



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99721; File No. SR-CBOE-2023-063]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the Exchange's Rules Relating to Position and Exercise Limits

March 12, 2024.

I. Introduction

On November 29, 2023, Cboe Exchange, Inc. (the “Exchange” or “Cboe”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rules relating to position and exercise limits. The proposed rule change was published for comment in the Federal Register on December 14, 2023.³ The Commission has received three comment letters regarding the proposed rule change.⁴ On January 23, 2024, pursuant to Section 19(b)(2) of the Act,⁵ 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 approve or disapprove the proposed rule change.⁶ This

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99119 (Dec. 8, 2023), 88 FR 86701 (“Notice”).

⁴ See letters to Vanessa Countryman, Secretary, Commission, from: Ellen Greene, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Management Association (“SIFMA”), dated January 26, 2024 (“SIFMA Letter”); and Jiří Król, Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association (“AIMA”), dated January 14, 2024 (“AIMA Letter”); and letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, Managed Funds Association (“MFA”), to Sherry R. Haywood, Assistant Secretary, Commission, dated January 4, 2024 (“MFA Letter”). Comment letters can be accessed at <https://www.sec.gov/comments/sr-cboe-2023-063/srcboe2023063.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 99417 (Jan. 23, 2024), 89 FR 5588 (Jan. 29, 2024). The Commission designated March 13, 2024, 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.

order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

The Exchange states that position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options.⁸ The Exchange states that, because participation in the options market may be discouraged if the position limits are too low, position limits must balance concerns regarding mitigating potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.⁹

Cboe Rule (“Rule”) 8.30 currently provides that the position limits for equity options are 25,000 or 50,000 or 75,000 or 200,000 or 250,000 contracts on the same side of the market (with adjustments for splits and re-capitalizations) or such other number of option contracts as may be fixed from time to time by the Exchange.¹⁰ The position limit applicable to a class depends upon the trading volume and outstanding shares of the underlying security.¹¹ The 25,000-contract limit applies to options on an underlying security that does not meet the requirements for a higher option contract limit.¹² To be eligible for the 50,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 20,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 15,000,000 shares and the underlying security must have at least 40,000,000 shares currently outstanding.¹³ To be eligible for the 75,000-contract limit, the most recent six-month trading

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Notice, 88 FR at 86701.

⁹ See id.

¹⁰ Rule 8.42 provides that the exercise limit for an equity option is the same as the position limit established in Rule 8.30 for that equity option. See Notice, 88 FR at 86701, n. 4.

¹¹ See Rule 8.30, Interpretation and Policy (“Int.”) .02.

¹² See Rule 8.30, Int. .02(a).

¹³ See Rule 8.30, Int. .02(b).

volume of the underlying security must have totaled at least 40,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 30,000,000 shares and the underlying security must have at least 120,000,000 shares currently outstanding.¹⁴ To be eligible for the 200,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 80,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 60,000,000 shares and the underlying security must have at least 240,000,000 shares currently outstanding.¹⁵ To be eligible for the 250,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 100,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 75,000,000 shares and the underlying security must have at least 300,000,000 shares currently outstanding.¹⁶ These limits have been in place since 2005.¹⁷

The Exchange proposes to amend Rule 8.30 to adopt three additional equity option position limits of 500,000 option contracts, 1,000,000 option contracts, and 2,000,000 option contracts.¹⁸ To be eligible for the 500,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 500,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 375,000,000 shares and the underlying security must have at least 1,500,000,000 shares currently outstanding.¹⁹ To be eligible for the 1,000,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 1,000,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least

¹⁴ See Rule 8.30, Int. .02(c).

¹⁵ See Rule 8.30, Int. .02(d).

¹⁶ See Rule 8.30, Int. .02(e).

¹⁷ See Notice, 88 FR at 86701.

¹⁸ See id.

¹⁹ See proposed Rule 8.30, Int. .02(f).

750,000,000 shares and the underlying security must have at least 3,000,000,000 shares currently outstanding.²⁰ To be eligible for the 2,000,000-contract limit, the most recent six-month trading volume of the underlying security must have totaled at least 5,000,000,000 shares; or the most recent six-month trading volume of the underlying security must have totaled at least 3,750,000,000 shares and the underlying security must have at least 15,000,000,000 shares currently outstanding.²¹

The Exchange states that since the last position limit increase in 2005, there has been a significant increase in the overall volume of exchange traded equity options and a steady increase in the number of accounts that approach the current highest position limit of 250,000 option contracts.²² As described in greater detail in the Notice, the Exchange states that annual equity options trading volume in recent years is nearly seven times the volume amount when the current position limits were adopted in 2005, and has more than doubled since 2017.²³ The Exchange further states that, as of October 12, 2023, over 300 equity options classes that currently are limited to the maximum position limit of 250,000 contracts would qualify for one of the three proposed position limits: 182 equity options classes would be eligible for the 500,000-contract limit; 110 equity options classes would be eligible for the 1,000,000-contract limit; and 13 equity options classes would be eligible for the 2,000,000-contract limit.²⁴ According to the Exchange, the increase in options volume and lack of evidence of market manipulation over the past 20 years justifies the proposed increases in the position and exercise limits.²⁵

²⁰ See proposed Rule 8.30, Int. .02(g).

²¹ See proposed Rule 8.30, Int. .02(h).

²² See Notice, 88 FR at 86702.

²³ See *id.*

²⁴ See *id.*

²⁵ See *id.*

The Exchange also points to Apple Inc. (“AAPL”) options as an example supporting the proposal. Prior to an AAPL stock split in August 2020, AAPL had approximately 4,000,000,000 shares outstanding and the option position limit of 250,000 contracts represented control of 25,000,000 AAPL shares, or 0.625% of the shares outstanding.²⁶ After the stock split, AAPL had approximately 16,000,000,000 shares outstanding, and the immediate adjustment of the AAPL option position limit to 1,000,000 contracts following the split reflected control of 100,000,000 shares, or 0.625% of the shares outstanding, which retained the pre-stock split ratio.²⁷ When the last AAPL option listed at the time of the stock split in 2020 expired in September 2022, The Options Clearing Corporation (“OCC”) reverted back to the original position limit for AAPL of 250,000 contracts, the maximum stock option position limit permitted under the Exchange’s rules.²⁸ The Exchange states that this position limit is more restrictive than the original position limit because readjusting the position limit back to 250,000 contracts when there are 16,000,000,000 shares outstanding reduces the position limit to 0.156% of the shares outstanding, making the post-stock split position limit more restrictive than the pre-stock split position limit, and, in the Exchange’s view, arguably no longer meaningfully related to the current shares outstanding.²⁹

The Exchange further states that the current 250,000-contract limit for AAPL options forces market participants to reduce trading activity because the maximum position limit represents only 0.156% of the total shares outstanding.³⁰ The Exchange states that this reduction in trading volume also represents a reduction in available liquidity and negatively impacts liquidity, trading volume, and possibly execution prices.³¹ The Exchange states that, under the

²⁶ See id.

²⁷ See id.

²⁸ See id.

²⁹ See id.

³⁰ See id.

³¹ See id.

proposal, AAPL options would qualify for the 2,000,000-contract limit, which is over 12% higher than the current maximum position limit.³² The adjustment of the position limit from 250,000 contracts to 2,000,000 contracts reflects control of 200,000,000 shares or 1.25% of the shares outstanding, which the Exchange states is well within ratios provided by the prior methodology.³³ The Exchange states that the proposed increase would lead to a more liquid and competitive market for AAPL options, as well as all qualifying equity options, which would benefit customers that trade the options.³⁴ The Exchange also states that, given the total increased volume in options trading, it is reasonable to conclude that in addition to AAPL options, position limits for many classes are currently more restrictive than they were when adopted in 2005.³⁵ The Exchange further states that it has no reason to believe that the growth in trading volume in equity options will not continue, and that it expects continued options volume growth as opportunities for investors to participate in the options markets increase and evolve.³⁶

The Exchange states that the current position and exercise limits are restrictive, and that not adopting increased position and exercise limits will hamper the listed options markets from being able to compete fairly and effectively with the over-the-counter (“OTC”) markets.³⁷ The Exchange states that OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace, and, as a result, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets.³⁸ The Exchange states that without the proposed changes to position and exercise limits, market participants will find the standard equity position limits an impediment to their business and investment objectives.³⁹

³² See id.

³³ See id.

³⁴ See Notice, 88 FR at 86702-03.

³⁵ See Notice, 88 FR at 86702.

³⁶ See Notice, 88 FR at 86703.

³⁷ See id.

³⁸ See id.

³⁹ See id.

The Exchange states that market participants therefore may find the less transparent OTC markets a more attractive alternative to achieve their investment and hedging objectives, leading to a retreat from the listed options markets, where trades are subject to reporting requirements and daily surveillance.⁴⁰ The Exchange further states that the Commission previously highlighted competition with the OTC markets as a reason for increasing the standard position and exercise limits.⁴¹

The Exchange states that the proposal will allow market participants to more effectively execute their trading and hedging activities and allow market makers to maintain their liquidity in these options in amounts commensurate with the continued high consumer demand in the market for the underlying securities.⁴² The Exchange states that the proposed higher position limits also may encourage other liquidity providers to continue to trade on the Exchange rather than shift their volume to OTC markets, which will enhance the process of price discovery conducted on the Exchange through increased order flow.⁴³

In addition, the Exchange believes that the current liquidity in shares of and options on the underlying securities will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits.⁴⁴ The Exchange states that, as a general principle, increases in active trading volume and deep liquidity of the underlying securities do not lead to manipulation and/or disruption.⁴⁵ The Exchange further states that this general principle applies to the recently observed increased levels of trading volume and liquidity in shares of and options on the underlying securities, and, as a result, the Exchange does not believe that the options markets or underlying markets would

⁴⁰ See id.

⁴¹ See id. at n.16 (citing Securities Exchange Act Release No. 40875 (Dec. 31, 1998), 64 FR 1842 (Jan. 12, 1999) (SR-CBOE-1998-25)).

⁴² See Notice, 88 FR at 86704.

⁴³ See id.

⁴⁴ See id.

⁴⁵ See id.

become susceptible to manipulation and/or disruption as a result of the proposed higher position limit categories.⁴⁶ In addition, the Exchange expects continued options volume growth as opportunities for investors to participate in the options markets continue to increase and evolve.⁴⁷ The Exchange states that it continues to maintain a process in which, every six months, the status of the underlying securities are reviewed to determine what limit should apply.⁴⁸ The Exchange states that, accordingly, if the stock trading volume and/or outstanding shares for particular securities significantly decline in the future, the overlying options classes will be moved to a lower corresponding position limit under the rules at the next regularly scheduled review.⁴⁹ The Exchange states that the proposed rule change to adopt increased position limits for actively traded options is not novel, and that the Commission has previously expressed the belief that not just increasing, but removing, position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.⁵⁰

The Exchange states that the Commission has approved similar Exchange proposals to increase position limits for options on highly liquid and actively traded exchanged-traded products (“ETP(s)”) (e.g., iShares Russell 2000 ETF (“IWM”), iShares MSCI Emerging Markets ETF (“EEM”), iShares China Large-Cap ETF (“FXI”), iShares MSCI EAFE ETF (“EFA”), VanEck Vectors Gold Miners ETF (“GDX”), and iShares iBoxx \$ Investment Grade Corporate Bond ETF (“LQD”)).⁵¹ The Exchange states that although those proposals related to options on

⁴⁶ See id.

⁴⁷ See id.

⁴⁸ See id.

⁴⁹ See id.

⁵⁰ See id. at n. 22 (citing Securities Exchange Act Release No. 40969 (Jan. 22, 1999), 64 FR 4911, 4913 (Feb. 1, 1999) (SR–CBOE–98–23)).

⁵¹ See Notice, 88 FR at 86704, n. 23 (citing Securities Exchange Act Release Nos. 93525 (Nov. 4, 2021), 86 FR 62584 (Nov. 10, 2021) (SR–CBOE–2021–029); 88768 (Apr. 29, 2020), 85 FR 26736 (May 5, 2020) (SR–CBOE–2020–015); 83415 (June 12, 2018), 83 FR 28274 (June 18, 2018) (SR–CBOE–2018–042); and 68086 (Oct. 23, 2012), 77 FR 65600 (Oct. 29, 2012) (SR–CBOE–2012–066)).

ETPs and the current proposal applies to equity options,⁵² pursuant to Rule 8.30, the position limits for options on stock and ETPs are generally calculated in the same manner and based in part on trading volume of the underlying.⁵³ The Exchange states that, by way of comparison, the amount of outstanding shares of AAPL stock is significantly higher than that of IWM, EEM, FXI and EFA, which have an overlying options position limit of 1,000,000 contracts (as compared to the 250,000-contract limit for AAPL options).⁵⁴ The Exchange states that AAPL currently has nearly 16 billion shares outstanding, and the outstanding shares of IWM, EEM, FXI and EFA range between approximately 187 million and 673 million.⁵⁵ The Exchange also states that the criteria under the proposed new position limits of 1,000,000 and 2,000,000 for equity options require the most recent six-month trading volume of the underlying security to have totaled at least 1 billion or 5 billion shares, respectively, or have at least 3 billion or 15 billion shares, respectively, of the underlying security outstanding.⁵⁶ The Exchange further states that the proposed criteria under the 500,000-contract limit category requires the most recent six-month trading volume of the underlying security to have totaled at least 500 million shares or have at least 1.5 billion shares of the underlying security outstanding.⁵⁷ The Exchange states that, in comparison, LQD and GDX have approximately 275 million shares and 395 million shares outstanding, and have an overlying options position limit of 500,000 contracts.⁵⁸ The Exchange

⁵² The Commission notes that the equity options encompassed by the proposal include both stock options and ETP options.

⁵³ See Notice, 88 FR at 86704.

⁵⁴ See id.

⁵⁵ See id.

⁵⁶ See id. The Exchange states that there is also a corresponding recent six-month volume of the underlying security requirement that must be satisfied in addition to the requirement relating to total outstanding shares. See id. at n. 25.

⁵⁷ See Notice, 88 FR at 86704. The Exchange states that there is also a corresponding recent six-month volume of the underlying security requirement that must be satisfied in addition to the requirement relating to total outstanding shares. See id. at n. 26.

⁵⁸ See Notice, 88 FR at 86704.

states that it is therefore reasonable and appropriate to increase the position limit of options, as proposed, to similar position limits that apply for certain ETPs.⁵⁹

The Exchange states that existing surveillance and reporting safeguards are designed to deter and detect possible disruptive or manipulative trading behavior that might arise from increasing position and exercise limits in certain classes.⁶⁰ The Exchange represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify continued compliance with the Exchange’s listing standards.⁶¹ The Exchange states that daily monitoring of market activity is performed via automated surveillance techniques to identify unusual activity in both options and the underlying securities, as applicable.⁶²

The Exchange also states that the reporting requirement for equity options would remain unchanged, and, accordingly, that the Exchange would continue to require that each trading permit holder (“TPH”) or TPH organization that maintains positions in impacted options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange.⁶³ The Exchange states that this information includes the options positions, whether the positions are hedged, and a description of any hedge(s).⁶⁴ The Exchange states that although market makers (including the Exchange’s designated primary market makers) would continue to be exempt from this reporting requirement, the Exchange may access market maker position information.⁶⁵ The Exchange further states that the Exchange’s requirement that TPHs file reports with the Exchange for any customer who held aggregate long or short positions on the same side of the market of 200 or more option contracts of any single class for the previous day (referred to as large option position reporting or “LOPR”) will remain

⁵⁹ See id.

⁶⁰ See Notice, 88 FR at 86703.

⁶¹ See id.

⁶² See id.

⁶³ See id.

⁶⁴ See id.

⁶⁵ See id.

at this level and continue to serve as an important part of the Exchange's surveillance efforts.⁶⁶ The Exchange also states that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G, which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.⁶⁷

The Exchange also believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in equity options.⁶⁸ In this vein, the Exchange states that current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a TPH must maintain for a large position held by itself or by its customer.⁶⁹ In addition, Rule 15c3-1⁷⁰ imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.⁷¹

III. Summary of Comments Received

The Commission has received three comment letters regarding the proposal.⁷² All three commenters expressed support for the proposal. Two commenters stated that the current position limits have remained unchanged for 18 years, despite significant increases in options trading volume,⁷³ and one stated that the position limits should be modernized.⁷⁴ One commenter stated that position limits that are too low impede trading activity and the ability of market participants to implement investment strategies in names with large market capitalizations.⁷⁵ Another

⁶⁶ See id. and Rule 8.43.

⁶⁷ See Notice, 88 FR at 86703.

⁶⁸ See id.

⁶⁹ See id. and Rule 10.3.

⁷⁰ 17 CFR 240.15c3-1.

⁷¹ See Notice, 88 FR at 86703.

⁷² See supra note 4.

⁷³ See AIMA Letter at 1-2; and SIFMA Letter at 1.

⁷⁴ See AIMA Letter at 1.

⁷⁵ MFA Letter at 1.

commenter stated that the current position limits could limit hedging in accounts that are treated as acting in concert but have different trading strategies.⁷⁶ The commenter further stated that there has been a steady increase in the number of accounts that approach the current highest position limit of 250,000 contracts.⁷⁷ Another commenter stated that the current position limits have limited the trading volume for some equity options and suggested that the current limits have negatively impacted liquidity and execution prices in some cases.⁷⁸ Commenters stated that the proposal would lead to a more liquid and competitive market for equity options,⁷⁹ and would help to address concerns associated with the temporary increase in option position limits following a stock split and the subsequent reversion to pre-split position limits.⁸⁰ In addition, one commenter stated that existing surveillance procedures and reporting requirements would remain in place and help the Exchange and other self-regulatory organizations identify disruptive and/or manipulative trading activity.⁸¹ Another commenter stated that Commission and Exchange financial requirements limit a member firm's ability to establish a large unhedged position in equity options, and that the OCC and prime brokers review accounts for concentration risk in single securities like equity options.⁸²

IV. Proceedings to Determine Whether to Approve or Disapprove SR-CBOE-2023-063 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁸³ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the

⁷⁶ See SIFMA Letter at 2.

⁷⁷ See *id.*

⁷⁸ See AIMA Letter at 2.

⁷⁹ See AIMA Letter at 2; SIFMA Letter at 2.

⁸⁰ See MFA Letter at 2; SIFMA Letter at 2.

⁸¹ See AIMA Letter at 2; *see also* SIFMA Letter at 3.

⁸² See SIFMA Letter at 3.

⁸³ 15 U.S.C. 78s(b)(2)(B).

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 comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁸⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,⁸⁵ 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.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."⁸⁶ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁸⁷ and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁸⁸

As discussed above, the Exchange has proposed to increase the position and exercise limits for equity options by establishing new, additional position limits of 500,000 contracts, 1,000,000 contracts, and 2,000,000 contracts. The proposed position and exercise limits would

⁸⁴ 15 U.S.C. 78s(b)(2)(B).

⁸⁵ 15 U.S.C. 78f(b)(5).

⁸⁶ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁸⁷ See id.

⁸⁸ See id.

be available for options with underlying securities that meet specified requirements with respect to six-month trading volume or six-month trading volume and number of shares outstanding.⁸⁹

The Exchange states that since the current position limits were last updated, there has been an almost seven-fold increase in the overall volume of exchange-traded equity options and a steady increase in the number of accounts that approach the current highest position limit of 250,000 contracts.⁹⁰ Commenters reiterated the Exchange's statements, asserting that current option volumes justify a position limit increase and that the number of accounts approaching the current limits has steadily increased.⁹¹

Position and exercise limits serve as a regulatory tool designed to address the potential for manipulative schemes and adverse market impact surrounding the use of options.⁹² The proposal would establish new equity option position limits that are substantially larger than the existing maximum limit and would affect a significant number of option classes. The proposed new maximum equity option position and exercise limit of 2,000,000 contracts represents an eightfold increase over the current maximum equity option position and exercise limit of 250,000 contracts. In contrast, when the current maximum limit of 250,000 contracts was approved, it represented a three and one-third fold increase over the then-existing maximum equity option position and exercise limit of 75,000 contracts.⁹³ The additional proposed equity option position

⁸⁹ See *supra* notes 19-21 and accompanying text.

⁹⁰ See Notice, 88 FR at 86702. The Commission notes that certain ETP options have positions limits that are higher than 250,000 contracts, which limits are set forth in Int. .07 to Rule 8.30. 250,000 contracts is the current maximum position limit set forth in Int. .02 to Rule 8.30 for stock options and ETP options not identified in Int. .07.

⁹¹ See AIMA Letter at 1-2; SIFMA Letter at 1-2.

⁹² See, e.g., Securities Exchange Act Release No. 68086 (Oct. 23, 2012), 77 FR 65600 (Oct. 29, 2012) (SR-CBOE-2012-066).

⁹³ See, e.g., Securities Exchange Act Release No. 51244 (Feb. 23, 2005), 70 FR 10010 (Mar. 1, 2005) (File No. SR-CBOE-2003-30) (order approving two option position and exercise limit programs on a pilot basis) ("Pilot Approval"); and Securities Exchange Act Release No. 57352 (Feb. 19, 2007), 73 FR 10076 (Feb. 25, 2008) (File No. SR-CBOE-2008-007) (order granting permanent approval of two option position and exercise limit pilot programs) ("Pilot Permanent Approval," and together with the "Pilot Approval," the "Pilot Programs"). In addition to increasing the maximum equity option position limit from 75,000 to 250,000 contracts, the Pilot Programs increased other equity option position and exercise limits as follows: the 13,500-contact limit was increased to 25,000 contracts; the 22,500-contract limit was increased to 50,000 contracts; the 31,500-contract limit was increased to 75,000 contracts; and the 60,000-contract limit was increased to 200,000 contracts.

and exercise limits of 1,000,000 contracts and 500,000 contracts represent, respectively, a fourfold increase over and a doubling of the current maximum limit. These proposed increases—particularly the proposed increase to 2,000,000 contracts—represent a significant increase in the size of equity options positions that market participants would be able to establish on a given side of the market, and raise the potential for adverse impacts in the markets for the underlying equity securities and for manipulative schemes.

The Exchange states that the overall increase in options volumes since the equity option position limits were last updated justifies the Exchange’s proposal. But options volume is not part of the eligibility criteria for any equity option position limit. The Exchange does not explain how overall option volume establishes that the proposed position limits are consistent with the Act. The Exchange sets forth no data or analysis as to why each proposed position limit is appropriate or as to why each proposed limit’s underlying security share trading volume or share trading volume plus shares outstanding thresholds appropriately correspond to the particular limit. The Commission therefore has no basis to conclude, for example, that a 2,000,000-contract limit is appropriate for equity options where the most recent six-month trading volume of the underlying security totaled at least 5,000,000,000 shares or where the most recent six-month trading volume of the underlying security totaled at least 3,750,000,000 shares and the underlying security had at least 15,000,000,000 shares currently outstanding. Likewise, while the Exchange and commenters assert that the number of accounts approaching the current maximum position limit has increased, the Exchange provides no data or detail to support these assertions, such as, for example, the number of accounts that have approached the current maximum limit.⁹⁴

The Exchange puts forth AAPL as an example of an equity option for which a position limit increase is warranted, stating that, as a result of the AAPL stock split in August 2020, the

⁹⁴ See, e.g., Pilot Permanent Approval, *supra* note 93 (setting forth data showing, among other things, the number of accounts approaching the pilot position limits).

250,000-contract limit that applies to AAPL options represents 0.156% of the post-split shares outstanding, a level that the Exchange characterizes as not meaningfully related to the current shares outstanding.⁹⁵ The Exchange also states that, under the proposal, by contrast, a 2,000,000-contract limit for AAPL options would result in maximum ownership of 1.25% of outstanding shares, which the Exchange states is well within ratios provided by the prior methodology. But an equity option's underlying security share trading volume is a necessary metric in the determination of the appropriate position limit, aside from consideration of the number of outstanding shares of the underlying security or what proportion of those shares would be represented by an option position that is at the maximum limit. As noted above, the Exchange does not explain how it determined that the proposed underlying security share trading volume eligibility criteria for each proposed position limit justifies the corresponding limit, nor has the Exchange done so in the particular case of AAPL options.

The Exchange further states that the current 250,000-contract limit for AAPL options forces market participants to reduce trading activity, and that “[t]his reduction in trading volume also represents a reduction in available liquidity and negatively impacts liquidity, trading volume, and possibly execution prices.”⁹⁶ Commenters also stated that the current position limits impede trading and hedging activity, and suggested that the current limits have negatively impacted liquidity and execution prices.⁹⁷ But the Exchange provides no analysis or data to support these assertions, such as the types of trading activity that may be limited by the current position limit levels or data showing, for example, wider quote spreads or reduced quote sizes in AAPL or other equity options.

In addition, as discussed above, the Exchange states that, as of October 12, 2023, over 300 equity options classes that currently are limited to the maximum position limit of 250,000

⁹⁵ See Notice, 88 FR at 86702.

⁹⁶ Id.

⁹⁷ See MFA Letter at 1; SIFMA Letter at 2; AIMA Letter at 2.

contracts would qualify for one of the three proposed new position limits, with 182 equity options classes eligible for the 500,000-contract limit, 110 equity options classes eligible for the 1,000,000-contract limit, and 13 equity options classes eligible for the 2,000,000-contract limit.⁹⁸ The proposed position limits would apply not only to options on stock, but also to options on ETPs. Indeed, the Commission understands that the proposal encompasses equity options with a variety of underlying exposures including, for example, commodity-based ETPs, volatility-based ETPs, leveraged and inverse leveraged ETPs, and American Depository Receipts (“ADRs”). The proposal gives no consideration to the heterogeneity among the securities underlying the options covered by the proposal or whether differences in underlying exposures present different levels of risk of adverse market impact.

The Exchange also seeks to justify the proposal in part by providing a comparative analysis of options on certain broad-based index exchange-traded funds (“ETFs”) that currently have position limits of 500,000 or 1,000,000 contracts.⁹⁹ But the proposal does not provide sufficient information to explain why the underlying markets for the broad-based index ETFs are sufficiently comparable to the market for stock, or sufficient information to independently support a finding that the proposed position limits would not have an adverse market impact. Unlike an ETF, a stock is not subject to the creation and redemption processes that apply to ETFs, nor to the issuer arbitrage mechanisms that help to keep an ETF’s price in line with the value of its underlying portfolio when overpriced or trading at a discount to the securities on which it is based. The Commission previously has considered how these processes and mechanisms may serve to mitigate the potential price impact that might otherwise result from increased position limits for an ETF option.¹⁰⁰

⁹⁸ See Notice, 88 FR at 86702. The Commission understands that, based on more recent statistics, over 400 equity option classes would qualify for a position limit increase under the proposal.

⁹⁹ See Notice, 88 FR at 86704; see also Rule 8.30, Int. 07.

¹⁰⁰ See Securities Exchange Act Release No. 93525 (Nov. 4, 2021), 86 FR 62584, 62587 (Nov. 10, 2021) (order approving File No. SR-Cboe-2021-029).

Further, Rule 8.30, Int. .07 provides bespoke position limits for certain ETF options that are higher than the current maximum position limit of 250,000 contracts set forth in Rule 8.30, Int. .02, including a 1,800,000-contract limit for options on the PowerShares QQQ Trust (“QQQ”), and a 500,000-contract limit for options on each of the following ETFs: LQD, GDX, the iShares MSCI Brazil Capped ETF (“EWZ”), the iShares iBoxx High Yield Corporate Bond Fund (“HYG”), the iShares 20+ Year Treasury Bond Fund ETF (“TLT”), and the Financial Select Sector SPDR Fund (“XLF”). The Commission understands that, under the proposal, these ETF options could qualify for position limits higher than those set forth in Rule 8.30, Int. .07 by satisfying proposed Rule 8.30, Int. .02’s share volume or share volume plus shares outstanding thresholds for the proposed 2,000,000-contract limit in the case of QQQ options and the proposed 1,000,000-contract limit in the cases of the other aforementioned ETF options. But the proposal does not set forth corresponding revisions to Rule 8.30, Int. .07 to account for this or otherwise address what these ETF options’ position limits would be under the proposal. As a result, the position limits set forth in Rule 8.30, Int. .07 for certain ETF options could be lower than the proposed position limits that these ETF options could qualify for in proposed Rule 8.30, Int. .02, rendering it unclear what position limit would apply to these options under the proposal.

Accordingly, the Exchange has not provided an adequate basis for the Commission to conclude that the proposal would be consistent with Section 6(b)(5) of the Act.

V. 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 Section 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 which would be facilitated by an oral presentation of data, views, and arguments, the Commission will

consider, pursuant to Rule 19b-4 under the Act,¹⁰¹ any request for an opportunity to make an oral presentation.¹⁰²

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 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, which are set forth in the Notice,¹⁰³ in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Has the Exchange demonstrated that the proposed position limit increases are appropriate based on the share trading volumes and shares outstanding of the securities underlying the equity options that would be covered by the proposal? Has the Exchange adequately explained the need for the proposed 2,000,000-contract limit? Would a more measured, incremental approach, beginning with an increase in the maximum position limit to a level less than 2,000,000 contracts, be more appropriate as a means of implementing an equity option position limit increase? If so, what would be an appropriate maximum limit? If not, why?

2. Has the Exchange provided sufficient data and analysis to support a conclusion that the proposed position limit increases should not result in attempted manipulations of the underlying securities or in adverse market impacts, such as disruptions in the markets for the

¹⁰¹ 17 CFR 240.19b-4.

¹⁰² Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 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).

¹⁰³ See supra note 3.

underlying securities? As discussed above, the proposal would significantly increase the position limits for options on a large number of underlying securities. The proposal discusses trading in AAPL but provides no discussion or analysis of the trading volume and other characteristics of the many other underlying securities that also would be subject to options position limit increases under the proposal. Are the proposed position limit increases also appropriate for the many equity options on underlying securities with lower share trading volumes and numbers of shares outstanding than AAPL that would qualify for higher limits under the proposal?

3. Are the proposed position limits appropriate for all of the equity options covered by the proposal in light of the heterogeneity in their underlying instruments? For example, should options on commodity-based ETPs be subject to the same position limits as options on stock? Should position limits for options on commodity-based ETPs consider the available supply in the markets for the commodity on which the ETP is based? As other examples, the proposal would encompass options on volatility-based ETPs, leveraged or inverse leveraged ETPs, and ADRs that provide non-U.S. market exposure. What are commenters views as to the appropriateness of increasing position limits for these equity options or any other type of equity option that is not based on U.S. company stock exposure?

4. Should the proposed position limit increases be implemented on a pilot basis to allow the Exchange to assess the impact of the proposed position limit increases on the markets for the underlying securities? If so, what pilot data should be collected?

5. The Exchange states that existing surveillance procedures as well as, among other things, TPH option position and hedge reporting requirements and LOPR for customer positions are adequate to identify violative and/or disruptive trading activity. Do commenters agree that existing surveillance and reporting mechanisms will be adequate if equity option position limits are increased as the Exchange has proposed? Are current intra-day surveillance procedures capable of monitoring the intra-day trading in underlying securities by large option position

holders that could have a strong incentive to manipulate an options settlement price, a practice known as “marking the close” or “marking the open?” To what extent are such surveillance procedures conducted on a manual or automated basis?

6. The Exchange and commenters suggest that the existing position limits unnecessarily restrict market participants’ trading or hedging strategies. The Commission understands that multi-strategy funds that employ relative value trading strategies may be one example where this is the case. Can commenters provide other examples of trading or hedging strategies that are impeded by the current position limits? Would higher position limits facilitate the execution of relative value strategies or other trading strategies on exchanges?

7. The Exchange states that listed option position limits that are too restrictive may cause market participants to find the OTC market for conventional options a more attractive alternative to achieve their investment and hedging objectives, leading to a retreat from the listed options markets.¹⁰⁴ Can commenters provide data or analysis to support the notion that the existing equity option position limits cause trades to occur in the OTC market that otherwise would occur in listed options on exchanges if the position limits were higher? Can commenters provide data or analysis to support the notion that equity option position limit increases would result in the migration of equity option trading interest from the OTC market to exchanges? Customizable FLEX equity options generally are not subject to position limits with the exceptions of FLEX equity options with third-Friday-of-the-month expirations and certain FLEX equity options that are cash-settled.¹⁰⁵ Do FLEX equity options serve market participants’ needs for an alternative to standardized, listed equity options? In contrast to FLEX equity options, OTC equity options are subject to position limits. If the listed, standardized option position limits restrict market participants’ ability to implement their trading strategies, why would market participants seek to utilize OTC equity options instead of FLEX equity options given that

¹⁰⁴ See Notice, 88 FR at 86703.

¹⁰⁵ See, e.g., Rule 8.35(c).

OTC equity options are subject to position limits whereas FLEX equity options generally are not? Historically, a justification for not imposing position limits on FLEX equity options has been that this would encourage exchange trading of listed options instead of OTC option trading.¹⁰⁶ Are commenters able to provide evidence that the general lack of FLEX equity option position limits has had this effect?

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 No. SR-CBOE-2023-063 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-2023-063. 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

¹⁰⁶ See, e.g., Securities Exchange Act Release No. 42223 (Dec. 10, 1999), 64 FR 71158 (Dec. 20, 1999).

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-2023-063 and should be submitted by [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.¹⁰⁷

Sherry R. Haywood,

Assistant Secretary.

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¹⁰⁷ 17 CFR 200.30-3(a)(57).