

*Estimated Time per Respondent:* 140 minutes.

*Total Burden Hours:* 780 hours.

U.S. Office of Personnel Management.

**Stephen Hickman,**

*Federal Register Liaison.*

[FR Doc. 2023-04106 Filed 2-27-23; 8:45 am]

**BILLING CODE 6325-66-P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023-113 and CP2023-116]

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* March 1, 2023.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

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- I. Introduction
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### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the

proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<sup>1</sup>

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

### II. Docketed Proceeding(s)

1. *Docket No(s):* MC2023-113 and CP2023-116; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 14 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 22, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* March 1, 2023.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**  
*Secretary.*

[FR Doc. 2023-04053 Filed 2-27-23; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL SERVICE

### International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

<sup>1</sup> See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

**DATES:** Date of notice: February 28, 2023.

**FOR FURTHER INFORMATION CONTACT:** Christopher C. Meyerson, (202) 268-7820.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 22, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 14 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2023-113 and CP2023-116.

**Tram T. Pham,**

*Attorney, Ethics and Legal Compliance.*

[FR Doc. 2023-04077 Filed 2-27-23; 8:45 am]

**BILLING CODE 7710-12-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96965; File No. SR-CBOE-2022-057]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Increase Position Limits for Options on Apple Inc. Stock

February 22, 2023.

#### I. Introduction

On November 7, 2022, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Cboe Rules 8.30 and 8.42 to increase the position and exercise limits for options on Apple Inc. ("AAPL") stock. The proposed rule change was published for comment in the **Federal Register** on

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

November 25, 2022.<sup>3</sup> On December 22, 2022, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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.<sup>5</sup> This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

## II. Description of the Proposal

Currently, Exchange Rule 8.30 establishes position limits for equity options of 25,000 contracts, 50,000 contracts, 75,000 contracts, 200,000 contracts, or 250,000 contracts on the same side of the market or such other number of option contracts as may be fixed from time to time by the Exchange.<sup>7</sup> The position limit applicable to a class is determined based on the trading volume and outstanding shares of the underlying security.<sup>8</sup> Based on the criteria in Exchange Rule 8.30, Interpretation and Policy .02, the position limit for AAPL options currently is 250,000 contracts and, pursuant to Exchange Rule 8.42, the exercise limit for AAPL options is also 250,000 contracts.<sup>9</sup>

The Exchange states that when an underlying security undergoes a stock split, the number of outstanding options is proportionately increased and the exercise price is proportionately decreased.<sup>10</sup> For example, if a security undergoes a 4–1 stock split, an investor that held one option with an exercise price of \$100 on 100 shares of stock ABC prior to the stock split would hold four ABC options, each on 100 shares and each with an exercise price of \$25, following the stock split.<sup>11</sup> In response to the increase in option positions that results from a stock split, the position (and exercise) limit for the option overlying that security is multiplied by the number of shares issued per single outstanding share as part of the stock split.<sup>12</sup> For example, using the same 4–

1 example, if the position limit for an option before a 4–1 stock split is 250,000 contracts, the position limit for the option overlying that security will be multiplied by four to 1,000,000 contracts.<sup>13</sup> The Exchange states that this increase prevents investors holding the maximum positions from immediately being over the position limit at the time of the stock split.<sup>14</sup> The Exchange further states that this position limit increase is temporary and lasts until the last outstanding option position at the time of the stock split has expired, at which time the position limit reverts to the pre-stock-split level.<sup>15</sup>

The Exchange states that the position and exercise limits for AAPL options were 250,000 contracts at the time of the AAPL 4–1 stock split on August 31, 2020.<sup>16</sup> Following the stock split, the position limit was increased to 1,000,000 contracts.<sup>17</sup> The position limit for AAPL options remained at 1,000,000 contracts until September 16, 2022 (when the last option position that was outstanding at the time of the stock split expired), when the position limit reverted back to 250,000 contracts.<sup>18</sup> The Exchange states that, given the significant activity in AAPL options (and the underlying security), it understands that numerous customers held more than 250,000 AAPL option contracts at that time, putting their holdings above the position limit.<sup>19</sup> The Exchange further states that it understands from these customers that the reduced position limit may be impeding trading activity and their ability to implement investment strategies in AAPL options, including the use of effective hedging vehicles or income generating strategies (e.g., buy-write or put-write strategies), and the ability of market-makers to make liquid markets with tighter spreads in AAPL options, potentially causing the transfer of volume to the over-the-counter (“OTC”) market.<sup>20</sup> The Exchange states that OTC transactions, which are not publicly disclosed, do not contribute to the price discovery process on a public exchange or other lit markets.<sup>21</sup>

The Exchange believes that it is appropriate to increase the AAPL option position limit to 1,000,000 contracts so market participants may continue to trade AAPL options in the same manner and at the same levels as they have for the prior two years, which could enable liquidity providers to maintain liquidity levels on the Exchange and allow other market participants to continue to trade on the Exchange rather than shift their volume to the OTC market.<sup>22</sup> The Exchange believes the larger market capitalization of AAPL stock, as well as the highly liquid market for AAPL stock and the overlying options since the stock split, reduces the concerns regarding potential market manipulation and/or disruption in the underlying market following an increase in the position limit.<sup>23</sup> The Exchange states that the continued demand for trading AAPL options for legitimate economic purposes despite the reduced position limit warrants a reversion to the 1,000,000-contract position limit that existed for the prior two years.<sup>24</sup>

The Exchange further states that the proposed position limit of 1,000,000 contracts for AAPL options, which was the AAPL option position limit for two years, is the same as existing position limits for options on the iShares Russell 2000 ETF (“IWM”), the iShares MSCI Emerging Markets ETF (“EEM”), iShares China Large-Cap ETF (“FXI”), and iShares MSCI EAFE ETF (“EFA”).<sup>25</sup> The Exchange states that, to support the proposed position limit increase, it considered the liquidity of the underlying security, the value of the underlying security and relevant marketplace, the AAPL share and option volume, and the liquidity of the noted exchange-traded products (“ETPs”).<sup>26</sup>

The Exchange provided the information in the table below regarding the average daily volume (“ADV”) for AAPL shares and options on AAPL stock traded during specified time periods prior to the 2020 stock split, between the stock split and the position limit reversion, and since the position limit reversion:<sup>27</sup>

<sup>3</sup> See Securities Exchange Act Release No. 96353 (November 18, 2022), 87 FR 72568 (November 25, 2022) (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 96570 (December 22, 2022), 87 FR 80212 (December 29, 2022). The Commission designated February 23, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> Pursuant to Exchange Rule 8.42, the exercise limit for an equity option is the same as the position limit established in Exchange Rule 8.30 for that equity option. See *id.* at n. 3.

<sup>8</sup> See Notice, 87 FR at 72568 and Exchange Rule 8.30, Interpretation and Policy .02.

<sup>9</sup> See Notice, 87 FR at 72569.

<sup>10</sup> See *id.* (citing Options Clearing Corporation (“OCC”) Bylaws, Article VI, Section 11A(a); and *Characteristics and Risks of Standardized Options* at 19).

<sup>11</sup> See Notice, 87 FR at 72569.

<sup>12</sup> See *id.*

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* The Commission understands that this type of temporary position limit increase following a stock split occurs pursuant to the direction of the OCC.

<sup>19</sup> See *id.*

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*

<sup>25</sup> See *id.* and Exchange Rule 8.30, Interpretation and Policy .07.

<sup>26</sup> See Notice, 87 FR at 72569.

<sup>27</sup> See *id.*

Date range	ADV (shares)	ADV (option contracts)
January 3, 2020 through August 31, 2020 (date of the stock split) .....	170,468,316	870,304
September 1, 2020 through December 31, 2021 .....	101,001,141	1,661,627
January 1, 2022 through September 16, 2022 (date of the position limit reversion) .....	88,458,041	1,354,430
September 17, 2022 through October 24, 2022 (time since the position limit reversion) .....	91,683,969	1,425,372

In addition, the Exchange states that as of October 24, 2022, AAPL had a market capitalization of \$2.4 trillion

(16.07 billion shares outstanding with a share price of \$149.45).<sup>28</sup> For comparison, the Exchange provided the

information below for IWM, EEM, FXI, and EFA from January 1, 2022, through October 24, 2022:<sup>29</sup>

Product	ADV (ETF shares)	ADV (option contracts)	Shares outstanding (millions)	Fund market cap (USD) (billions)	Share value (USD)
IWM .....	31,358,610	840,721	291.10	50.49	173.44
EEM .....	47,767,767	183,342	578.25	19.62	33.93
FXI .....	39,007,654	159,703	176.70	3.80	21.53
EFA .....	29,953,566	123,262	705.60	41.83	59.28

The Exchange states that while these are ETPs, rather than stocks, ETP shares trade in the same manner as stocks and, except for those set forth in Exchange Rule 8.30, Interpretation and Policy .07, position limits on ETP options are determined in the same manner as the position limits for options on stocks.<sup>30</sup>

The Exchange believes that the liquidity in the AAPL shares and their overlying options, AAPL's significantly large market capitalization, and the overall market landscape for AAPL stock and options support the proposal to increase its position limit.<sup>31</sup> The Exchange states that, given the robust liquidity in and value of AAPL stock, the Exchange does not anticipate that the proposed increase in the position limit would create significant price movements because the relevant market is large enough to adequately absorb potential price movements that may be caused by larger trades.<sup>32</sup> To reduce the chances of potential manipulation if trading in AAPL stock declines, proposed Exchange Rule 8.30, Interpretation and Policy .02(g) provides that if the most recent six-month trading

volume of AAPL stock totals less than 200,000,000 shares or the most recent six-month trading volume of AAPL stock totals less than 150,000,000 shares and AAPL stock has fewer than 600,000,000 shares currently outstanding, the position limit for AAPL options will be determined as set forth in paragraphs (a) through (e) of Interpretation and Policy .02.<sup>33</sup> The Exchange states that these proposed levels are twice the current volume and share levels of an underlying security for the overlying option to be eligible for the 250,000-contract option position limit.<sup>34</sup>

The Exchange states that the reporting requirements for AAPL options will remain unchanged under the proposal.<sup>35</sup> The Exchange states that it will continue to require that each Trading Permit Holder ("TPH") or TPH organization that maintains positions in AAPL 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, including the options' positions, whether such positions are hedged and, if so, a

description of the hedge(s).<sup>36</sup> Although Market-Makers, including Designated Primary Market-Makers,<sup>37</sup> will continue to be exempt from the reporting requirement, the Exchange states that it may access Market-Maker position information.<sup>38</sup> In addition, the Exchange states that its requirement that TPHs file reports with the Exchange for any customer who held aggregate large 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 will remain at this level for AAPL options and will continue to serve as an important part of the Exchange's surveillance efforts.<sup>39</sup>

The Exchange believes that its and other SROs' existing surveillance procedures and reporting requirements are capable of properly identifying disruptive and/or manipulative trading activity.<sup>40</sup> 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.<sup>41</sup> According to the Exchange, these procedures utilize daily

<sup>28</sup> See *id.*

<sup>29</sup> See *id.* at 72570.

<sup>30</sup> See *id.* Exchange Rule 8.30, Interpretation and Policy .07 provides that the position limits under Exchange Rule 8.30 applicable to options on shares or other securities that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that satisfy the criteria set forth in Exchange Rule 4.3.06 shall be the same as the position limits applicable to equity options under Exchange Rule 8.30 and Interpretations and Policies thereunder, except for the position limits established in Exchange Rule 8.30, Interpretation and Policy .07 for specified securities, including IWM, EEM, FXI, and EFA.

<sup>31</sup> See *id.*

<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> A Market-Maker is a "Trading Permit Holder registered with the Exchange pursuant to Rule 3.52 for the purpose of making markets in option contracts traded on the Exchange and that has the rights and responsibilities set forth in Chapter 5, Section D of the Rules." A Designated Primary Market-Maker is a "TPH organization that is approved by the Exchange to function in allocated securities as a Market-Maker (as defined in Rule 8.1) and is subject to the obligations under Rule

5.54 or as otherwise provided under the rules of the Exchange." See Exchange Rule 1.1.

<sup>38</sup> The Exchange states that the OCC, through the Large Option Position Reporting system, acts as a centralized service provider for TPH compliance with position reporting requirements by collecting data from each TPH or TPH organization, consolidating the information, and ultimately providing detailed listings of each TPH's report to the Exchange and to the Financial Industry Regulatory Authority, Inc., acting as its agent pursuant to a regulatory services agreement. See Notice, 87 FR at 72570, n. 11.

<sup>39</sup> See Notice, 87 FR at 72570. See also Exchange Rule 8.43.

<sup>40</sup> See Notice, 87 FR at 72570.

<sup>41</sup> See *id.*

monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlying securities, as applicable.<sup>42</sup> In addition, the Exchange states that the disclosures in Schedules 13D or 13G,<sup>43</sup> which are used to report ownership of stock that exceeds 5% of a company's total stock issue, could assist in providing information in monitoring for potential manipulative schemes.<sup>44</sup>

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in AAPL options.<sup>45</sup> 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.<sup>46</sup> In addition, the Exchange states that Rule 15c3-1 under the Act<sup>47</sup> imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.<sup>48</sup>

### III. Proceedings To Determine Whether To Approve or Disapprove SR-CBOE-2022-057 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>49</sup> 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 proposal, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>50</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is

<sup>42</sup> See *id.* The Exchange believes these procedures have been effective for the surveillance of AAPL option trading and the Exchange will continue to employ them. See *id.* at n. 13.

<sup>43</sup> 17 CFR 240.13d-1.

<sup>44</sup> See Notice, 87 FR at 72570.

<sup>45</sup> See *id.*

<sup>46</sup> See *id.* at 72570, n. 15 (citing Exchange Rule 10.3 regarding margin requirements).

<sup>47</sup> 17 CFR 240.15c3-1.

<sup>48</sup> See Notice, 87 FR at 72570.

<sup>49</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>50</sup> *Id.*

instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposed rule change with the Act and, in particular, Section 6(b)(5) of the Act,<sup>51</sup> which requires 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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."<sup>52</sup> 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,<sup>53</sup> 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.<sup>54</sup>

As discussed above, the Exchange has proposed to increase the position and exercise limits for AAPL options from 250,000 contracts to 1,000,000 contracts. Following the AAPL 4-1 stock split on August 31, 2020, the AAPL option position limit temporarily increased from 250,000 contracts to 1,000,000 contracts until September 16, 2022, when the position limit reverted to 250,000 contracts.<sup>55</sup> The Exchange states that it understands from customers that the reduced position limit may be impeding trading activity and their ability to implement investment strategies in AAPL options, including the use of effective hedging vehicles or income generating strategies, and the ability of market-makers to make liquid markets with tighter spreads in AAPL options.<sup>56</sup> The Exchange believes that it is appropriate

<sup>51</sup> 15 U.S.C. 78f(b)(5).

<sup>52</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> See Notice, 87 FR at 72569.

<sup>56</sup> See *id.*

to increase the AAPL position limit to 1,000,000 option contracts so market participants may continue to trade AAPL options in the same manner and at the same levels as they did when the position limit temporarily was 1,000,000 contracts.<sup>57</sup>

Position and exercise limits serve as a regulatory tool designed to address manipulative schemes and adverse market impact surrounding the use of options.<sup>58</sup> The proposal is novel in that currently, outside of exceptions to accommodate temporary OCC-initiated adjustments, the maximum stock option position and exercise limits permitted under exchange rules are 250,000 contracts. In addition to being novel, the proposed fourfold increase in the position and exercise limits for AAPL options would be a substantial increase from current levels, and raises the potential for adverse impacts in the underlying market for AAPL stock. According to the Exchange, the larger market capitalization of AAPL stock, as well as the highly liquid market for AAPL stock and the overlying options since the stock split, mitigates these concerns.<sup>59</sup>

The trading volume of the stock underlying a stock option is one of the two metrics that determines a stock option's position limit.<sup>60</sup> As set forth in the proposal, AAPL stock ADV declined significantly during the post-split period when the AAPL option position limit temporarily was 1,000,000 contracts, and as of October 24, 2022, AAPL stock's ADV had decreased almost by half from its ADV prior to the stock split.<sup>61</sup> While the Exchange states that

<sup>57</sup> See *id.*

<sup>58</sup> See, e.g., Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

<sup>59</sup> See Notice, 87 FR at 72569.

<sup>60</sup> See *id.* at 72568 and Exchange Rule 8.30, Interpretation and Policy .02.

<sup>61</sup> See Notice, 87 FR at 72569. The Commission cannot discern whether the post-stock-split ADV figures for AAPL stock set forth in the proposal are adjusted for the split; here, the Commission assumes that they are not. In addition, a Cboe study on the impact of stock splits on trading activities finds that split-adjusted volume in mega-capitalization stocks increased slightly one-week post-split but, in the two-week to six-month period post-split, the median executed share volume decreased about 48%, compared to volume a week pre-split. See Cboe study on the impact of stock split on trading activities at: <https://www.cboe.com/insights/posts/stock-splits-lead-to-split-results-in-trading/>. This study also finds that the median number of options contracts traded in mega-capitalization stocks decreased approximately 49% one week post-split and remained down through the six-month period post-split. In the case of option contracts in AAPL, the study finds that the split-adjusted number of AAPL option contracts traded decreased about 52%, averaging 0.9 million contracts traded daily post-split compared to 1.9 million contracts traded daily pre-split. Also, while

the market for AAPL stock and the overlying options is highly liquid,<sup>62</sup> the proposal does not adequately explain why a fourfold position (and exercise) limit increase is warranted given the significant decrease in AAPL stock ADV described in the proposal.

In addition, the proposal does not explain why, in light of the AAPL stock trading volume decrease described in the proposal, a 1,000,000-contract position limit for AAPL options is necessary for market participants to trade in the same manner and at the same levels as they did when the position limit temporarily was 1,000,000 contracts. Although the Exchange states that the 250,000-contract position limit for AAPL options may be impeding customers' trading activity and their ability to implement investment and hedging strategies, the proposal provides no detail to support these assertions, such as the number of customers affected or the hedging or investment strategies that these customers are unable to execute because of the lower position limit.<sup>63</sup> Similarly, the Exchange states that the 250,000-contract position limit may be impeding the ability of market makers to make liquid markets with tighter spreads in AAPL options, but the proposal provides no information indicating that market makers' quoted spreads have widened or that they have reduced the size associated with their quotes. Further, market makers' positions in AAPL options would not count towards the current position limit to the extent covered by existing equity hedge or other exemptions.<sup>64</sup>

Further, the proposal justifies the proposed position limit, in part, through a comparison to options on certain broad-based index exchange-traded funds ("ETF(s)") that currently have a 1,000,000-contract position limit,<sup>65</sup> but

the Exchange's proposal focuses on AAPL, the Commission understands that some evidence suggests that, as a general matter, share trading volume may be unchanged or decrease after a stock split. See, e.g., Patrick Dennis, *Stock Splits and Liquidity: The Case of the Nasdaq-100 Index Tracking Stock*, the Financial Review, 38, 2003, 415-433; Thomas E. Copeland, *Liquidity Changes Following Stock Splits*, the Journal of Finance, 34, 1, 1979, 115-141.

<sup>62</sup> See Notice, 87 FR at 72569; see also *id.* at 72571 (stating that, while the ADV of AAPL stock is lower than it was prior to the 2020 stock split, it is still more than 50% of the pre-stock-split ADV, and that the ADV of AAPL options since the 2020 stock split is almost double the ADV prior to the stock split).

<sup>63</sup> Some hedging transactions and positions are exempt from position limits. See Exchange Rule 8.30, Interpretation and Policy .04(a).

<sup>64</sup> See, e.g., Exchange Rule 8.30, Interpretation and Policy .04.

<sup>65</sup> See Notice, 87 FR at 72571 (stating that AAPL stock ADV is currently approximately two to three

times higher than the ADV of IWM, EEM, FXI, and EFA, and that AAPL option ADV is currently anywhere from almost twice to more than ten times the ADV of options on IWM, EEM, FXI, and EFA).

does not provide sufficient information to explain why the underlying markets for the broad-based index ETFs are sufficiently comparable to the market for AAPL stock, or sufficient information to independently support a finding that the proposed position limit increase would not have an adverse market impact. Unlike an ETF, a stock, such as AAPL, 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.<sup>66</sup>

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

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with 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,<sup>67</sup> any request for an opportunity to make an oral presentation.<sup>68</sup>

<sup>66</sup> See Securities Exchange Act Release No. 93525 (November 4, 2021), 86 FR 62584, 62587 (November 10, 2021) (order approving File No. SR-Cboe-2021-029).

<sup>67</sup> 17 CFR 240.19b-4.

<sup>68</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 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).

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on its concerns expressed above regarding the proposal's consistency with the Act, and seeks commenters' views as to whether the proposed position and exercise limits for AAPL options could have an adverse market impact.

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by March 21, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 4, 2023. 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2022-057 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 No. SR-CBOE-2022-057. The 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 (<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, DC 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. 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 No. SR-CBOE-2022-057 and should be submitted by March 21, 2023. Rebuttal comments should be submitted by April 4, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>69</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-04032 Filed 2-27-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96963; File No. SR-NASDAQ-2022-079]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rules 4702(b)(14) and (b)(15) Concerning Dynamic M-ELO Holding Periods

February 22, 2023.

On December 21, 2022, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to replace the static holding period requirements for Midpoint Extended Life Orders and Midpoint Extended Life Orders Plus Continuous Book with dynamic holding periods. The proposed rule change was published for comment in the *Federal Register* on January 10, 2023.<sup>3</sup> The Commission received comments on the proposed rule change.<sup>4</sup>

Section 19(b)(2) of the Act <sup>5</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may

designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 24, 2023. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designates April 10, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NASDAQ-2022-079).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-04031 Filed 2-27-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96966; File No. SR-NASDAQ-2023-004]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fees the Exchange Charges Companies Seeking Review of a Delisting Determination, Public Reprimand Letter, or Written Denial of an Initial Listing Application

February 22, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 10, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, which Items have been prepared by

the Exchange. 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

The Exchange proposes to modify the fees the Exchange charges companies seeking review of a delisting determination, public reprimand letter, or written denial of an initial listing application.

\* \* \* \* \*

#### The Nasdaq Stock Market LLC Rules

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#### 5815. Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) Procedures for Requesting and Preparing for a Hearing.

(1)–(2) No changes.

(3) Fees.

Within 15 calendar days of the date of the Staff Delisting Determination, Public Reprimand Letter, or written denial of an initial listing application, the Company must submit a hearing fee of [\$10,000] \$20,000. *However, if the hearing request relates to a Staff Delisting Determination dated on or before February 10, 2023, the Company must submit a hearing fee of \$10,000.*

(4)–(6) No changes.

(b)–(d) No changes.

#### 5820. Appeal to the Nasdaq Listing and Hearing Review Council

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This Rule 5820 describes the procedures applicable to appeals and calls for review.

(a) Procedure for Requesting Appeal.

A Company may appeal any Panel Decision to the Listing Council by submitting a written request for appeal and a fee of [\$10,000] \$15,000 to the Nasdaq Office of Appeals and Review within 15 calendar days of the date of the Panel Decision. *However, if the appeal relates to a Panel Decision dated*

<sup>69</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 92844 (January 4, 2023), 88 FR 1438.

<sup>4</sup> All comments received by the Commission on the proposed rule change are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nasdaq-2022-079/srnasdaq2022079.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.