

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98005; File No. SR-CBOE-2023-019)

July 27, 2023

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change to Make Permanent the Operation of its Pilot Program that Allows the Exchange to List P.M.-Settled Third Friday-of-the-Month Mini-SPX Index Options and Mini-Russell 2000 Index Options Series

I. Introduction

On April 19, 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 p.m.-settled third Friday-of-the-month Mini-SPX Index (“XSP”) options and Mini-Russell 2000 Index (“MRUT”). The proposed rule change was published for comment in the Federal Register on April 28, 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. 97366 (April 24, 2023), 88 FR 26359 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 97678, 88 FR 39285 (June 15, 2023). The Commission designated July 27, 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 and trade cash-settled XSP and MRUT 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 (“p.m.-settled XSP” and “p.m.-settled MRUT,” respectively, and collectively, the “Pilot Products”).

In July 2013, the Commission approved the Program to list and trade p.m.-settled XSP options on a pilot basis.⁷ In February 2021, the Commission approved a rule change that amended the Program to allow the exchange to list and trade p.m.-settled MRUT options.⁸ 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.⁹ 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

⁷ See Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR-CBOE-2013-055) (“XSP Approval Order”).

⁸ See Securities Exchange Act Release No. 91067 (February 5, 2021) 86 FR 9108 (February 11, 2021) (SR-CBOE-2020-116) (“MRUT Approval Order”).

⁹ See XSP Approval Order, 78 FR at 47811; and MRUT Approval Order, 86 FR at 9109. 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, 10669 (February 14, 2013) (order approving the listing and trading of SPXPM on CBOE).

¹⁰ See XSP Approval Order, 78 FR at 47811; and MRUT Approval Order, 86 FR at 9109.

¹¹ See XSP Approval Order, 78 FR at 47811; and MRUT Approval Order, 86 FR at 9109.

connection with the Program.¹² The Exchange has filed to extend the operation of the Program on multiple occasions¹³ 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.¹⁴

Since the Program's inception in 2013 for XSP and 2021 for MRUT, the Exchange has submitted reports to the Commission regarding the Program that detail the Exchange's experience with the Program, pursuant to the XSP and MRUT Approval Orders.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 the Pilot Products, as well as trading in the securities that comprise the underlying indexes. 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 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").¹⁷ 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 Program was consistent with the Exchange Act.¹⁸ The Exchange states it has made public on its website data and analyses previously submitted to the

¹² Id.

¹³ See, e.g., Securities Exchange Act Release Nos. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014) (SR-CBOE-2014-004); and 96222 (November 3, 2022), 87 FR 67736 (November 9, 2022) (SR-CBOE-2022-054).

¹⁴ See Securities Exchange Act Release No. 97446 (May 5, 2023), 88 FR 30365 (May 11, 2023).

¹⁵ See supra note 12.

¹⁶ See Notice, 88 FR at 26361.

¹⁷ See id.

¹⁸ See Notice, 88 FR at 26361-62.

Commission under the Program,¹⁹ and will continue to make public any data and analyses it submits to the Commission while the Program is still in effect.²⁰

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.²¹ The Exchange states it has not identified any evidence from the pilot data indicating that the trading of p.m.-settled XSP or MRUT options has any adverse impact on fair and orderly markets on Expiration Fridays for the Mini-SPX Index, the Mini-RUT Index or the underlying securities comprising the underlying indexes, nor have there been any observations of abnormal market movements attributable to p.m.-settled XSP or MRUT options from any market participants that have come to the attention of the Exchange.²² 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.²³ 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.²⁴

¹⁹ See Notice, 88 FR at 26362. Available at <https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data>.

²⁰ See Notice, 88 FR at 26362.

²¹ See *id.*

²² See *id.*

²³ See Notice, 88 FR at 26362-65.

²⁴ See Notice, 88 FR at 26363-64. The Exchange states that although its study specifically evaluated options on the S&P 500 index ("SPX options"), because XSP options overly the same index comprised of the same securities (just one tenth the size) and MRUT is also a broad-based index, the Exchange believes it is appropriate to extrapolate the data to apply the Pilot Products. See Notice, 88 FR at 26365.

The Exchange also completed an analysis intended to evaluate whether the Program impacted the quality of the a.m.-settled options market.²⁵ Specifically, the Exchange compared values of key market quality indicators (specifically, the bid-ask spread²⁶ and effective spread²⁷) 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.²⁸ 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 the Pilot Products significantly impacted the market quality of a.m.-settled options, such as a.m.-settled SPX or Russell 2000 index options, respectively, when the Program began.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 XSP or MRUT options on the underlying cash markets.³⁰

²⁵ See Notice, 88 FR at 26364.

²⁶ 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).

²⁷ 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.

²⁸ For purposes of comparison, the Exchange paired SPXW options and SPY options with the same moneyness and same days to expiration.

²⁹ See Notice, 88 FR at 26365.

³⁰ See Notice, 88 FR at 26364.

III. Proceedings to Determine Whether to Approve or Disapprove SR-CBOE-2023-019, 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 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,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 XSP and MRUT 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

³¹ 15 U.S.C. 78s(b)(2)(B).

³² Id.

³³ 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,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 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.

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).

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-2023-019 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-2023-019. 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-2023-019 and should be submitted on or before [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.³⁶

Sherry R. Haywood,

Assistant Secretary.

³⁶ 17 CFR 200.30-3(a)(12).