

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81893; File No. 4-443)

October 18, 2017

Joint Industry Plan; Notice of Filing of the Fourth Amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options

On August 16, 2017, Chicago Board Options Exchange, Incorporated, on behalf of the BATS Exchange, Inc.; Box Options Exchange, LLC; C2 Options Exchange, Incorporated; EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq Options Market, LLC; Nasdaq PHLX, LLC; NYSE American, LLC; NYSE Arca, Inc.; and the Options Clearing Corporation (“OCC”) (together, the “Plan Sponsors”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 608 thereunder,² a proposal to amend the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (“OLPP” or “Plan”).³ The amendment would: (1)

¹ 15 U.S.C. 78k-1(a)(3).

² 17 CFR 242.608.

³ On July 6, 2001, the Commission approved the OLPP, which was proposed by the American Stock Exchange LLC, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, the OCC, Philadelphia Stock Exchange, Inc., and Pacific Exchange, Inc. See Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). See also Securities Exchange Act Release Nos. 49199 (February 5, 2004), 69 FR 7030 (February 12, 2004) (adding Boston Stock Exchange, Inc. as a Plan Sponsor); 57546 (March 21, 2008), 73 FR 16393 (March 27, 2008) (adding Nasdaq Stock Market, LLC as a Plan Sponsor); 61528 (February 17, 2010), 75 FR 8415 (February 24, 2010) (adding BATS Exchange, Inc. as a Plan Sponsor); 63162 (October 22, 2010), 75 FR 66401 (October 28, 2010) (adding C2 Options Exchange Incorporated as a Plan Sponsor); 66952 (May 9, 2012), 77 FR 28641 (May 15, 2012) (adding BOX Options Exchange LLC as a Plan Sponsor); 67327 (June 29, 2012), 77 FR 40125 (July 6, 2012) (adding Nasdaq OMX BX, Inc. as a Plan Sponsor); 70765 (October 28, 2013), 78 FR

change, to a single date from three separate dates, the earliest date on which new January Long-term Equity Anticipation series on equity options, options on Exchange Traded Funds, or options on Trust Issued Receipts may be added; (2) allow equity, Exchange Traded Fund, and Trust Issued Receipt option series to be added based on trading following regular trading hours; (3) make certain administrative and procedural changes to the processes relating to options class certifications and by which notice is given under the terms of the OLPP; and (4) correct a technical cross-referencing error in Section 7 of the Plan.⁴ The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Description and Purpose of the Amendment

The OLPP Participant Exchanges (“Participants”) and the OCC (collectively the “Plan Participants” or “Plan Sponsors”), have agreed to amend the OLPP (the “Amendment”). The purpose of the Amendment is to: (i) change the earliest date of introduction of new January Long-term Equity Anticipation (“LEAP”) series on equity options, options on Exchange Traded Funds (“ETF”), or options on Trust Issued Receipts (“TIR”) to a single date (from three separate months); (ii) allow equity, ETF, and TIR option series to be added based on trading following regular trading hours; (iii) make other administrative changes within the OLPP related to the options class certification process and the process by which notice is given under the terms of the OLPP and (iv) fix a technical error in the section related to new plan sponsors.

65739 (November 1, 2013) (adding Topaz Exchange, LLC as a Plan Sponsor); 70764 (October 28, 2013), 78 FR 65733 (November 1, 2013) (adding Miami International Securities Exchange, LLC as a Plan Sponsor); 76822 (January 1, 2016), 81 FR 1251 (January 11, 2016) (adding EDGX Exchange, Inc. as a Plan Sponsor); 77323 (March 8, 2016), 81 FR 13433 (March 14, 2016) (adding ISE Mercury, LLC as a Plan Sponsor); 82 FR 9263 (February 3, 2017) (adding MIA X PEARL, LLC as a Plan Sponsor).

⁴ See Letter from the Plan Sponsors to Brent J. Fields, Secretary, Commission, dated August 15, 2017 (“Transmittal Letter”).

January LEAPs Series

The Plan Participants propose to change the earliest possible date on which new January LEAPs series on equity, ETF, and TIR options classes may be added.

Section 3(e) of the OLPP currently states, in part, “With regard to the listing of new January [LEAPs]...the Series Selecting Exchange and any other exchange that lists and trades the same option class shall not add new LEAP series on that option class: (i) Earlier than September (which is 28 months before the expiration), for an option class on the January expiration cycle; (ii) Earlier than October (which is 27 months before expiration), for an option class on the February expiration cycle; and (iii) Earlier than November (which is 26 months before expiration), for an option class on the March expiration cycle.”

The Plan Participants propose to remove any reference to an option class’ expiration cycle as it relates to when new January LEAPs series may be added and replace it with a single date, the Monday prior to the September expiration. The new language of Section 3(e) will state, “With regard to the listing of new January [LEAPs]...the Series Selecting Exchange and any other exchange that lists and trades the same option class shall not add new LEAP series on that option class earlier than the Monday prior to the September expiration (which is 28 months before the expiration).”

In the past there were operational concerns related to adding new January LEAPs series for all options classes on which LEAPs were listed on a single trading day. The addition of new series in a pre-electronic trading environment was a manual process. Accordingly, the addition of new January LEAPs series was spread across three months (September, October, and November).

Today, these operational concerns related to January LEAPs have been alleviated as new series can be added in bulk electronically. The Plan Participants believe that moving the addition of new January LEAPs series to no earlier than the Monday prior to the September expiration will reduce marketplace confusion about available January LEAPs series. Where previously January LEAPs series for options classes on the February or March expiration cycles would not have been available as early as January LEAPs series for options classes on the January expiration cycle, under the proposed change, all January LEAPs series will be available concurrently.

Option Series to be Added Based on Trading Following Regular Trading Hours

The Plan Participants propose to allow equity, ETF, and TIR options series to be added based on trading following regular trading hours. Regular trading hours is defined in Rule 600(b)(64) of Regulation NMS⁵ as between 9:30 a.m. and 4:00 p.m. Eastern Time, unless otherwise specified pursuant to the procedures established in Rule 605(a)(2)⁶. Section 3(g) of the OLPP relates to the listing of new series. Section 3(g)(i) currently states, in part, "...if the price of the underlying security is less than or equal to \$20, the Series Selecting Exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security. However, the foregoing restriction shall not prohibit the listing of at least three exercise prices per expiration month in an option class. If the price of the underlying security is greater than \$20, the Series Selecting Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. The price of the underlying security is measured by: (1) for intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges; (2)

⁵ 17 CFR 242.600(b)(64).

⁶ 17 CFR 242.605(a)(2).

for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Series Selecting Exchange determines its preliminary notification of new series; and (3) for option series to be added as a result of pre-market trading, the most recent share price reported by all national securities exchanges between 7:45 a.m. and 8:30 a.m. (Chicago time).”

The OLPP does not currently allow for option series to be added based on trading following regular trading hours. Accordingly, the Plan Participants are unable to add new option series that may result from trading following regular trading hours until the morning after the trading following regular trading hours occurs. Events that occur after regular trading hours, such as earnings releases, often have a significant impact on the price of an underlying security. The inability to add series as a result of trading following regular trading hours is a burden on public customers and the members or participants of the Plan Participants as they do not know what options series will be available until markets open the following day.

The Plan Participants propose to add a 4th category by which the price of an underlying security may be measured. The proposed language states, “for option series to be added based on trading following regular trading hours, the most recent share price reported by all national securities exchanges between 3:15 p.m. and 5:00 p.m. (Chicago Time).”

The proposed addition will allow for the listing of options series to be more contemporaneous with market events in that it will now allow listing based on trading following regular trading hours, in addition to pre-market and intra-day trading. Currently, options series may not be added based on trading following regular trading hours and need to wait until pre-market trading, beginning at 7:45 a.m. (Chicago Time) the following day to be added. Under the proposed rule, option series to be added based on trading following regular trading hours may

be added as early as 3:15 p.m. (Chicago Time) the day the trading following regular trading hours occurs. The proposed rule will not affect when new series additions will be available for trading. Option series added based on trading following regular trading hours will be available for trading on the open of the regular trading session (i.e. 8:30 a.m. Chicago Time) on the options markets the following day (along with any series added as the result of pre-market trading activity).

Allowing option series to be added based on trading following regular trading hours will provide investors with additional notice regarding the option series that will be available for trading the following day. Earlier notice regarding what options series will be available for trading the following day will allow investors to plan their option trading activity earlier and accordingly help perfect the mechanism of a free and open market and a national markets system, and, in general, protect investors and the public interest.

Administrative Changes to Class Certification and Notice Processes

Finally, the Plan Participants propose to make other administrative changes related to the notification process whereby OCC confirms certifications received each day and the means of submission for listing certifications to OCC.

Currently, Section 1 of the OLPP, which describes the certification process, requires OCC to provide daily to each Participant a customized email confirming the option classes newly certified for trading, if any, by that Participant. Similarly, OCC must notify each Participant daily of all options a Participant previously certified for trading that were subsequently certified by another Participant on that day.

Although OCC is required to email the Participants such notifications, a list of all certifications received and processed each day is made available to the public on the OCC

website. Since the daily list of options certifications is made publicly available under the current practice, the Plan Participants propose to streamline the process by replacing the existing requirement for customized email notifications with a requirement for a daily general notification from OCC to all Participants to inform them that the daily list of certifications is viewable on the OCC website. To codify such changes and consolidate repetitive language regarding the certificate submission and notification process contained in Section 1 of the OLPP, the Plan Participants propose to modify Section 1 as follows.

Specifically, the current Sections 1(b)(ii) and 1(c) are to be replaced by a new Section 1(c), and the content of current Section 1(b)(i) is maintained in its entirety, with the exception of the removal of “option symbol” in the last sentence⁷, as new Section b. The current Sections 1(b)(ii) and 1(c) contain identical time frame requirements for OCC to provide notification to exchanges daily for new listing certifications and listing certifications for which one exchange is certifying an option that is already traded by another exchange (“adds to existing certifications”). In lieu of describing the 1:00 p.m. notification time line twice as stated in current Sections 1(b)(ii) and 1(c), the proposed new Section 1(c) provides the same time frame requirement (1:00 p.m. Chicago time) in one consolidated location in the OLPP that is applicable to both new listing certifications and adds to existing certifications.

⁷ The last sentence of current Section 1(b)(i), which states, “The option symbol, initial exercise prices, the expiration cycle and position and exercise limits* for the selected option class shall be as provided in the Certificate that OCC determined to be the first submitted;” will be modified to eliminate “option symbol” from this provision. With the implementation of the Options Symbology Initiative in 2010, options generally have the same symbol as the underlying security. As a result, Participants no longer submit conflicting option symbols for new certifications, as was the case prior to 2010. The language “option symbol” is removed only from the last sentence which addresses the submission of conflicting option symbols by different Participants. The requirements to provide an option symbol elsewhere in Section 1(b) and new Section 1(c) will remain and are necessary as such information is needed to identify an option for trading.

As an associated change to the consolidation of the notification timing requirements to Participants, the language describing the customized email notifications sent by OCC has been excluded from new Section (c) because, as discussed above, customized e-mails will no longer be required. In addition, certain details required in the current customized email notifications will not specifically be provided on the OCC website in the area designated for daily listing certifications as such information will instead be available on other portions of the OCC website or will be viewable to Participants through OCC's system. Proposed Section 1(c) requires the portion of the OCC website designated for daily listing certifications to provide the name of the underlying security, the option symbol and Selecting Exchange(s) for selected options on that day.⁸ Other option attributes, in particular the initial exercise prices and position and exercise limits for a selected option class currently included in the daily customized email notifications sent by OCC, will instead be available on other areas of the OCC website where such information is currently found today.⁹ The expiration cycle, which is also currently included in the customized email notifications but is not located on the OCC website designated for daily listing certifications, is also currently viewable to Participants through OCC's system.¹⁰

⁸ Daily listing certifications can be viewed on the OCC website at <https://www.theocc.com/market-data/series/new-listings/>.

⁹ Exercise prices can be found on the OCC website at <https://www.theocc.com/webapps/series-added-today> and <https://www.theocc.com/webapps/series-search>. Position and exercise limits can be found at <https://www.theocc.com/webapps/position-limits>. Such information will be available to the public on these websites for a selected option class on the day the option class commences trading, as is the case currently.

¹⁰ Functionality currently available through a portion of OCC's clearing system allows option exchanges to view option attributes, including series and expiration cycle for options. Plan Participants currently obtain expiration cycle information from the customized email notifications or by accessing such information in OCC's system. The posting of daily listing certifications on the OCC website does not presently include expiration cycles and will not under the new process. Such information will be accessed

Similar to the deletion of repetitive language discussed above, the Plan Participants propose new Section 1(d) to consolidate nearly duplicative language contained in current Sections 1(b)(ii) and 1(c) regarding when an option may begin trading. The new Section 1(d) states that trading for an option symbol submitted to OCC for certification on a given day may begin on the first trading day after submission. This provision applies to both new listing certifications and adds to existing certifications, thereby eliminating repetitive language in current Sections 1(b)(ii) and 1(c).

Likewise, Plan Participants are proposing the addition of new Section 1(e) to consolidate and amend nearly duplicative language contained in current Sections 1(b)(ii) and 1(c) regarding the withdrawal of a certification. As is the case currently, new Section 1(e) specifies that a Participant may withdraw a certification by notifying OCC prior to the time when OCC sends the daily email notification to Participants. If an exchange notifies OCC of a withdrawal after the daily notification has been sent, OCC will send an updated notification to all Participants to inform them of the change to that day's certifications. The communication for an updated notification to all Participants is a change from the existing process under the OLPP whereby currently only exchanges that have also certified the withdrawn option will be notified. This change reflects the intended departure from customized email notifications. Such customized emails are no longer needed since the information is publicly available on the OCC website.¹¹

The Plan Participants also propose to streamline the means of certification submission as contained in Section 5 of the OLPP. Currently, Section 5 provides that all class certificates must be submitted to OCC through telefacsimile. To modernize the process, Plan Participants are

by Participants if needed through OCC's system as they can do currently. Expiration cycle can also be inferred from the public website through examination of series data.

¹¹ Daily listing certifications are located at <https://www.theocc.com/market-data/series/new-listings/>.

proposing to amend this language to state that class certificates and any associated information and/or documentation must be submitted via “such electronic means reasonably agreed upon among the Plan Sponsors.” Participants will agree annually as to the means for such communications. Each Participant will document in writing agreement to such means and submit such documentation to OCC. It is anticipated that Plan Participants will use functionality provided by OCC’s system as the electronic means for submission of listing certifications and any documents associated with such certifications.

In addition, the Plan Participants are proposing to amend Section 5 to describe when a notice is deemed to have been given by electronic means. The new language in Section 5 states “All other notices required under the terms of this Plan shall be deemed to have been duly given if communicated through electronic mail or other electronic means reasonably agreed upon among the Plan Sponsors. Notices by New Plan Sponsors (as defined in Section 7 below) to then-existing Plan Sponsors of the execution of the Plan shall be deemed to be duly given if communicated by electronic mail or other electronic means reasonably agreed upon among the Plan Sponsors to each Plan Sponsor.” It is anticipated that notices by New Plan Sponsors and all such “other notices”, which shall include notifications made pursuant to Section 2 of the OLPP, will generally be made using electronic mail. Participants will agree annually to the means for such communications in the same manner as described above for listing certification submissions.

The above changes are intended to modernize Section 1 of the OLPP by simplifying and consolidating language that allows for more efficient processes for certifications as well as for communication. The Plan Participants recognize that certain requirements of the OLPP are currently not adaptable to technology advancements. For example and as discussed above, the

Plan Participants have been bound to continue to use telefacsimile for certification submissions because of the definitive language in the OLPP. Additionally, resources are currently allocated to create customized communications to the Participants as required under the OLPP whereas all such information is available publicly on the OCC website. The Plan Participants believe the proposed amendments collectively will enhance the certification and notification processes and will also allow the requirements of the OLPP to be more adaptable to any future technology improvements that may make these processes more agile and efficient.

Technical Error in Section Related to New Plan Sponsors

Section 7(ii) of the OLPP currently states, “To become a Plan Sponsor, an amendment to the Plan may be effected by a new Eligible Exchange executing a copy of the Plan, as then in effect (with the only change being the addition of the new Plan Sponsor's name in Section 8 below) and submitting such executed Plan to the SEC. Such amendment will be effective when it has been approved by the SEC or otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 11Aa3-2.” The reference to the names of new Plan Sponsors being added to Section 8 of the OLPP is incorrect. The names of Plan Sponsors are contained in Section 9 of the OLPP. The Plan Participants propose to correct this technical error by replacing the reference to “Section 8” with “Section 9.”

Governing or Constituent Documents

Not applicable.

Implementation of Amendment

The OLPP, as amended, will become effective upon Commission approval. The Plan Participants will implement the OLPP, as amended, pursuant to the terms of the Amendment upon Commission approval.

Development and Implementation Phases

Not applicable.

Analysis of Impact on Competition

The proposed OLPP, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Plan Participants do not believe that the proposed OLPP, as amended, introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act.

Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

The Participants have no written understandings or agreements relating to an interpretation of the Amendment. Section 7 of the OLPP sets forth how any entity registered as a national securities exchange or national securities association may become a Plan Sponsor.

Approval of Amendment of the Plan

The Amendment has been approved by the Plan Sponsors in accordance with the terms of the plan. Each of the Plan Participants have executed a signed copy of the Amendment.

Terms and Conditions of Access

Section 7 of the OLPP provides that any Eligible Exchange, as defined therein, may become a Plan Sponsor by (a) executing a copy of the Plan; (b) providing each then-current Plan Sponsor with a copy of such executed Plan; and (c) effecting an amendment to the Plan as specified therein.

Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

Method and Frequency of Processor Evaluation

Not applicable.

Dispute Resolution

Not applicable.

II. Implementation of Amendment

The OLPP, as amended, will become effective upon Commission approval. The Plan Participants will implement the OLPP, as amended, pursuant to the terms of the Amendment upon Commission approval.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OLPP Amendment 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 4-443 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 4-443. 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 plan that are filed with the Commission, and all written communications relating to the plan 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 such filing also will be available for inspection and copying at the Plan Sponsors' principal offices. 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 4-443, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Eduardo A. Aleman
Assistant Secretary