

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95392; File No. SR-CBOE-2022-039)

July 29, 2022

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of 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 July 21, 2022, Cboe Exchange, Inc. (“Exchange”) 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 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 italicized; 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 Pilot 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, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). In addition, the Exchange may also open for trading Weekly Expirations on S&P 500 Index and Mini-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Pilot Program ("Pilot Program"), to permit P.M.-settled options on the Mini-S&P 500 Index ("XSP options") that expire on Tuesday or Thursday. Under the existing Pilot Program, the Exchange is permitted to list P.M.-settled options on broad-based indexes that expire on: (1) any Monday, Wednesday, or Friday and, with respect to options on the S&P 500 Index ("SPX options") any Tuesday or Thursday ("Weekly Expirations" or "EOWs") and (2) the last trading day of the month ("End of Month Expirations" or "EOMs").³ The proposed XSP options that expire on Tuesday or Thursday would be listed under the Pilot Program, which is currently set to expire on November 7, 2022. The Exchange notes that permitting XSP options with Tuesday and Thursday expirations, as proposed, would be in addition to the XSP options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list, as they are permissible Weekly Expirations for options on a broad-based index (e.g., the Mini-S&P 500 Index) pursuant to Rule 4.13(e)(1).

The Pilot Program for Weekly Expirations will apply to XSP options 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 options with Tuesday and Thursday expirations. Specifically, as set forth in Rule 4.13(e), Weekly

³ See Rule 4.13(e).

Expirations, including the proposed XSP options with 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 (including XSP) 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 (which is 12 for XSP options). 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.

The proposed rule change also adds that if two different Weekly Expirations on Mini-S&P 500 Index options (as is the case of 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. The Exchange believes it is appropriate to clarify in the rule text that the Exchange will list just one Weekly Expiration in such a case, as the two Weekly Expirations would essentially be the same options contract. For example, if the Exchange listed XSP options with proposed Thursday expirations and Friday expirations and the Exchange was closed for business on a Friday then, pursuant to current Rule 4.13(e)(1), the normally expiring Friday expiration would expire on the previous business day—essentially making it an XSP option with a Thursday expiration. Thus, expiring XSP options in this case will always have the same weekday expiration (per the example, it is an XSP option with a Thursday expiration, whether it was listed as an XSP with a Thursday expiration or a Friday expiration). As such, for the sake of clarity in the rules and to mitigate any confusion regarding the listing of Weekly XSP options when the Exchange is closed for business, the proposed rule change provides that the Exchange will list just one Weekly Expiration if two Weekly Expirations would expire on the same day due to the Exchange being closed for business. In addition, like all Weekly Expirations listed pursuant to Rule 4.13(e)(4), transactions in expiring XSP 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 XSP options with Tuesday and Thursday expirations will expand hedging tools available to market participants while also providing greater trading opportunities. By offering XSP options with Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule

change will allow market participants to purchase XSP options 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 proposes to abide by the same reporting requirements for the trading of XSP options that expire on any Tuesday or Thursday that it does for the trading of P.M.-settled options on broad-based indexes that expire on any Monday, Wednesday, or Friday and for SPX options that expire on Tuesday or Thursday pursuant to the Pilot Program. The Exchange proposes to include data regarding XSP options that expire on Tuesdays or Thursdays as it does for all other Weekly Expirations in the Pilot Program annual report that it submits to the Securities and Exchange Commission (“Commission”) at least two months prior to the expiration date of the Pilot Program.⁴ The Exchange is required to submit an annual report at least yearly. The annual report to the Commission addresses the following areas: Analysis of Volume & Open Interest, Monthly Analysis of Weekly Expirations & EOM Trading Patterns and Provisional Analysis of Index Price Volatility. Going forward, the Exchange will include the same areas of analysis for XSP options with Tuesday and Thursday expirations in the annual reports. The Exchange also proposes to include the following market quality data, over sample periods determined by the Exchange and the Commission, for XSP options as part of the annual report, as it does for SPX options:

- time-weighted relative quoted spreads;

⁴ See Nonstandard Expirations Pilot Approval Order.

- relative effective spreads; and
- time-weighted bid and offer sizes.

The Exchange also 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, including XSP options with Tuesday and Thursday expirations as proposed, is consistent with the Exchange Act. As it does for current Pilot Program products, the Exchange will make public on its website all data and analyses in connection with XSP options with Tuesday and Thursday expirations it submits to the Commission under the Pilot Program.

The Exchange believes there is sufficient investor interest and demand in XSP options with Tuesday and Thursday expirations to warrant inclusion in the Pilot Program and that the Pilot Program, as amended, will continue to provide investors with additional means of managing their risk exposures and carrying out their investment objectives.⁵ The Exchange notes that during the Pilot Program's approximately 12-year tenure, the Exchange has not observed any significant adverse market effects or identified any regulatory concerns as a result of the Pilot Program, nor does it believe that additional expirations listed under the Pilot Program would result in any such impact or regulatory concerns. Based on a study conducted by Commission staff on the pilot data (including quarterly, weekly, EOM and third Friday expirations for P.M.-settled XSP options),⁶ there is no evidence of any significant adverse

⁵ The Exchange currently lists Tuesday and Thursday expirations in SPX options. The Exchange also already allows XSP options to expire on Tuesdays for normally Monday or Wednesday expiring XSP options when the Exchange is not open for business on a respective Monday or Wednesday (as applicable), and already allows XSP options to expire on Thursdays for normally Friday expiring XSP options when the Exchange is not open for business on a respective Friday. Also, EOM options in XSP (and other broad-based indexes) may currently be listed to expire on a Tuesday or Thursday.

⁶ See Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum, Cornerstone Analysis of PM Cash-Settled Index Option Pilots (February

economic impact to the futures, index, or underlying index component securities markets as a result of the quantity of P.M.-settled XSP options that settle at the close or the amount of expiring open interest in P.M.-settled XSP options.⁷

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 XSP 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.⁸ Specifically, the

2, 2021) (“SEC PM Pilot Memo”) at 13, available at: https://www.sec.gov/files/Analysis_of_PM_Cash_Settled_Index_Option_Pilots.pdf (“Option settlement quantity data for A.M.- and P.M.-settled options were obtained from the Cboe, including the number of contracts that settled in-the-money for each exchange-traded option series on the S&P 500 index...on expiration days from January 20, 2006 through December 31, 2018. Daily open interest and volume data for [XSP] option series were also obtained from Cboe, including open interest data from January 3, 2006 through December 31, 2018 and trading volume data from January 3, 2006 through December 31, 2018.”)

⁷ See *id.* at 3. For example, the largest settlement event that occurred during the time period of the study (a settlement of \$100.4 billion of notional on December 29, 2017) had an estimated impact on the futures price of only approximately 0.02% (a predicted impact of \$0.54 relative to a closing futures price of \$2,677).

⁸ 15 U.S.C. 78f(b).

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ 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 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)¹⁰ 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 by providing investors with greater trading and hedging opportunities and flexibility, allowing them to transact in XSP options in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging objectives by listing XSP options that expire each trading day of the week. The Exchange does not believe that the addition of XSP options with Tuesday and Thursday expirations to the Pilot Program will raise any prohibitive regulatory concerns or adversely impact fair and orderly markets on expiration days. The Exchange has not observed any meaningful regulatory concerns or adverse impact on fair and orderly markets in connection with the listing and trading of XSP options with Monday, Wednesday and Friday expirations or with the recent listing and trading SPX options with expirations on Monday through.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Id.

Particularly, the Exchange does not believe an increase in the number of P.M.-settled XSP options series will have any significant adverse economic impact on the futures, index, or underlying index component securities markets.

The Exchange will include analysis in connection with XSP options that expire on Tuesdays and Thursdays in the same manner that it currently does for other Pilot Program products, as described above, in the annual reports it submits to the Commission. The Exchange also will provide the Commission with any additional data or analyses that it may request if it deems such data or analyses necessary to determine whether the Pilot Program, including XSP options with Tuesday and Thursday expirations as proposed, is consistent with the Exchange Act. The Exchange represents that it believes that it has the necessary systems capacity to support any additional traffic associated with trading of XSP options with Tuesday and Thursday expirations and does not believe that its TPHs will experience any capacity issues as a result of this proposal. The Exchange will monitor the trading volume associated with any possible additional options series listed and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

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 XSP options with Tuesday and Thursday expirations will be available to all market participants. By listing XSP options that expire Tuesdays and Thursdays, the proposed rule change will provide all investors that participate in the XSP options market greater trading and hedging opportunities and flexibility to meet their investment and hedging needs. Additionally, Tuesday

and Thursday expiring XSP options will trade in the same manner as Weekly Expirations currently trade.

The Exchange does not believe that the proposal to list XSP options 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 XSP 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 and are welcome to similarly propose to list Tuesday and Thursday options on those indexes or equity products. To the extent that the addition of XSP options that expire on Tuesdays and Thursdays 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.

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2022-039 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-2022-039. 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. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2022-039, 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.¹¹

J. Matthew DeLesDernier,
Deputy Secretary.

¹¹ 17 CFR 200.30-3(a)(12).