

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98277; File No. SR-CBOE-2023-043)

September 1, 2023

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 4.3 (Criteria for Underlying Securities) to Accelerate the Listing of Options on Certain IPOs

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 August 24, 2023, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 amend Rule 4.3.

The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 4.3. Criteria for Underlying Securities

(a) – (b) No change.

Interpretations and Policies

.01 The [Board of Directors]Exchange has established guidelines to be considered [by the Exchange in]when evaluating potential underlying securities for Exchange option transactions. Absent

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

exceptional circumstances with respect to subparagraphs (a)(1), (a)(2), (b)(1), or (b)(2) listed below, at the time the Exchange selects an underlying security for Exchange option transactions, the following guidelines with respect to the issuer shall be met.

(a) No change.

(b) Guidelines applicable to the market for the security are:

(1) No change.

(2) (A) If the underlying security is a “covered security” as defined under Section 18(b)(1)(A) of the Securities Act of 1933[,]; (i) the market price per share of the underlying security has been at least \$3.00 for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to the OCC for listing and trading. For purposes of this Interpretation .01(b)(2)(A), the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded; however, (ii) the requirements set forth in clause (i) will be waived during the three days following an underlying security’s initial public offering day if the underlying security has a market capitalization of at least \$3 billion based on upon the offering price of its initial public offering, in which case options on the underlying security may be listed and traded starting on or after the second business day following the initial public offering day.

* * * * *

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

The Exchange proposes to amend Rule 4.3. The Exchange proposes a listing rule change that is substantially similar in all material respects to the proposal approved for NYSE American LLC (“NYSE American”).³ NYSE American filed a proposed rule change,⁴ which the Securities and Exchange Commission (the “Commission”) recently approved, to modify the standard for the listing and trading of options on “covered securities” to reduce the time to market in NYSE American Rule 915 (Criteria for Underlying Securities). At this time, the Exchange proposes to adopt a substantively identical rule.

Proposal

Exchange Rule 4.3, Interpretation and Policy .01 sets forth the guidelines to be considered by the Exchange in evaluating potential underlying securities that are “covered securities,” as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter “covered security” or “covered securities”), for Exchange option transactions.⁵ Currently, the Exchange permits the listing of an option on an underlying covered security that, amongst other things, has a market price of at least \$3.00 per share for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation (“OCC”) to list and

³ See Securities Exchange Act Release No. 98013 (July 27, 2023) 88 FR 50927 (August 2, 2023) (SR-NYSEAMER-2023-27) (Order Granting Approval of a Proposed Rule Change to Amend Rule 915 (Criteria for Underlying Securities) to Accelerate the Listing of Options on Certain IPO).

⁴ Id.

⁵ Current Exchange Rule 4.3(a) requires that, for underlying securities to be eligible for listing and trading on the Exchange, securities must be duly registered and be an NMS stock (as defined in Rule 600 of Regulation NMS under the Act) and be characterized by a substantial number of outstanding shares that are widely held and actively traded. The Exchange also proposes to replace the term “Board of Directors” with Exchange and make conforming nonsubstantive changes to the introductory paragraph of Rule 4.3, Interpretation and Policy .01, as it is outdated. The Board of Directors delegated authority to determine listing criteria to Exchange management. Exchange management currently determines guidelines for evaluating potential underlying securities for Exchange option transactions, as set forth in Rule 4.3(b).

trade options on the underlying security (the “three-day lookback period”).⁶ Under the current rule, if an initial public offering (“IPO”) occurs on a Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday, with the market price determined by the closing price over the three-day lookback period from Monday through Wednesday. The option on the IPO’d security would then be eligible for trading on the Exchange on Friday (i.e., within four business days of the IPO inclusive of the day the listing certificate is submitted to OCC).

The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities — well above the \$3.00 per share threshold — that would obviate the need for the three-day lookback period. The Exchange understands from market participants that the proposed changes would help options on covered securities with a market capitalization of at least \$3 billion based upon the offering prices of their IPOs come to market earlier. The proposed change, which the Exchange expects will be harmonized across options exchanges, is designed to provide investors the opportunity to hedge their interests in IPO investments in a shorter amount of time than what is currently permitted.⁷ The Exchange believes that options serve as a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility in the trading of IPO’d securities.⁸

⁶ See Exchange Rule 4.3, Interpretation and Policy .01(b)(2)(A). The Exchange is not proposing to make any changes to the guidelines for listing securities that are not a “covered security.” See Exchange Rule 4.3, Interpretation and Policy .01(b)(2)(B).

⁷ While the Exchange acknowledges that market participants may utilize options for speculative purposes (in addition to as a hedging tool), the Exchange believes (as set forth below) that its existing surveillance technologies and procedures adequately address potential violations of exchange rules and federal securities laws applicable to trading on the Exchange.

⁸ See proposed Rule 4.3, Interpretation and Policy .01(b)(2)(A)(ii).

Accordingly, the Exchange proposes to modify Rule 4.3, Interpretation and Policy .01(b)(2) to waive the three-day lookback period for covered securities that have a market capitalization of at least \$3 billion based upon the offering price of the IPO of such securities and to allow options on such securities to be listed and traded starting on or after the second business day following the initial public offering day (i.e., not inclusive of the day of the IPO).⁹ NYSE American noted in its rule change that it reviewed trading data for IPO'd securities dating back to 2017 and is unaware of any such security that achieved a market capitalization of \$3 billion based upon the offering price of its IPO that would not have also qualified for listing options based on the three-day lookback requirement.¹⁰ Specifically, NYSE American stated in its rule change that it determined that 202 of the 1,179 IPOs that took place between January 1, 2017, and October 21, 2022 met the \$3 billion market capitalization/IPO offering price threshold.¹¹ Further, NYSE American stated that options on all 202 of those IPO shares subsequently satisfied the three-day lookback requirement for listing and trading, i.e., none of these large IPOs closed below the \$3.00/share threshold during its first three days of its trading.¹² As such, the Exchange believes the proposed capitalization threshold of \$3 billion based upon the offering price of its IPO is appropriate.

Under the proposed rule, if an IPO for a company with a market capitalization of \$3 billion based upon the offering price of its IPO occurs on a Monday, the Exchange could submit its listing certificate to OCC (to list and trade options on the IPO'd security) as soon as all the other

⁹ The Exchange acknowledges that the Options Listing Procedures Plan (or "OLPP") requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin. See OLPP, at p. 3., available here: https://www.theocc.com/getmedia/198bfc93-5d51-443c-9e5b-fd575a0a7d0f/options_listing_procedures_plan.pdf. The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series.

¹⁰ See supra note 5.

¹¹ Id.

¹² Id.

requirements for listing are satisfied. If, on Tuesday, all requirements are deemed satisfied, options on the IPO'd security could then be eligible for trading on the Exchange on Wednesday (i.e., starting on or after the second business day following the IPO day). Thus, the proposal could potentially accelerate the listing of options on IPO'd securities by two days.

The Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner without sacrificing investor protection. The Exchange represents that trading in options on IPO'd securities — like all other options traded on the Exchange — is subject to surveillances administered by the Exchange and/or FINRA on behalf of the Exchange.¹³ Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of options on IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.¹⁴ As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, adequately address potential concerns regarding possible manipulation or price stability.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities

¹³ FINRA currently conducts certain surveillances on behalf of the Exchange pursuant to a regulatory services agreement. To the extent that FINRA may conduct any surveillances on behalf of the Exchange pursuant to the regulatory services agreement (which surveillances may vary over time), the Exchange is responsible for FINRA's performance under the regulatory services agreement. The Exchange is also a party to a bilateral Rule 17d-2 Agreement with FINRA and various multi-party Rule 17d-2 Agreements with FINRA and other national securities exchanges that trade options (e.g., Rule 17d-2 Agreements governing options sales practice and options position limits) and to national market systems plans with the other national securities exchanges that trade options (e.g., the national market system plan that governs options insider trading for which FINRA is the current plan processor).

¹⁴ See supra note 9.

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.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ 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 is consistent with the Section 6(b)(5)¹⁷ 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 the proposed change would facilitate options transactions and would remove impediments to and perfect the mechanism of a free and open market and a national market system, which would, in turn, protect investors and the public interest by providing an avenue for options on IPO’d securities to come to market earlier. The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities — well above the \$3.00 per share threshold — that would obviate the need for the three-day lookback period. As noted above, NYSE American noted that it reviewed trading data for IPO’d securities dating back to 2017 and was unaware of an IPO’d security with a

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Id.

market capitalization of \$3 billion or more (based upon the offering price of its IPO) that subsequently would have failed to qualify for listing and trading as options under the three-day lookback requirement.¹⁸ The Exchange believes that the proposed amendment, which the Exchange expects to be harmonized across options exchanges, would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted. The Exchange believes that options serve as a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility to IPO'd securities.¹⁹

Further, as noted herein, the Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner without sacrificing investor protection. The Exchange represents that trading in options on IPO'd securities — like all other options traded on the Exchange — is subject to surveillances administered by the Exchange and/or FINRA on behalf of the Exchange.²⁰ Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of options on IPO'd securities in all trading

¹⁸ See supra note 5.

¹⁹ See supra note 9.

²⁰ FINRA currently conducts certain surveillances on behalf of the Exchange pursuant to a regulatory services agreement. To the extent that FINRA may conduct any surveillances on behalf of the Exchange pursuant to the regulatory services agreement (which surveillances may vary over time), the Exchange is responsible for FINRA's performance under the regulatory services agreement. The Exchange is also a party to a bilateral Rule 17d-2 Agreement with FINRA and various multi-party Rule 17d-2 Agreements with FINRA and other national securities exchanges that trade options (e.g., Rule 17d-2 Agreements governing options sales practice and options position limits) and to national market systems plans with the other national securities exchanges that trade options (e.g., the national market system plan that governs options insider trading for which FINRA is the current plan processor).

sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.²¹ As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, adequately address potential concerns regarding possible manipulation or price stability.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange expects other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal.

Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

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

²¹ See supra note 9.

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.

A proposed rule change filed under Rule 19b-4(f)(6)²⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver, stating its desire to harmonize its rules to those of NYSE American to ensure fair competition among the options exchanges. Further, the proposed change would allow options on IPO'd securities to come to market sooner (i.e., at least two business days post-IPO not inclusive of the day of the IPO) without sacrificing investor protection. For these reasons, and because the proposed rule change does not raise any novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁶

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

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

²⁶ 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).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2023-043 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-2023-043. 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-2023-043 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Sherry R. Haywood,
Assistant Secretary.

²⁷ 17 CFR 200.30-3(a)(12).