

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98621; File No. SR-CBOE-2023-054)

September 28, 2023

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 4.13

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 September 28, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 4.13.

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

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(e) *Nonstandard Expirations Program.*

(1) *Weekly Expirations.* The Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Tuesday, Wednesday, Thursday, or Friday (other than the third Friday-of-the-month or days that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

coincide with an EOM expiration). [In addition, the Exchange may also open for trading Weekly Expirations on S&P 500 Index and Mini-S&P 500 Index options to expire on any Tuesday or Thursday (other than days that coincide with an EOM expiration).] Weekly Expirations shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations shall be P.M.-settled and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that may be listed for each Weekly Expiration (i.e., a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class is the same as the maximum number of expirations permitted in Rule 4.13(a)(2) for standard options on the same broad-based index. Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date. If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class. Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class. If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Tuesday, Wednesday, Thursday, or Friday, the normally Tuesday, Wednesday, Thursday, or Friday expiring Weekly Expirations will expire on the previous business day. If two different Weekly Expirations [on S&P 500 Index or Mini-S&P 500 Index options] would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations.

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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

The Exchange proposes to amend Rule 4.13(e), which governs its Nonstandard Expirations Program (“Program”), to permit P.M.-settled options on any broad-based index eligible for standard options trading that expire on Tuesday or Thursday. Currently under the Program, the Exchange is permitted to list P.M.-settled options on any broad-based index eligible for standard trading that expire on: (1) any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration (as defined below) and, with respect to options on the S&P 500 Index (“SPX options”) and the Mini-S&P 500 Index (“XSP options”) any Tuesday or Thursday (“Weekly Expirations”) and (2) the last trading day of the month (“End of Month Expirations” or “EOMs”).³ The Exchange notes that permitting Tuesday and Thursday expirations for all broad-based indexes, as proposed, would be in addition to the options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list on those indexes, as they are permissible Weekly Expirations for options on a broad-based index pursuant to Rule 4.13(e)(1). The proposal merely expands the availability of Tuesday and Thursday Weekly Expirations, and thus all Weekly Expirations available under the Program, to all broad-based indexes eligible for standard options trading, on which the Exchange may currently list Monday, Wednesday, and Friday Weekly expirations under the Program.

³ See Rule 4.13(e).

The Program for Weekly Expirations will apply to any broad-based index option with Tuesday and Thursday expirations in the same manner as it currently applies to all other P.M.-settled broad-based index options with Monday, Wednesday, and Friday expirations and to SPX and XSP options with Tuesday and Thursday expirations. Specifically, as set forth in Rule 4.13(e), Weekly Expirations, including the proposed Tuesday and Thursday expirations, are subject to all provisions of Rule 4.13 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations are P.M.-settled, and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that may be listed for each Weekly Expiration (i.e., a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class is the same as the maximum number of expirations permitted in Rule 4.13(a)(2) for standard options on the same broad-based index. Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date. If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class. Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class. If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the

Exchange is not open for business on a respective Tuesday, Wednesday, Thursday, or Friday, the normally Tuesday, Wednesday, Thursday, or Friday expiring Weekly Expirations will expire on the previous business day. If two different Weekly Expirations on a broad-based index would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations. In addition, like all Weekly Expirations, pursuant to Rule 4.13(e)(3), transactions in expiring broad-based index options with Tuesday and Thursday expirations may be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. on their last trading day (Eastern Time).

The Exchange believes that that the introduction of Tuesday and Thursday expirations for all broad-based index options (rather than offering those expirations for just two indexes) will expand hedging tools available to market participants while also providing greater trading opportunities, regardless of in which index option market they participate. By offering expanded Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule change will allow market participants to purchase options on all broad-based index options available for trading on the Exchange in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios. In particular, the proposed rule change will allow market participants to roll their positions on more trading days, thus with more precision, spread risk across more trading days and incorporate daily changes in the markets, which may reduce the premium cost of buying protection.

The Exchange believes there is sufficient investor interest and demand in Tuesday and Thursday expirations for broad-based index options beyond SPX and XSP to warrant inclusion in the Program and that the Program, as amended, will continue to provide investors with

additional means of managing their risk exposures and carrying out their investment objectives.⁴ With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it believes that the Exchange and OPRA have the necessary systems capacity to handle any potential additional traffic associated with trading of broad-based index options with Tuesday and Thursday expirations. The Exchange does not believe that its Trading Permit Holders (“TPHs”) will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with any possible additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange’s automated systems.

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.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ 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 facilitation transactions in securities, to remove impediments to and perfect the

⁴ The Exchange currently lists Tuesday and Thursday expirations in SPX and XSP options pursuant to the Program. The Exchange also already allows options on broad-based indexes to expire on Tuesdays for normally Monday or Wednesday expiring options when the Exchange is not open for business on a respective Monday or Wednesday (as applicable), and already allows options on broad-based indexes to expire on Thursdays for normally Friday expiring options when the Exchange is not open for business on a respective Friday. Also, EOM options in any broad-based indexes may currently be listed to expire on a Tuesday or Thursday.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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)⁷ 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 rule change will 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. The Exchange believes that that the introduction of Tuesday and Thursday expirations for all broad-based index options (rather than offering those expirations for just two indexes) will provide investors with expanded hedging tools and greater trading opportunities and flexibility, regardless of in which index option market they participate. As a result, investors will have additional means to manage their risk exposures and carry out their investment objectives. By offering expanded Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule change will allow market participants to purchase options on all broad-based index options available for trading on the Exchange in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios. For example, the proposed rule change will allow market participants to roll their positions on more trading days, thus with more precision, spread risk across more trading days and incorporate daily changes in the markets, which may reduce the premium cost of buying protection. The Exchange represents that it believes that it has the necessary systems capacity to support any additional traffic associated with trading of options on all broad-based index options

⁷ Id.

with Tuesday and Thursday expirations and does not believe that its TPHs will experience any capacity issues as a result of this proposal.

The Commission previously recognized that listing Tuesday and Thursday expirations for SPX and XSP options was consistent with the Act.⁸ The Commission noted that Tuesday and Thursday expirations in these index options would “offer additional investment options to investors and may be useful for their investment or hedging objectives”⁹ The Exchange also notes it previously listed P.M.-settled broad-based index options with weekly expirations pursuant to a pilot program, so the Commission could monitor the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets (while recognizing that these risks may have been mitigated given enhanced closing procedures in use in the primary equity markets); however, the Commission recently approved a proposed rule change to make that pilot program permanent. The Commission noted that the data it reviewed in connection with the pilot demonstrated that these options (including SPX and XSP options with Tuesday and Thursday expirations) “benefitted investors and other market participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market” and were thus consistent with the Act.¹⁰ The proposed rule change is consistent with these findings, as it will benefit investors and other market participants that participate in the markets for broad-based index options other than SPX and XSP options in the same manner by providing them with more flexible trading and hedging opportunities. Additionally, the Exchange does not

⁸ See Securities Exchange Act Release Nos. 94682 (April 12, 2022), 87 FR 22993, 22994 (April 18, 2022) (SR-CBOE-2022-005) (approval of proposed rule change to list P.M.-settled SPX options that expire on Tuesdays and Thursdays) (“Daily SPX Option Approval”); and 95795 (September 15, 2022), 87 FR 57745, 57746 (September 21, 2022) (SR-CBOE-2022-039) (approval of proposed rule change to list P.M.-settled XSP options that expire on Tuesdays and Thursdays) (“Daily XSP Option Approval”).

⁹ See Daily SPX Option Approval at 22995; and Daily XSP Option Approval at 57746.

¹⁰ See Securities Exchange Act Release No. 98456 at 10 – 11 (September 20, 2023) (SR-CBOE-2023-020).

believe the listing of additional P.M.-settled options on other broad-based indexes will have any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options or impact market quality, based on the data provided to and reviewed by the Commission (and the Commission's own conclusions based on that review, as noted above) and due to the significant changes in closing procedures in the decades since index options moved to a.m.-settlement.¹¹

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 does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because options on broad-based indexes with Tuesday and Thursday expirations will be available to all market participants. By listing options on all available broad-based indexes that expire on Tuesdays and Thursdays, the proposed rule change will provide all investors that participate in the markets for options on all broad-based indexes available for trading on the Exchange with greater trading and hedging opportunities and flexibility to meet their investment and hedging needs, which are already available for SPX and XSP options. Additionally, Tuesday and Thursday expiring broad-based index options will trade in the same manner as Weekly Expirations currently trade, including Tuesday and Thursday expiring SPX and XSP options.

The Exchange does not believe that the proposal to list options on all broad-based indexes with Tuesday and Thursday expirations will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because

¹¹ See id.

these options are proprietary Exchange products. Other exchanges offer nonstandard expiration programs for index options as well as short-term options programs for certain equity options (including options on certain exchange-traded funds that track broad-based indexes) that expire on Tuesdays and Thursdays¹² and are welcome to similarly propose to list Tuesday and Thursday options on those index or equity products. To the extent that the addition of options on additional broad-based indexes that expire on Tuesdays and Thursdays being available for trading on the Exchange makes the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

¹² See, e.g., Nasdaq PHLX, LLC Options 4A, Section 12 (permitting nonstandard expirations, including expirations on Tuesdays and Thursdays, for Nasdaq-100 index options and Nasdaq 100-Micro index options); and Nasdaq ISE, LLC Options 4, Section 5, Supplementary Material .03 (permitting short-term options series with daily expirations for SPY and QQQ options).

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-2023-054 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-2023-054. 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-2023-054 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.¹³

Sherry R. Haywood,

Assistant Secretary.

¹³ 17 CFR 200.30-3(a)(12).