

**RAILROAD RETIREMENT BOARD****Sunshine Act Meetings**

**TIME AND DATE:** 10 a.m., August 16, 2023.

**PLACE:** Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to [SecretarytotheBoard@rrb.gov](mailto:SecretarytotheBoard@rrb.gov).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

- Office of Legislative Affairs—Recent Briefings and Appropriations

**CONTACT PERSON FOR MORE INFORMATION:** Stephanie Hillyard, Secretary to the Board, (312) 751-4920.

(Authority 5 U.S.C. 552b)

Dated: August 4, 2023.

**Stephanie Hillyard,**  
Secretary to the Board.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-98044; File No. SR-CBOE-2023-036]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow Certain Flexible Exchange Equity Options To Be Cash Settled**

August 2, 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 August 1, 2023, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, 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 amend Rules 4.21 and 8.35 related to Flexible Exchange (“FLEX”) Options. The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/>

[CBOELegalRegulatoryHome.aspx](http://www.cboe.com/AboutCBOE/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

**II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

The Exchange proposes to amend Rules 4.21 and 8.35 related to FLEX Options. FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options. The Exchange proposes to amend Rule 4.21 to allow for cash settlement of certain FLEX Equity Options.<sup>3</sup> Generally, FLEX Equity Options are settled by physical delivery of the underlying security,<sup>4</sup> while all FLEX Index Options are currently settled by delivery in cash.<sup>5</sup> As proposed, FLEX Equity Options where the underlying security is an Exchange-Traded Fund (“ETF”) would be permitted to be settled by delivery in cash if the underlying security meets prescribed criteria. The Exchange notes that cash-settled FLEX ETF Options will be subject to the same trading rules and procedures that currently govern the trading of other FLEX Options on the Exchange, with the exception of the rules to accommodate the cash-settlement feature proposed in this rule filing.

To permit cash settlement of certain FLEX ETF Options, the Exchange proposes new subparagraph (ii) to Rule 4.21(b)(5)(A). Proposed Rule 4.21(b)(5)(A)(ii) would provide that the exercise settlement for a FLEX ETF

<sup>3</sup> A “FLEX Equity Option” is an option on a specified underlying equity security. See Cboe Options Rule 1.1.

<sup>4</sup> See Rule 4.21(b)(5)(A)(i).

<sup>5</sup> See Rule 4.21(b)(5)(B). As discussed below, cash settlement is also permitted in the over-the-counter (“OTC”) market.

Option may be by physical delivery of the underlying ETF or by delivery in cash if the underlying security, measured over the prior six-month period, has an average daily notional value of \$500 million or more and a national average daily volume (“ADV”) of at least 4,680,000 shares.<sup>6</sup>

The Exchange also proposes in the introductory paragraph of Rule 4.21(b) that a FLEX Equity Option overlying an ETF (cash- or physically settled) may not be the same type (put or call) and may not have the same exercise style, expiration date, and exercise price as a non-FLEX Equity Option overlying the same ETF.<sup>7</sup> In other words, regardless of whether a FLEX Equity Option overlying an ETF is cash- or physically settled, at least one of the exercise style (*i.e.*, American-style or European-style), expiration date, and exercise price of that FLEX Option must differ from those terms of a non-FLEX Option overlying the same ETF in order to list such a FLEX Equity Option. For example, suppose a non-FLEX SPY option (which is physically settled, p.m.-settled and American-style) with a September expiration and exercise price of 475 is listed for trading. A FLEX Trader could not submit an order to trade a FLEX SPY option (which is p.m.-settled) that is cash-settled (or physically settled) and American-style with a September expiration and exercise price of 475.

In addition, the Exchange proposes new subparagraph (a) to Rule 4.21(b)(5)(A)(ii), which would provide that the Exchange will determine bi-annually the underlying ETFs that satisfy the notional value and trading volume requirements in proposed Rule 4.21(b)(5)(A)(ii) by using trading statistics for the previous six-months.<sup>8</sup> The proposed rule would further provide that the Exchange will permit cash settlement as a contract term on no

<sup>6</sup> See proposed Rule 4.21(b)(5)(A)(ii). The Exchange also proposes a corresponding nonsubstantive amendment to Rule 4.21(b)(5)(A)(i) and a nonsubstantive amendment to Rule 4.21 to renumber current Rule 4.21(b)(5)(A)(ii) as new Rule 4.21(b)(5)(A)(iii).

<sup>7</sup> All non-FLEX Equity Options (including on ETFs) are physically settled. Note all FLEX and non-FLEX Equity Options (including ETFs) are p.m.-settled.

<sup>8</sup> See proposed Rule 4.21(b)(5)(A)(ii)(a). The Exchange will announce the implementation date of the proposed rule change via Exchange Notice. The Exchange plans to conduct the bi-annual review on January 1 and July 1 of each year. The results of the bi-annual review will be announced via Exchange Notice and any new securities that qualify would be permitted to have cash settlement as a contract term beginning on February 1 and August 1 of each year. If the Exchange initially begins listing cash-settled FLEX Options on a different date (*e.g.*, September 1), it would initially list securities that qualified as of the last bi-annual review (*e.g.*, the one conducted on July 1).

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

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