe Options market participants, and the Pilot Products will be available to all Cboe Options market participants. The Exchange believes there is sufficient investor interest and demand in the Pilot Program to warrant its extension. The Exchange believes that, for the period that the Pilot Program has been in operation, it has provided investors with desirable products with which to trade. Furthermore, the Exchange believes that it has not experienced any adverse market

¹⁹ Id.

effects or regulatory concerns with respect to the Pilot Program. The Exchange further does not believe that the proposed extension of the Pilot Program will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only applies to trading on Cboe Options. To the extent that the continued trading of the Pilot Products may make Cboe Options a more attractive marketplace to market participants at other exchanges, such market participants may elect to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)²³ permits the Commission to designate a shorter time if such action is consistent with the protection of

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay will allow it to extend the Pilot Program prior to its expiration on May 8, 2023, and maintain the status quo, thereby reducing market disruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Pilot Program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the Pilot Program. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²⁴

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 shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2023-024 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-CBOE-2023-024. 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, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to File Number SR-CBOE-2023-024, 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.²⁵

J. Matthew DeLesDernier,
Deputy Secretary.

²⁵ 17 CFR 200.30-3(a)(12), (59).