

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78954; File No. SR-CBOE-2016-069)

September 27, 2016

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule to Amend the Nonstandard Expirations Pilot Program to Permit New Series to be Added Up to and Including on the Expiration Date

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 September 16, 2016, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 proposes to align CBOE’s listing ability under the Nonstandard Expirations Pilot Program with CBOE’s listing ability under the Short Term Option Series (“STOs”) Program (which is an industry-wide program). Specifically, CBOE proposes to permit new series to be added up to and including on the expiration date for expirations listed under the Nonstandard Expirations Pilot Program. The text of the proposed rule change is available on the Exchange’s

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission.

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

CBOE proposes to permit new series to be added up to and including on the expiration date for expirations listed under the Nonstandard Expirations Pilot Program. The Exchange states that the ability to list new series up to and including on their last trading day or expiration date (as applicable) is currently permitted for expirations listed under the STOs Program, which is an industry-wide program.⁵ This proposal seeks to align CBOE's listing ability under the two Programs.

In July 2005, the Commission approved a CBOE rule filing to establish the STOs

⁵ The STOs Program is set forth in Rule 5.5(d) (which governs the STOs Program for stock and exchange-traded product ("ETP") option classes) and Rule 24.9(a)(2)(A) (which governs the STOs Program for index option classes). The last trading day and expiration date for an options class are generally determined by its exercise-settlement style. For P.M.-settled contracts, the last trading day and expiration date occur on the same business day. For A.M.-settled contracts, the last trading is on the business day before the expiration date. Because the expirations listed under the Nonstandard Expirations Pilot Program are P.M.-settled, the last trading and expiration date for these expirations occur on the same business day.

Program on a pilot basis.⁶ When it was adopted, the STOs Program permitted CBOE to list series in an approved class (i.e., stock, ETP or index) on any Friday to expire at the close of business on the next Friday that is a business day (excluding third Fridays).⁷ Importantly, under the Program then and now, STOs are settled in the same manner as monthly (standard) expiration series in the same class. For example, if the monthly option contract for a particular class is A.M.-settled, as most index options are, STOs for that class are also A.M.-settled. This means that the last trading day for A.M.-settled index STOs is on the business day prior to their expiration day (Thursday) and the exercise settlement value is based on the reported level of the index calculated using opening prices of the index components on the expiration day.⁸ A.M.-settled index STOs and P.M.-settled index STOs expire at the close of business on their expiration dates.

The STOs Program was made permanent⁹ and has been expanded several times so that currently, among other things, STOs expirations may be listed to expire on the next five Fridays that are business days (excluding third Fridays and days on which Quarterly Option Series expire) and new series of STOs may be added up to and including on their last trading day or

⁶ See Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (order approving SR-CBOE-2004-63).

⁷ Similar versions of the STOs Program have been adopted by the majority, if not all, of the other options exchanges, see e.g., BOX IM-5050-6 to Rule 5050 (Short Term Option Series Program) and ISE Rule 504.02 (Short Term Option Series Program), MIAX Rule 404.02 (Short Term Option Series Program).

⁸ The last trading day and expiration date are the same day (Friday) for P.M.-settled index STOs and the exercise settlement value is based on the reported level of the index calculated using the last reported prices of the index components on the expiration date. CBOE currently lists P.M.-settled index STOs on the S&P 100 Index (OEX which has American-style exercise and XEO which has European-style exercise). These index STOs are P.M.-settled because monthly (standard) expiration series in OEX and XEO are P.M.-settled.

⁹ See Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (order approving SR-CBOE-2009-018).

expiration date (as applicable).¹⁰

Due to the same expiration style restriction for STOs on broad-based indexes, CBOE submitted a proposal in 2009 to establish a pilot program under which CBOE is permitted to list P.M.-settled options on broad-based indexes that expire on (a) any Friday of the month, other than the third Friday-of-the-month, and (b) the last trading day of the month.¹¹ This pilot program is currently named the “Nonstandard Expirations Pilot Program” and expirations listed under this Program compete with expirations listed under the industry wide STOs Program.¹²

Unlike new series listed under the STOs Program, the listing of new series under the Nonstandard Expirations Pilot Program is treated the same as standard options on the same underlying index (other than being P.M.-settled).¹³ Specifically, Rule 24.9.01(c) governs the listing of new series under the Nonstandard Expirations Pilot Program and that Rule provides, in relevant part, that new series of index options may be added up to the fifth business day prior to expiration. As a result, classes traded under the Nonstandard Expirations Pilot Program are competitively disadvantaged to classes traded under the STOs Program. This is because new series of STOs may be added past the time that they may be added for Nonstandard Expirations. Additionally, Rule 24.9.01 permits new series to be added up to and including on the last trading

¹⁰ See Securities Exchange Act Release No. 71005 (December 6, 2013), 78 FR 75395 (December 11, 2013) (order approving SR-CBOE-2013-096).

¹¹ See Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (order approving SR-CBOE-2009-075).

¹² See Securities Exchange Act Release Nos. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (order approving SR-CBOE-2015-106) and 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (order approving SR-CBOE-2016-046).

¹³ For standard stock and ETP options, new series may generally be added until the beginning of the month in which the option contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add new series of options on an individual stock until the close of trading on the second business day prior to expirations. See Rule 5.5.04.

day for other index options that expire on a weekly basis (i.e., VIX options and VXST options, which are both classes that have weekly expirations).¹⁴

Accordingly, the Exchange seeks to align CBOE's listing ability under the Nonstandard Expirations Pilot Program with CBOE's listing ability under the STOs Program and with other index options that expire on a weekly basis. Specifically, the Exchange proposes to amend Rule 24.9(e)(1) and Rule 24.9(e)(2) to expressly permit the addition of new series up to and including on the expiration date for series listed under the Nonstandard Expirations Pilot Program. As with intraday series added under the STOs Program, The Options Clearing Corporation ("OCC") has the ability to accommodate same day series adds under the Nonstandard Expirations Pilot Program.

The Exchange is proposing to correct two typographical errors in Rule 24.9(e)(1). This proposed change is a cleanup change and is non-substantive.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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

¹⁴ VIX and VXST are A.M.-settled index options and do not trade on their expiration date. Because series listed under the Nonstandard Expirations Pilot Program are P.M.-settled and trade throughout the day on their expiration date, the Exchange is seeking to permit new series in Nonstandard Expirations to be added up to and including on their expiration date (which is their last trading day, too). This proposed change tracks the Exchange's listing ability for P.M.-settled series listed under the industry-wide STOs Program.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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.

In particular, because expirations listed under the Nonstandard Expirations Pilot Program compete with expirations listed under the STOs Program (both intra and inter-market), the Exchange believes that is necessary for competitive reasons (both intra and inter-market) to have the same series listing abilities under each Program. Market participants would also benefit from this proposal because they would be able to request and receive strikes in competing products up to and including on the expiration date for these competing products. The Exchange notes that the ability to list series up to and including on expiration for P.M.-settled STOs (and their last trading day for A.M.-settled STOs and weekly VIX and VXST options) already exists. As a result, permitting new series listed under the Nonstandard Expirations Pilot Program to be added up to and including on their expiration date is not a new or novel proposal.

Finally, the Exchange is proposing to make two technical changes to the text of Rule 5.5(d). One proposed change is grammatical and the other deletes a repetitive word. These changes would benefit investors because CBOE's Rulebook would read correctly.

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

CBOE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that new series are permitted to be added up to and including on their last trading day or expiration date (as applicable) for series listed under the STOs Program and on their last trading day for certain weekly expiring index options. As a result, permitting new series to be

added up to and including on the expiration date for Nonstandard Expirations is not a new or novel proposal. Additionally, the current rule change is being proposed to allow Nonstandard Expirations to compete (both intra and inter-market) with series listed under the STOs program. CBOE believes this proposed rule change is necessary to ensure fair competition among the options exchanges. Also, the Exchange does not believe the proposal would impose any burden on intramarket competition, as all market participants would be treated in the same manner and would have more tools for trading if CBOE has the same listing ability in both programs.

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:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such shorter

time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6)¹⁸ thereunder. 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 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

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-2016-069 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2016-069. 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2016-069 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.¹⁹

Robert W. Errett
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).