

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98008; File No. SR-CBOE-2023-020)

July 27, 2023

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change To Make the Nonstandard Expirations Pilot Program Permanent

I. Introduction

On April 11, 2023, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the operation of its pilot program (“Program”) that permits the Exchange to list broad-based index options with nonstandard expirations. The proposed rule change was published for comment in the Federal Register on May 1, 2023.³ On June 9, 2023, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission did not receive any comment letters on the proposed rule change. The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97371 (April 25, 2023), 88 FR 26621 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 97679, 88 FR 3931 (June 15, 2023). The Commission designated July 30, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposed Rule Change

The Exchange proposes to make permanent a pilot program that permits the Exchange to list p.m.-settled options on broad-based indexes that expire (1) on the last day of the trading month (“EOM”), and (2) any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration) and, with respect to S&P 500 index options (“SPX”) and mini-S&P 500 index options (“XSP”), on any Tuesday or Thursday (other than days that coincide with an EOM expiration) (“Weekly”).

In September 2010, the Commission approved a rule change that established the Program under which the Exchange was permitted to list p.m.-settled options on broad-based indexes to expire on any Friday of the month, other than the third Friday-of-the-month, and the last trading day of the month.⁷ The Commission subsequently approved proposed rule changes to amend the Program to allow the Exchange to also list: (1) p.m.-settled Monday⁸ and Wednesday⁹ expirations on broad-based indexes, and (2) p.m.-settled Tuesday and Thursday expirations on SPX¹⁰ and XSP.¹¹ In approving the Program, the Commission noted its concern about the potential impact on the market at expiration for the underlying component stocks for a p.m.-settled, cash-settled index options.¹² However, the Commission has also recognized the potential

⁷ See Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR-CBOE-2009-075) (“Nonstandards Approval Order”).

⁸ See Securities Exchange Act Release No. 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR-CBOE-2016-046).

⁹ See Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (SR-CBOE-2015-106).

¹⁰ See Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (SR-CBOE- 2022-005).

¹¹ See Securities Exchange Act Release No. 95795 (September 21, 2022) (order approving SR-CBOE- 2022-039).

¹² See Nonstandards Approval Order, 75 FR at 57540. See also Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801-02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options); 65256 (September 2, 2011), 76 FR 55969, 55970-76 (September 9, 2011) (order approving proposed rule change to establish a pilot program to list and trade SPXPM options); and 68888 (February 8, 2013), 78 FR 10668,

impact was unclear.¹³ The Commission approved the Program on a pilot basis to allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects.¹⁴ In order to facilitate this assessment, the Exchange committed to provide the Commission with data and analysis in connection with the Program.¹⁵ The Exchange has filed to extend the operation of the Program on multiple occasions¹⁶ and it is currently set to expire on the earlier of November 6, 2023, or the date on which the Program is approved on a permanent basis.¹⁷

Since the Program's inception in 2010, the Exchange has submitted reports to the Commission regarding the Program that detail the Exchange's experience with the Program, pursuant to the various approval orders.¹⁸ Specifically, the Exchange states it has submitted annual pilot reports to the Commission that contain an analysis of volume, open interest, and trading patterns.¹⁹ Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and, if needed, share trading activity. The Exchange states it has also submitted periodic interim reports that contain some, but not all, of the information contained in the annual reports (together with the annual reports, the "pilot reports").²⁰ The Exchange states that, during the course of the Program, it has

10669 (February 14, 2013) (order approving the listing and trading of SPXPM on CBOE) ("SPXPM Approval Order").

¹³ See e.g., SPXPM Approval Order, 78 FR at 10669.

¹⁴ See e.g., Nonstandards Approval Order, 75 FR at 57549; and Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 at 22995 (SR-CBOE- 2022-005).

¹⁵ Id.

¹⁶ See, e.g., Securities Exchange Act Release Nos. 65741 (November 14, 2011), 76 FR 72016 (November 21, 2011); and 96223 (November 3, 2022), 87 FR 67728 (November 9, 2022).

¹⁷ See Securities Exchange Act Release No. 97445 (May 5, 2023), 88 FR 30368(May 11, 2023).

¹⁸ See supra notes 7-11.

¹⁹ See Notice, 88 FR at 26623.

²⁰ See id.

provided the Commission with any additional data or analyses the Commission requested if it deemed such data or analyses necessary to determine whether the Program was consistent with the Exchange Act.²¹ The Exchange states it has made public on its website data and analyses previously submitted to the Commission under the Program, and will continue to make public any data and analyses it submits to the Commission while the Program is still in effect.²²

As set forth more fully in the Notice, the Exchange concludes that the Program does not negatively impact market quality or raise any unique or prohibitive regulatory concerns.²³ The Exchange states it has not identified any evidence from the pilot data indicating that the trading of Weekly and EOM options has any adverse impact on fair and orderly markets on the third Friday-of-the-month for the underlying indexes or the underlying securities comprising the underlying indexes, nor have there been any observations of abnormal market movements attributable to Weekly and EOM options from any market participants that have come to the attention of the Exchange.²⁴ In order to support its overall assessment of the Program, the Exchange includes both an assessment of an analysis conducted at the direction of the staff of the Commission's Division of Economic and Risk Analysis and the Exchange's review and analysis of pilot data.²⁵ Among other things, the Notice includes the Exchange's analysis of end of day volatility as well as a comparison of the impact of quarterly index rebalancing versus p.m.-settled expirations.²⁶

²¹ See Notice, 88 FR at 26624.

²² See *id.* Available at <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data>.

²³ See Notice, 88 FR at 26624.

²⁴ See *id.*

²⁵ See Notice, 88 FR at 26624-26.

²⁶ See Notice, 88 FR at 26625-26. The Exchange states that although this analysis specifically evaluated SPX options, the Exchange believes it is appropriate to extrapolate the data to apply to the Weekly and EOM options (which include SPX options) because Weekly and EOM options may only overly broad-based

The Exchange also completed an analysis intended to evaluate whether the Program impacted the quality of the a.m.-settled options market.²⁷ Specifically, the Exchange compared values of key market quality indicators (specifically, the bid-ask spread²⁸ and effective spread²⁹) in p.m.-settled SPX options (“SPXW”) both before and after the introduction of Tuesday expirations and Thursday expirations for SPXW options on April 18 and May 11, 2022, respectively.³⁰ The Exchange believes analyzing the impact of new SPXW options on then-existing SPXW options provides a reasonable substitute to evaluate whether the introduction of Weekly and EOM options impacted the market quality of any corresponding a.m.-settled options when the Program began.³¹

Finally, the Exchange states that the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, have significantly minimized risks of any potential impact of Weekly or EOM options on the underlying cash markets.³²

index options. See Notice, 88 FR at 26627.

²⁷ See Notice, 88 FR at 26364.

²⁸ The Exchange calculated for each of SPXW options (with Monday, Wednesday, and Friday expirations) and weekly options on the Standard & Poor’s Depository Receipts S&P 500 ETF (“SPY”) (with Monday, Wednesday, and Friday expirations) the daily time-weighted bid-ask spread on the Exchange during its regular trading hours session, adjusted for the difference in size between SPXW options and SPY options (SPXW options are approximately ten times the value of SPY options).

²⁹ The Exchange calculated the volume-weighted average daily effective spread for simple trades for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY weekly options (with Monday, Wednesday, and Friday expirations) as twice the amount of the absolute value of the difference between an order execution price and the midpoint of the national best bid and offer at the time of execution, adjusted for the difference in size between SPXW options and SPY options.

³⁰ For purposes of comparison, the Exchange paired SPXW options and SPY options with the same moneyness and same days to expiration.

³¹ See Notice, 88 FR at 26626.

³² See Notice, 88 FR at 26628.

III. Proceedings to Determine Whether to Approve or Disapprove SR-CBOE-2023-020, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act³³ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,³⁴ the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to make permanent a pilot program that permits the listing and trading of p.m.-settled Weekly and EOM expirations. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with the Act, and in particular, Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.³⁵

³³ 15 U.S.C. 78s(b)(2)(B).

³⁴ Id.

³⁵ 15 U.S.C. 78f(b)(5).

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, is consistent with Sections 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,³⁶ any request for an opportunity to make an oral presentation.³⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

³⁶ 17 CFR 240.19b-4.

³⁷ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (Jun. 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2023-020 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-2023-020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 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-2023-020 and should be submitted by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Sherry R. Haywood,

Assistant Secretary.

³⁸ 17 CFR 200.30-3(a)(12).