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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98957; File No. SR-CBOE-2023-054]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change to Amend Rule 4.13 to Expand the Nonstandard Expirations Program to Include P.M.-Settled Options on Broad-Based Indexes that Expire on Tuesday or Thursday

November 15, 2023.

I. Introduction

On September 28, 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 amend Rule 4.13(e), which governs its Nonstandard Expirations Program (“Program”), to permit p.m.-settled options on any broad-based index eligible for standard options trading that expire on Tuesday or Thursday. The proposed rule change published for comment in the Federal Register on October 4, 2023.³ The Commission did not receive any comment letters and is approving the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Rule 4.13(e), which governs its Program, to permit p.m.-settled options on any broad-based index eligible for standard options trading that expire on Tuesday or Thursday. Currently under the Program, the Exchange is permitted to list p.m.-settled options on any broad-based index eligible for standard trading that expire on: (1) any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an end-of-month expiration and, with respect to options on the S&P 500 Index (“SPX options”) and the Mini-S&P 500 Index (“XSP options”) any Tuesday or Thursday (“Weekly

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98621 (September 28, 2023), 88 FR 68896 (“Notice”).

Expirations”) and (2) the last trading day of the month (“End of Month Expirations” or “EOMs”).⁴ The proposal expands the availability of Tuesday and Thursday Weekly Expirations to all broad-based indexes eligible for standard options trading.⁵

The Program for Weekly Expirations will apply to any broad-based index option 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 and XSP options with Tuesday and Thursday expirations.⁶ Specifically, as set forth in Rule 4.13(e), Weekly Expirations, including the proposed 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.⁷

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.⁸ 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.⁹ Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date.¹⁰ In addition, like all Weekly

⁴ See Rule 4.13(e).

⁵ See Notice, supra note 3 at 68897.

⁶ See id.

⁷ See id.

⁸ See id.

⁹ See id.

¹⁰ For a more detailed description of the proposed Tuesday or Thursday expirations, see Notice, supra note 3.

Expirations, pursuant to Rule 4.13(e)(3), transactions in expiring broad-based index 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. eastern time on their last trading day.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules 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.

In support of its proposal, the Exchange notes that the Commission recently approved the listing of Tuesday and Thursday expirations for SPX and XSP options in addition to Monday, Wednesday, and Friday expirations for options on any broad-based index eligible for standard options trading.¹³ The Exchange states that the introduction of Tuesday and Thursday expirations for all broad-based index options (rather than offering those expirations for just two indexes) will provide investors with expanded hedging tools and greater trading opportunities and flexibility, and will allow market participants to trade in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios.¹⁴ The Exchange further believes that the listing of additional p.m.-settled

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ See Securities Exchange Act Release No. 98456 (September 20, 2023), 88 FR 66091 (September 26, 2023) (SR-CBOE-2023-020) (permanent approval of nonstandard expirations pilot program) ("Nonstandard Approval Order").

¹⁴ See Notice, supra note 3 at 68898.

options on other broad-based indexes will not have any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options or impact market quality.¹⁵ Finally, the Exchange represents it has sufficient capacity to handle additional traffic associated with trading of broad-based index options with Tuesday and Thursday expirations, and 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.¹⁶

The Commission has had concerns about the adverse effects and impact of p.m.-settlement upon market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading on expiration days.¹⁷ However, the Commission recently approved proposals from several exchanges, including the Exchange, to permanently establish programs permitting the listing and trading of certain p.m.-settled broad-based index options.¹⁸ In approving these proposals, the Commission reviewed data provided by the exchanges in their filings, the exchanges' pilot data and reports, as well as an analysis conducted at the direction of Staff from the Commission's Division of Economic and Risk Analysis and concluded that analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options nor did it indicate a deterioration in market quality for an existing product when a new

¹⁵ See id.

¹⁶ See id.

¹⁷ See Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969, at 55972 (September 9, 2011) (SR-C2-2011-008) (Order approving proposed rule change to establish a pilot program to list and trade SPXPM options on the C2 Options Exchange, Incorporated).

¹⁸ See, e.g., Securities Exchange Act Release Nos. 98454 (September 20, 2023), 88 FR 66103 at 66103-04 (September 26, 2023) (SR-CBOE-2023-005) (Order approving p.m.-settled Third Friday SPX options); 98450 (September 20, 2023), 88 FR 66 111 (September 26, 2023) (SR-ISE-2023-08) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent Certain P.M.-Settled Pilots); 98451 (September 20, 2023), 88 FR 66088 (September 26, 2023) (SR-Phlx-203-07) (Order approving a nonstandard expirations pilot program and p.m.-settled XND options); and Nonstandard Approval Order.

p.m.-settled expiration was introduced.¹⁹ Further, the Commission stated that significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.²⁰

As noted above, the Exchange currently may list Tuesday and Thursday expirations for SPX and XSP options in addition to Monday, Wednesday, and Friday expirations for options on any broad-based index eligible for standard options trading.²¹ The Exchange's proposal, which would permit Tuesday and Thursday expirations for options on any broad-based index, is reasonably designed as a limited expansion of existing p.m.-settled broad-based index option programs and may provide the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions. The Exchange has represented that it has adequate systems capacity and that it will monitor trading of broad-based index options with Tuesday and Thursday expirations.²² The Commission expects the Exchange to continue to monitor any potential risks from large p.m.-settled positions and take appropriate action on a timely basis if warranted.

Accordingly, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²³ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-CBOE-2023-054) be, and hereby is, approved.

¹⁹ See e.g., Nonstandard Approval Order, 88 FR at 66094.

²⁰ See *id.*

²¹ See *supra* note 13.

²² See *supra* note 16 and accompanying text.

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

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