

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97367; File No. SR-CBOE-2023-005)

April 24, 2023

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent the Operation of the Program that Allows the Exchange to List P.M.-Settled Third Friday-of-the-Month S&P 500 Stock Index (“S&P 500”) Options (“SPX”) Series

I. Introduction

On January 6, 2023, Cboe Exchange, Inc. (“Exchange”) 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 that permits the Exchange to list P.M.-settled third Friday-of-the-month SPX options (the “Program”). The proposed rule change was published for comment in the Federal Register on January 24, 2023.³ On March 7, 2023, pursuant to Section 19(b)(2) of the Exchange 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 On March 17, 2023, the Exchange submitted Amendment No. 1 to the proposed rule change (“Amendment No. 1”).⁶ The Commission has

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 96703 (January 18, 2023), 88 FR 4265 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 97063, 88 FR 15476 (March 13, 2023). The Commission designated April 24, 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 In Amendment No. 1, the Exchange submitted Exhibit 3, which provides additional detail

received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to make permanent a pilot program that permits the Exchange to list and trade cash-settled SPX options with third Friday-of-the-month expiration dates (“Expiration Friday”) whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (“SPXPM”).

In February 2013, the Commission approved the Program on a pilot basis.⁸ At the time, 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 option such as SPXPM.⁹

regarding the Exchange’s analysis of the market quality impact of P.M.-settled index options. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-cboe-2023-005/srcboe2023005.htm>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ 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.

⁹ See SPXPM Approval Order, 78 FR at 10669. 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 on the C2 Options Exchange, Incorporated); and 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 on the C2 Options Exchange, Incorporated).

However, the Commission also recognized the potential impact was unclear.¹⁰ 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.¹¹ In order to facilitate this assessment, the Exchange committed to provide the Commission with data and analysis in connection with the Program.¹² Although the pilot period was originally scheduled to end on February 8, 2014, the Exchange filed to extend the operation of the pilot on multiple occasions, which, pursuant to current Rule 4.13.13,¹³ is currently set to expire on the earlier of May 8, 2023 or the date on which the Program is approved on a permanent basis.¹⁴

Since the Program's inception in 2013, the Exchange has submitted reports to the Commission regarding the Program that detail the Exchange's experience with the Program,

¹⁰ See SPXPM Approval Order, 78 FR at 10669.

¹¹ See SPXPM Approval Order, 78 FR at 10669.

¹² See SPXPM Approval Order, 78 FR at 10670.

¹³ In 2019, the Exchange relocated prior Rule 24.9, containing the provision which governs the Pilot Program, to current Rule 4.13. See SR-CBOE-2019-092 (October 4, 2019), which did not make any substantive changes to prior Rule 24.9 and merely relocated it to Rule 4.13.

¹⁴ 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, 2022), 87 FR 67736 (November 9, 2022) (SR-CBOE-2022-054).

pursuant to the SPXPM Approval Order.¹⁵ Specifically, the Exchange states it has submitted annual pilot reports to the Commission that contain an analysis of volume, open interest, and trading patterns.¹⁶ The analysis examines trading in SPX options, as well as trading in the securities that comprise the S&P 500 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 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”). The Exchange states that, during the course of the Program, it has provided the Commission with any additional data or analyses the Commission requested if it deemed such data or analyses necessary to determine whether the Pilot Program was consistent with the Exchange Act.¹⁷ The Exchange states it has made public on its website all data and analyses previously submitted to the Commission under the Program,¹⁸ and will continue to make public any data and analyses it submits to the Commission while the Program is still in effect.¹⁹

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.²⁰ The Exchange states it has not identified any evidence from the pilot data indicating that the trading of P.M.-settled SPX options has any adverse impact on fair and orderly markets on Expiration

¹⁵ See supra note 8.

¹⁶ See Notice, 88 FR at 4266.

¹⁷ See Notice, 88 FR at 4267.

¹⁸ Available at <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data>.

¹⁹ See Notice, 88 FR at 4267.

²⁰ See Notice, 88 FR at 4267-70.

Fridays for the S&P 500 Index or the underlying securities comprising the S&P 500, nor have there been any observations of abnormal market movements attributable to P.M.-settled SPX options from any market participants that have come to the attention of the Exchange.²¹ In order to support its overall assessment of the Program, the Exchange includes both an assessment of a study 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.²² 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.²³

The Exchange also completed an analysis intended to evaluate whether the Program impacted the quality of the SPX options market. Specifically, the Exchange compared values of key market quality indicators (specifically, the bid-ask spread²⁴ and effective spread²⁵) in SPXW options both before and after the introduction of Tuesday expirations and Thursday expirations for SPXW options on April 18 and May 11, 2022, respectively.²⁶ The Exchange believes

²¹ See Notice, 88 FR at 4267.

²² See Notice, 88 FR at 4266-70.

²³ See Notice, 88 FR at 4268.

²⁴ The Exchange calculated for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (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).

²⁵ 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.

²⁶ For purposes of comparison, the Exchange paired SPXW options and SPY options with the same moneyness and same days to expiration.

analyzing whether the introduction of new SPXW P.M.-settled expirations (i.e., SPXW options with Tuesday and Thursday expirations) impacted the market quality of then-existing SPXW P.M.-settled expirations (i.e., SPXW options with Monday, Wednesday, and Friday expirations) provides a reasonable substitute to evaluate whether the introduction of P.M.-settled index options impacted the market quality of the SPX market when the Program began.²⁷ Therefore, the Exchange believes analyzing the impact of new SPXW options on then-existing SPXW options permit the Exchange to extrapolate that it is unlikely the introduction of P.M.-settled SPXW options significantly impacted the market quality of A.M.-settled SPX options when the Program began.²⁸ The full analysis is included in Exhibit 3.²⁹

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 P.M.-, cash-settled SPX options on the underlying cash markets.³⁰

III. Proceedings to Determine Whether to Approve or Disapprove SR-CBOE-2023-005, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act³¹ to determine whether the proposed rule change, as modified by Amendment No. 1, 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

²⁷ See Notice, 88 FR at 4269.

²⁸ See Notice, 88 FR at 4270.

²⁹ See Amendment No. 1, *supra* note 6.

³⁰ See Notice, 88 FR at 4269.

³¹ 15 U.S.C. 78s(b)(2)(B).

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,³² 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 SPX options with third Friday-of-the-month-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.³³

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, as modified by Amendment No. 1, 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

³² Id.

³³ 15 U.S.C. 78f(b)(5).

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,³⁴ any request for an opportunity to make an oral presentation.³⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by [insert date 21 days from 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 from 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.

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-2023-005 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.

³⁴ 17 CFR 240.19b-4.

³⁵ 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).

All submissions should refer to File Number SR-CBOE-2023-005. 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-2023-005 and should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Sherry R. Haywood,
Assistant Secretary

³⁶ 17 CFR 200.30-3(a)(57).