Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 009
Amendment No. (req. for Amendments *) 1

Filing by Cboe BYX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☐ Amendment * ☑ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Matthew Last Name * Iwamaye

Title * VP, Associate General Counsel

E-mail * miwamaye@cboe.com

Telephone * (732) 687-9355 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Cboe BYX Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 09/18/2024

By Matthew Iwamaye
(Name *)

(Title *) VP, Associate General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Matthew Iwamaye Date: 2024.09.18 15:08:41 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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BYX-24-009 19b-4 (MTP For Periodic

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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BYX-24-009 Exhibit 1 (MTP for Perioc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐ Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

☐ Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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BYX-24-009 (Rule 11.25(e) - MTP for I

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Rules of Cboe BYX Exchange, Inc.

* * * * *

Rule 11.25. Periodic Auctions

(a) – (d) (No change.)

(e) *Priority and Execution of Orders.* Periodic Auction Orders and Continuous Book Orders that are executable at the end of the Periodic Auction Period are executed at the Periodic Auction Price determined pursuant to Rule 11.25(d), as follows: First, any displayed Continuous Book Orders that are executable at the Periodic Auction Price are executed in price/time priority. Second, any Periodic Auction Orders that are executable at the Periodic Auction Price are executed in size/time priority, beginning with the largest order. Finally, any non-displayed Continuous Book Orders that are executable at the Periodic Auction Price are executed as provided in Rule 11.9(a)(2)(B). [All Match Trade Prevention modifiers, as defined in Rule 11.9(f), will be ignored as it relates to executions occurring during a Periodic Auction.] If a Periodic Auction is not already in progress, and a Periodic Auction Order or Continuous Book Order with an MTP modifier would, upon entry, either execute immediately or initiate a Periodic Auction, the System will apply Match Trade Prevention as described in Rule 11.9(f), and any Periodic Auction Orders or Continuous Book Orders designated with a Match Trade Prevention modifier (as defined in Rule 11.9(f)(1)-(5)) will not execute against a resting opposite side Periodic Auction Order or Continuous Book Order designated with a Match Trade Prevention modifier, originating from the same Unique Identifier (as defined in Rule 11.9(f)).

(1) Provided, however, even where a Periodic Auction Order or Continuous Book Order are designated with an MTP modifier, the System will either temporarily bypass the MTP modifier or cancel an inbound Periodic Auction Order in the following scenarios:

(A) If a Periodic Auction is in progress and an inbound Periodic Auction Order (e.g. Order 4) would result in the cancelation of a resting Continuous Book Order (Order 1) that is designated with a MTP modifier originating from same Unique Identifier, or in the cancelation of the inbound Periodic Auction Order itself (e.g., Order 4), then the System will temporarily bypass the MTP modifiers on both Order 1 and Order 4, and Order 4 will join the Periodic Auction. If Order 1 did not execute in the Continuous Book while the Periodic Auction was in progress, then Order 1 could potentially execute with Order 4, provided that Order 1 has priority as determined by Rule 11.25(d). The bypassing of the MTP modifiers in this scenario occurs only upon entry of Order 4 in order to prevent the cancelation of orders in situations where an immediate execution would not occur; or

(B) If a Periodic Auction is in progress, and an inbound Periodic Auction Order is designated with an MTP modifier, and such order matches against a resting contra-side Periodic Auction Order, that is participating in the Periodic Auction, originating from the same Unique Identifier that is also designated with an MTP modifier, then the inbound Periodic Auction Order will be canceled; or

(C) If a Periodic Auction is in progress (e.g., Order 1 (Firm B) and Order 2 (Firm C)), and an inbound Continuous Book Order (e.g. Firm B's Order 3) with a MTP modifier would result in the cancelation of an order participating in the Periodic Auction or the Continuous Book Order itself (e.g., Firm B's Order 3), that is designated with an MTP modifier originating from the same Unique Identifier (e.g. Firm B's Order 1), then the System will temporarily bypass Order 3's MTP modifier and Order 3 will post to Continuous Book. If Order 3 did not execute in the Continuous Book while the Periodic Auction was in progress, then Order 3 could potentially execute with Order 1, provided that Order 3 has priority as determined by Rule 11.25(d). The bypassing of MTP modifiers in this scenario occurs only upon entry of Order 3 to prevent the cancelation of orders (e.g., Order 1) in situations where an immediate execution would not occur.

(2) In the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could either trade or initiate a Periodic Auction with a contra-side Periodic Auction Order or Continuous Book Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply MTP regardless of whether the Minimum Quantity is satisfied.

* * * * *

Item 1. Text of the Proposed Rule Change

(a) Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") proposes to amend Exchange Rule 11.25(e) ("Priority and Execution of Orders") to allow (1) Users to utilize the Exchange's Match Trade Prevention ("MTP") functionality when entering Periodic Auction Orders onto the Exchange for execution and (2) add new rule text providing that in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could either trade with a contra-side Continuous Book Order or initiate a Periodic Auction with a contra-side Periodic Auction Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply MTP regardless of whether the Minimum Quantity is satisfied. This Amendment No. 1 replaces SR-CboeBYX-2024-009 ("Initial Filing")[1] as originally filed and supersedes the Initial Filing its entirety. The text of the proposed rule changes is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on September 18, 2024. The Exchange will implement the proposed rule change no later than 180 days after the approval date of this rule filing and will announce the implementation date to Members via Exchange Notice.

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[1] See Securities Exchange Act Release No. 100337 (June 14, 2024), 89 FR 52148 (June 21, 2024) (SR-CboeBYX-2024-009).

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Matthew Iwamaye, Vice President, Associate General Counsel, (732) 687-9355, Cboe BZX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to (1) amend Rule 11.25(e) to allow Users[2] to utilize the Exchange's Match Trade Prevention ("MTP") functionality when entering Periodic Auction Orders[3] onto the Exchange for execution,[4] and (2) add new rule text providing that in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could either trade with a contra-side Continuous Book Order or initiate a Periodic Auction with a contra-side Periodic Auction Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply MTP regardless of whether the Minimum Quantity is satisfied.

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2 The term "User" shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. See Rule 1.5(cc), definition of "User".

3 The term "Periodic Auction Order" shall mean a "Periodic Auction Only Order" or "Periodic Auction Eligible Order" as those terms are defined in Rules 11.25(b)(1)-(2), and the term "Periodic Auction Book" shall mean the System's electronic file of such Periodic Auction Orders. See Rule 11.25(a)(6). Hereinafter, a Periodic Auction Only Order may be referred to as a "PAO Order", and a Periodic Auction Eligible Order may be referred to as a, "PAE Order".

4 The Exchange plans to implement the proposed rule change on a date that will be circulated in a notice from the Cboe Trade Desk to all Members.

By way of background, MTP is an existing process[5] through which Users can prevent their incoming orders designated with a MTP modifier from executing against a resting opposite side order also designated with an MTP modifier and originating from the same market participant identifier ("MPID"), Exchange Member identifier, trading group identifier, Exchange Sponsored Participant identifier, affiliate identifier, or Multiple Access identifier (any such identifier, a "Unique Identifier").[6] Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. MTP is a valuable tool for Exchange Users because it allows them to better manage order flow and prevent undesirable trading activity such as wash sales[7] or self-trades[8] that may occur because of the high-speed nature of trading in today's marketplace.

Currently, Rule 11.25(e) states that all MTP modifiers (as defined in Rule 11.9(f)(1)-(5)) for Periodic Auction Orders will be ignored for executions occurring during a Periodic Auction. As part of the Exchange's prior Periodic Auction Rule

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5 The Exchange notes that previous proposals extending the functionality of MTP to other trading scenarios were effective upon filing with the Commission. See generally Securities and Exchange Act Release No. 53429 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR-EDGX-2010-18); Securities and Exchange Act Release No. 34-96292 (November 10, 20220), 87 FR 68766 (November 16, 2022) (SR-CboeEDGX-2022-048).

6 See Rule 11.9(f) – Match Trade Prevention ("MTP") Modifiers.

7 A "wash sale" is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, e.g., 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) ("Other Trading Practices").

8 Self-trades are "transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security." FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02, available at: https://www.finra.org/rules-guidance/rulebooks/finra-rules/5210.

filings,[9] the Exchange reasoned that MTP is mainly designed for use on the Continuous Book,[10] and use of MTP for Periodic Eligible Orders[11] and Periodic Auction Only Orders[12] (collectively, Periodic Auction Orders) may complicate the execution of an auction that requires the pooling and matching of multiple orders against other orders at the Periodic Auction Book Price.[13] Based on User feedback, however, Users of Periodic Auctions desire the ability to utilize MTP for their Periodic Auction Orders (when the Periodic Auction is not in progress) to help them manage their order flow and prevent undesirable executions against themselves. Users are not asking to utilize MTP for their Periodic Auction Orders when a Periodic Auction is occurring.

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9 See Securities and Exchange Act Release No 34-91423 (March 26, 2021), 86 FR 17230 (April 1, 2021) (SR-CboeBYX-2020-021).

10 The term "Continuous Book" shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term "Continuous Book" shall mean the System's electronic file of such Continuous Book Orders. See Rule 11.25(a)(2), definition of "Continuous Book Order".

11 "A 'Periodic Auction Eligible Order' is a non-displayed limit order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible…Periodic Auction Eligible Orders will be ranked as Non-Displayed Limit Orders consistent with the priority of order outlined in Rule 11.12(a). An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book. Incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a). Periodic Auction Eligible Orders will not trade on the Continuous Book during a Periodic Auction Period in the security." See 11.25(b)(2).

12 "A 'Periodic Auction Only Order' is a non-displayed limit order entered with an instruction to participate solely in Periodic Auctions pursuant to this Rule 11.25. Periodic Auction Only Orders are not eligible for executions on the Continuous Book." See Rule 11.25(b)(1). Hereinafter, Periodic Auction Only Orders as, "PAO Orders."

13 "The term 'Periodic Auction Book Price' shall mean the price within the Collar Price Range at which the most shares from the Periodic Auction Book would match. In the event of a volume-based tied at multiple price-levels, the Periodic Auction Book Price will be the price that results in the minimum total imbalance. In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Book Price will be the price closest to the Volume Based Tie Breaker. The Periodic Auction Book Price will be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Book Price." See 11.25(a)(5), definition of "Periodic Auction Book Price".

Accordingly, the Exchange now seeks to allow Users to utilize MTP when entering Periodic Auction Orders onto the Exchange.[14] Importantly, allowing Users to designate Periodic Auction Orders with MTP modifiers will not impact how the Periodic Auction itself is conducted, and the proposed MTP functionality will not prevent the completion of a Periodic Auction once it has been initiated.

As proposed, however, there will be instances where the Exchange has elected to temporarily bypass a User's MTP instruction. These instances are demonstrated in Examples 5 and 8, below, and generally involve scenarios where (i) a Periodic Auction is in progress, and the temporary bypassing of the MTP modifier on Firm A's inbound Continuous Book Order is necessary to prevent the cancelation of Firm A's Periodic Auction Order with an MTP modifier that is currently participating in the Periodic Auction, or (ii) a Periodic Auction is in progress, and the bypassing of Firm A's MTP modifier on its inbound Periodic Auction Order is necessary to prevent – depending on the relevant MTP instruction –the cancelation of Firm A's resting Continuous Book Order, or the cancelation of the inbound Periodic Auction Order itself, preventing such order from participating in the Periodic Auction.

In each instance, the temporary bypassing of the inbound order's MTP modifier is intended to prevent the cancelation of orders where an immediate execution would not occur. Importantly, the bypassing of an inbound order's MTP modifier is *temporary* and occurs only upon entry of the inbound order. The Exchange believes this behavior is

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[14] The Exchange notes that previous proposals extending the functionality of MTP to other trading scenarios were effective upon filing with the Commission. See Securities and Exchange Act Release No. 53429 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR-EDGX-2010-18); see also Securities and Exchange Act Release No. 34-96292 (November 10, 20220), 87 FR 68766 (November 16, 2022) (SR-CboeEDGX-2022-048).

necessary and appropriate to help strike a responsible balance between providing Users with an optional risk tool to prevent undesirable executions and ensuring that Periodic Auctions will complete. Moreover, the current architecture and design of Exchange Systems require that MTP for Periodic Auctions function as described.

Additionally, the Exchange proposes to add new rule text providing that in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could either trade with a contra-side Continuous Book Order or initiate a Periodic Auction with a contra-side Periodic Auction Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply MTP regardless of whether the Minimum Quantity is satisfied.

To illustrate how Periodic Auction Orders designated with MTP modifiers will behave, the Exchange offers the following examples:[15]

Example 1: Two PAE Orders matching – MTP Action Occurs:

Example 1 illustrates how MTP will operate when Firm A's resting PAE Order with an MTP modifier of MTP Cancel Oldest ("MCO"),[16] interacts with a subsequent

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15 For each example, assume that all trade prices are within the National Best Bid or National Best Offer ("NBBO"). Additionally, note that while Exchange Rule 11.9(f) provides for various MTP modifiers - including Cancel Newest, Cancel Oldest, Decrement and Cancel, Cancel Both, and Cancel Smallest – the Examples provided in this rule filing only demonstrate how certain of these modifiers will operate. Including examples for every possible MTP scenario would be difficult to efficiently demonstrate in a rule filing. Nevertheless, the MTP modifier exemplified in the provided Examples is not critical to understanding how the proposed functionality will operate because as demonstrated below, when a Periodic Auction is not in progress MTP will operate as it does today, and when a Periodic Auction is in progress, the System will, as described below, temporarily bypass an order's MTP instruction.

16 MTP Cancel Oldest ("MCO") is defined as "[a]n incoming order marked with the "MCO" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The resting order marked with the MCO modifier will be cancelled back to the originating User(s). The incoming order marked with the MCO modifier will remain on the BYX Book. See Rule 11.9(f)(2).

inbound PAE Order submitted by Firm A with an MTP modifier of MCO and a Periodic Auction is not in progress. Here, MTP operates in the same manner[17] as it would for Continuous Book Orders; i.e., because Firm A's inbound PAE Order was entered with an MTP modifier of MCO, the System will cancel Firm A's Order 1,[18] which is the "oldest" contra-side Firm A order that is marketable versus Firm A's inbound PAE Order to sell. This MTP action prevents Firm A from potentially trading with itself either on the Continuous Book or during a Periodic Auction.[19]

- *Order 1 – Resting (Firm A): PAE Order (MTP = Cancel Oldest), Buy 100 @ 1.00*
- *Order 2 – Inbound order (Firm A): PAE Order (MTP = Cancel Oldest), Sell 200 @ 1.00*
- *Result: Order 1 is canceled.*

Example 2: Two PAO Orders matching – MTP Action Occurs:

Example 2 illustrates how MTP will operate when Firm A's resting PAO Order with an MTP Modifier of MCN, interacts with Firm A's inbound PAO Order with an

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17 See Rule 11.9(f) - Match Trade Prevention ("MTP") Modifiers. Any incoming order designated with an MTP modifier will be prevented from executing against a resting opposite side order also designated with an MTP modifier and originating from the same market participant identifier ("MPID"), Exchange Member identifiers, trading group identifier, Exchange Sponsored Participant identifier, affiliate identifier, or Multiple Access identifier (any such identifier, a "Unique Identifier"). The order canceled by the System will depend on the incoming order's MTP modifier, as described in 11.9(f)(1)-(5).

18 See Rule 11.9(f)(2).

19 As MTP action is controlled by the incoming order ("…the MTP modifier on the incoming order controls the interaction between two orders marked with MTP modifiers." See Rule 11.21(g)), Firm A's Order 1 was correctly cancelled in this situation. Note, however, that if Firm A's Order 2 had included an MTP modifier of MTP Cancel Newest ("MCN"), the result would simply be that Order 2 is instead canceled. MTP Cancel Newest ("MCN") is defined as "[a]n incoming order marked with the "MCN" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The incoming order marked with the MCN modifier will be cancelled back to the originating User(s). The resting order marked with an MTP modifier will remain on the BYX Book." See Rule 11.9(f)(1). Similarly, if we changed Order 1's MTP Modifier to Cancel Newest and Order 2 remained as MTP Cancel Oldest, Order 1 would be canceled as Order 2's instruction controls MTP action.

MCN modifier, and a Periodic Auction is not in progress. Here, MTP operates in the same manner[20] as it would for Continuous Book Orders; i.e., because Firm A has designated its inbound Order 2 with MCN, the System will cancel Firm A's Order 2,[21] which is Firm's A's newest contra-side order that is marketable versus Firm A's resting Order 1. This MTP action prevents Firm A from potentially trading with itself during a Periodic Auction.

- *Order 1 – Resting (Firm A): PAO Order (MTP = Cancel Newest), Buy 100 @ 1.00*
- *Order 2 – Inbound order (Firm A): PAO Order (MTP = Cancel Newest), Sell 200 @ 1.00*
- *Result: Order 2 is canceled*

For the sake of clarity, the Exchange also wishes to explain what would happen to Order 2 if a Periodic Auction was in progress when Order 2 arrived.[22] To address this scenario, assume an inbound Periodic Auction Order from Firm B – Order X - arrived between Order 1 and Order 2, and initiated a Periodic Auction with Order 1. Here, when Order 2 arrives, and the Periodic Auction is in progress, Order 2 would still be canceled. When a Periodic Auction is in progress, and an inbound Periodic Auction Order is designated with an MTP modifier, and such order matches against a resting contra-side Periodic Auction Order originating from the same Unique Identifier that is also designated with a MTP modifier, the inbound Periodic Auction Order will be canceled.

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20 Supra note 17.

21 See Rule 11.9(f)(1).

22 This iteration of Example 2 demonstrates the functionality described in proposed Rule 11.25(e)(1)(B).

This behavior will enable Users to better manage their order flow and prevent undesirable executions in Periodic Auctions, just as they do today for their Continuous Book orders.

Example 3: Incoming PAE Order matching against a PAO Order – MTP Action Occurs:

Example 3 illustrates how MTP will operate when Firm A's resting PAO Order with a MTP modifier of MTP Cancel Smallest ("MCS"),[23] interacts with Firm A's inbound PAE Order with an MCS modifier, and an auction is not in progress. Here, MTP operates in the same manner[24] as it would for Continuous Book Orders; i.e., because Firm A has designated its orders with the MTP modifier, MCS, the System will cancel Firm A's Order 1, which is Firm A's small quantity order.[25] This MTP action prevents Firm A from potentially trading with itself during a Periodic Auction.

- *Order 1 – Resting (Firm A): PAO Order (MTP = Cancel Smallest), Buy 100 @ 1.00*
- *Order 2 – Inbound order (Firm A): PAE Order (MTP = Cancel Smallest), Sell 200 @ 1.00*
- *Result: Order 1 is canceled.*

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23 MTP Cancel Smallest ("MCS") is defined as "[a]n incoming order marked with the "MCS" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled back to the originating User(s). If the orders are not equivalent in size, the smaller of the two orders will be cancelled back to the originating User and the larger order will remain on the book. See Rule 11.9(f)(5).

24 Supra note 17.

25 See Rule 11.9(f)(5).

Example 4: Incoming PAE Order matching against a Continuous Book Order – MTP Action Occurs:

Example 4 illustrates how MTP will operate when Firm A's incoming PAE Order with a MCS modifier, matches against Firm A's resting Continuous Book Order, and a Periodic Auction is not in progress. Here, MTP operates in the same manner[26] as it would for Continuous Book Orders; i.e., Firm's A's Order 1 is canceled[27] based on Firm A's Order 2 MCS modifier because Order 1 is smaller than Order 2. Because a PAE Order is eligible to receive an execution on the Continuous Book,[28] and both Order 1 and Order 2 are designated with MTP modifiers, the System correctly cancels Order 1, thereby preventing Firm A from potentially trading with itself on the Continuous Book.

- *Order 1 – Resting (Firm A): Continuous Book order (MTP = Cancel Smallest), Buy 100 @ 1.00*
- *Order 2 – Inbound order (Firm A): PAE Order (MTP = Cancel Smallest), Sell 200 @ 1.00*
- *Result: Order 1 is canceled.*

Example 5 - Incoming PAE Order matching against a Continuous Book Order when a Periodic Auction is in Progress – No MTP Action Occurs:

For the sake of clarity, the Exchange wishes to describe what would happen to Order 1 if a Periodic Auction is in progress and an inbound Periodic Auction Order

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26 Supra note 17.

27 Supra note 29.

28 Supra note 12.

arrives (e.g., Order 4). [29] First, note that a Continuous Book Order cannot initiate a Periodic Auction.[30] Therefore, to initiate a Periodic Auction in this example, assume that two Periodic Auction Orders arrived, from Firm B and Firm C, prior to Order 1 and Order 4 – e.g., Order X (Firm B) and Order Y (Firm C). Further assume that Order X and Order Y are marketable versus each other and initiated a Periodic Auction. Additionally, assume that Order 1, a Continuous Book Order is entered prior to Order 4, and that Order 1 and Order 4 are designated with MTP modifiers originating from the same Unique Identifiers. Upon the arrival of Order 4, a Periodic Auction Order, the System will temporarily bypass[31] Order 1's and Order 4's MTP instruction, and Order 4 will join the Periodic Auction. Order 1 will remain on the Book. If Order 1 did not execute in the Continuous Book while the Periodic Auction was in progress, then Order 1 could potentially execute with Order 4, provided that Order 1 has priority as determined by Rule 11.25(f). The bypassing of the MTP modifiers in this scenario occurs only upon entry of Order 4 to prevent the cancelation of orders in situations where an immediate execution would not occur.

- *NBBO: 10.00 x 10.05*
- *Order X (Firm B): Buy 100 @ 10.03 – Midpoint Peg PAO*

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29 This iteration of Example 4 demonstrates the proposed functionality described in proposed Rule 11.25(e)(1)(A).

30 See Rule 11.25(c), Initiation and Publication of Periodic Auction Information, "A Periodic Auction will be initiated in a security during Regular Trading Hours when one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell pursuant to this Rule 11.25."

31 The Exchange notes that the bypassing of the MTP modifiers in this scenario is *temporary*. Should the Periodic Auction complete and Order 1 does not have the opportunity to trade with Order 4 in the Periodic Auction, then Order 1 would remain posted on the Continuous Book with its MTP modifier and be afforded the protections of MTP.

- *Order Y (Firm C): Sell 100 @ 10.02 – Midpoint Peg PAO*
- *Auction is initiated between Order X and Order Y*
- *Order 1 (Firm A): Buy 100 @ 10.03 – Midpoint Peg Continuous Book Order – MTP=Cancel Oldest*
- *Order 4 (Firm A): Sell 100 @ 10.02 – Midpoint Peg PAE – MTP=Cancel Oldest*
- *MTP would be bypassed when Order 4 is entered and Order 4 would join the Periodic Auction in progress.*
- *Result: Order X and Order Y trade 100 @ 10.025 in Periodic Auction. Order 1 and Order 2 trade 100 @ 10.025 in Periodic Auction*

Here, even though Order 1 and Order 4 both originated from Firm A, and are designated with an MTP modifier, Order 1 is not canceled upon Order 4's arrival because Order 1 is a Continuous Book Order that may or may not end up trading with Order 4 once the Periodic Auction is complete. Because Order 1 could receive an execution on the Continuous Book while the Periodic Auction is in progress, the Exchange temporarily bypasses Order 1's MTP instruction upon Order 4's arrival to prevent Order 1 from forfeiting a Continuous Book execution based on a *possibility* that Order 1 would be executable versus Order 4 at the completion of the Periodic Auction.

Example 6: Incoming Continuous Book order matching against a PAO Order – No MTP Action occurs:

Example 6 illustrates how MTP will operate when Firm A's incoming Continuous Book Order with an MCS modifier matches with Firm A's resting PAO Order with an MCS modifier, and a Periodic Auction is *not* in progress. Here, MTP will not be applied

because PAO Orders and Continuous Book Orders are not permitted to trade with one another.[32] As such, MTP is not needed to prevent Firm A's Order 1 from trading with Firm A's Order 2 and as such, Order 2 is permitted to post to the BYX Book.

- *Order 1 – Resting (Firm A): PAO Order (MTP = Cancel Smallest), Buy 100 @ 1.00*
- *Order 2 – Inbound order (Firm A): Continuous Book order (MTP = Cancel Smallest), Sell 200 @ 1.00*
- *Result: Order 2 will rest in the Continuous Book, and there is no MTP action.*

Example 7: Incoming order is canceled due to "Periodic Auction in Progress" involving a PAO Order:

Example 7 illustrates how an incoming order with a MTP modifier is canceled because a Periodic Auction is in progress.[33] Here, Firm A's inbound Order 2, a PAE Order to sell 200 @ 1.00, with a MTP modifier of MTP Cancel Both ("MCB"),[34] immediately starts an auction with Firm B's Order 1, a resting PAO Order to Buy 100 @ 1.00, that is participating in the Periodic Auction. While the Periodic Auction is in progress, Firm A enters Order 3, a PAE Order to Buy 200 @ 1.00 with an MCB instruction.

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32 Supra note 14 ("Periodic Auction Only Orders are not eligible for execution on the Continuous Book.").

33 Example 7 demonstrates the proposed functionality described in 11.25(e)(1)(B).)(1)(B).

34 MTP Cancel Both ("MCB") is defined as "[a]n incoming order marketed with the "MCB" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User(s). See Rule 11.9(f)(4). demonstrates the proposed functionality described in proposed Rule 11.25(e

The entry of Order 3 presents a scenario in which the Exchange seeks to implement MTP functionality that behaves differently than demonstrated in each of the preceding five examples. Specifically, if a Periodic Auction is in progress, and an inbound Periodic Auction is designated with an MTP modifier, and such order matches against a resting contra-side Periodic Auction Order, that is participating in the Periodic Auction, originating from the same Unique Identifier that is also designated with an MTP modifier, then the Periodic Auction Order will be cancelled. Importantly, this behavior is necessary to help ensure that once a Periodic Auction is initiated it will be completed.

Applying this proposed behavior to Example 7's fact pattern, when Firm A's Order 3, a PAE Order with an MCB modifier is entered after Periodic Auction has been initiated and Order 3 subsequently matches with Firm A's Order 2 (a PAE Order with a MCB modifier), Order 3 will be cancelled. Without this proposed behavior, Order 3 would otherwise be included in the Periodic Auction, and its MTP Cancel Both instruction would result in the cancelation of Order 2,[35] preventing the Periodic Auction from completing, and denying Firm A an execution it would otherwise have expected to receive. The Exchange believes that this proposed behavior appropriately balances the dual goals of ensuring that Periodic Auctions complete once initiated and providing Members the ability to utilize MTP for their Periodic Auction Orders in each of the scenarios described in the preceding five examples.[36]

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35 See Rule 11.9(f)(4).

36 The Exchange notes that the proposed MTP functionality is intended as a supplementary risk tool that Members may voluntarily use to help them manage their risk and compliance with applicable securities rules. As registered broker-dealers, Members are ultimately responsible for compliance with applicable securities rules, and should not rely on the proposed functionality as a sole means of compliance. As such, while the proposed MTP functionality will, in some instances, operate differently than it does outside of the context of Periodic Auctions, its design as a supplementary risk tool will still serve to benefit Members that choose to utilize this tool.

- *Order 1 – Resting (Firm B): PAO Order, Buy 100 @ 1.00*
- *Order 2 – Inbound Order (Firm A): PAE Order (MTP = Cancel Both[37]), Sell 200 @ 1.00*
- *Action: Order 2 initiates a Periodic Auction with Order 1*
- *Order 3 – Inbound order (Firm A): PAE Order (MTP = Cancel Both), Buy 200 @ 1.00*
- *Result: Order 3 is canceled in order to prevent Order 3 participating in the Periodic Auction, canceling Order 2, and disrupting the completion of the Periodic Auction.*

Example 8: Incoming order has MTP temporarily bypassed in a Periodic Auction:

Example 8 is another example of MTP being temporarily bypasses when a Periodic Auction is in progress, despite the Member adding MTP instructions to their Periodic Auction Order(s) and Continuous Book Order(s). Here, Firm B's Order 2, a PAE Order with an MCO modifier, initiates a Periodic Auction upon entry with Firm A's Order 1, a resting PAE Order with an MCO modifier. Firm A subsequently enters a Continuous Book Order (Hidden) with an MCO modifier. Here, the Exchange will temporarily bypass[38] an inbound Continuous Book Order's MTP modifier when a Periodic Auction is in progress, and such Continuous Book Order would post to the

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37 MTP Cancel Both is defined as "[a]n incoming order marked with the "MCB" modifier will not execute against the opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User (s). See Rule 11.9(f)(4).

38 The Exchange notes that the bypassing of the Continuous Book Order's MTP modifier in this scenario is *temporary*. Should the Periodic Auction complete and Order 3 does not have the opportunity to trade with Order 1 in the Periodic Auction, then Order 3 would remain posted on the Continuous Book with its MTP modifier and be afforded the protections of MTP.

Continuous Book, and be eligible to participate in the Periodic Auction, or alternatively receive an execution from the Continuous Book. In such instance, applying the Continuous Book Order's MTP modifier and canceling such order based on the *potential* that the order could trade in the Periodic Auction, would be unnecessarily prohibitive. By posting to the Continuous Book, such order could still execute without violating its MTP instructions.

Based on the proposed MTP functionality, Order 3 will post to the BYX Book prior to the end of the Periodic Auction as the MTP modifier is temporarily bypassed.[39] Order 1 and Order 2 will trade in the Periodic Auction for 500 shares @ 10.02. After trading with Order 2, Order 1 still has 500 shares remaining. Prior to the end of the Periodic Auction, Order 3 will be matched in the Periodic Auction and trade 200 shares with Order 1 @ 10.02, bypassing the MCO modifier assigned by Firm A to its Order 1 and Order 3.

The Exchange believes that temporarily bypassing an MTP modifier in this scenario is necessary to ensure that a Periodic Auction completes once it is initiated.[40] Additionally, bypassing Order 3's MTP instruction is also necessary to avoid disrupting trading in the Continuous Book, because Order 3 could perhaps post and trade while the Periodic Auction is in progress. The Exchange therefore believes cancelling Order 3 based on its *potential* to trade in the Periodic Auction would unnecessarily prevent a Member from potentially receiving a Continuous Book execution. While the proposed

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[39] The Exchange notes that the bypassing of the Continuous Book Order's MTP modifier in this scenario is *temporary*. Should the Periodic Auction complete and Order 3 does not have the opportunity to trade with Order 1 in the Periodic Auction, then Order 3 would remain posted on the Continuous Book with its MTP modifier and be afforded the protections of MTP.

[40] Example 8 demonstrates the proposed functionality described in proposed Rule 11.25(e)(1)(C).

MTP functionality will explicitly and automatically temporarily bypass a Member's MTP modifier when the scenario described in Example 8 is present, the Exchange believes that such behavior appropriately balances the dual goals of ensuring that Periodic Auctions operate as designed (i.e., once initiated they will complete, executing the maximum number of shares), and still provides Members the ability to utilize MTP for their Periodic Auction Orders in majority of instances described in each of the preceding six examples.[41]

- *Order 1 – Firm A: PAE Order (MTP = Cancel Oldest), Buy 1000 @ 10.02*
- *Order 2 – Firm B: PAE Order (MTP = Cancel Oldest), Sell 500, @ 10.02*
- *Action: Order 2 initiates an auction with Order 1, because Firm A and Firm B are different entities.*
- *Order 3 – Inbound order (Firm A): Continuous Book Order (MTP = Cancel Oldest), Sell 200 @ 10.02*
- *Action: MTP modifier on Order 3 is temporarily bypassed*
- *Result: Order 3 posts to the BYX Book prior to the end of the auction; Order 1 and Order 2 trade in the Periodic Auction for 500 @ 10.02; Order 3 then trades 200 @ 10.02 with Order 1 (bypassing MTP).*

Example 9: Minimum Quantity Order Unable to be Filled (PAE vs. PAE)[42]

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41 The Exchange notes that the proposed MTP functionality is intended as a supplementary risk tool that Members may voluntarily use to help them manage their risk and compliance with applicable securities rules. As registered broker-dealers, Members are ultimately responsible for compliance with applicable securities rules, and should not rely on the proposed functionality as a sole means of compliance. As such, while the proposed MTP functionality will, in some instances, operate differently than it does outside of the context of Periodic Auctions, its design as a supplementary risk tool will still serve to benefit Members that choose to utilize this tool.

42 Example 9 demonstrates the proposed functionality described in 11.25(e)(2).

Example 9 illustrates how the System will ignore the Minimum Quantity instruction on a Periodic Auction Order that is also designated with an MTP modifier, when the Minimum Quantity cannot be satisfied. Specifically, in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could initiate a Periodic Auction with a contra-side Periodic Auction Order or trade with a Continuous Book Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply ignore Order 1's Minimum Quantity instruction, and apply MTP, regardless of whether the Minimum Quantity is satisfied. Here, upon entry of Order 2, the System will ignore Order 1's Minimum Quantity instruction, and instead apply MTP, resulting in the cancelation of Order 1.

- *Order 1 (Firm A): Buy 1000 @ 10.02 – PAE – Min Quantity = 500 (MTP=any)*
- *Order 2 (Firm A): Sell 400 @ 10.02 – PAE order (MTP=Cancel Oldest)*
- *Result: Order 2 cannot initiate an auction with Order 1 due to the MIN quantity on Order 1. 'MIN' on Order 1 is ignored and Order 2 cancels Order 1. Order 2 posts to the book.*

Example 10: Minimum Quantity Order Able to be Filled (PAE vs. PAE)[43]

Example 10 illustrates how the System will ignore the Minimum Quantity instruction on a Periodic Auction Order that is also designated with a an MTP modifier, when the Minimum Quantity is satisfied. Here, even though the Minium Quantity for Order 1 can be satisfied by Order 2, the System will apply MTP resulting in the cancelation of Order 1.

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[43] Example 10 demonstrates the proposed functionality described in 11.25(e)(2)

- *Order 1 (Firm A): Buy 1000 @ 10.02 – PAE – Min Quantity = 500 (MTP = any)*
- *Order 2 (Firm 2): Sell 1000 @ 10.02 – PAE (MTP = Cancel Oldest)*
- *Result: The System applies MTP, and cancels Order 1*

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[44] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[45] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[46] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that its proposed MTP functionality is designed to promote the just and equitable principles of trade, and to protect investors and the public interest, by enabling Users to better prevent undesirable trading activity

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44 15 U.S.C. 78f(b).

45 15 U.S.C. 78f(b)(5).

46 Id.

such as wash sales or self-trades for not only their Continuous Book Orders, but their Periodic Auction Orders as well. Additionally, by providing Users with a supplemental risk tool that will better enable them to achieve compliance with applicable securities rules and regulations, the proposed rule change will help to further ensure that orders eligible for execution in the Periodic Auction indeed represent genuine trading interest from separate and distinct firms. While the proposed MTP functionality would not operate identically to MTP as it is used in non-Periodic Auction scenarios, the Exchange believes that its proposal strikes an appropriate balance between ensuring Users receive executions in the Periodic Auction and providing Users' the ability to utilize MTP in most trading situations involving Periodic Auctions. By making this clear to Users,[47] they will be able to anticipate how MTP modifiers will interact with their Periodic Auction Orders and mitigate any confusion that Users may have in using the proposed functionality.

Similarly, by making clear to Users that when they enter their Periodic Auction Orders as Minimum Quantity Orders, and designate them with an MTP instruction, and such Periodic Auction Orders attempt to execute versus contra-side Periodic Auction Orders or Continuous Book orders with a MTP modifier originating from the same Unique Identifier, that the Minimum Quantity instruction will not be enforced, Users will be better informed as to how MTP operates in conjunction with Minimum Quantity restrictions, and will be better able to manage their Periodic Auction Orders and when it

[47] In addition to codifying the proposed functionality, the Exchange will send out a Member notice that includes information about the proposed MTP functionality for Periodic Auctions.

may be sensible to enter Periodic Auction Orders with both a Minimum Quantity restriction and an MTP modifier.

Additionally, the Exchange believes that the proposed rule changes are designed to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Based on User feedback, the lack of MTP functionality for Periodic Auction Orders may discourage Users from entering Periodic Auction Orders because they do not have an automated way to systematically prevent undesirable executions resulting from orders originating from a User's algorithm or trading desk, or their related algorithms or trading desks. In this regard, the proposed rule changes may encourage Users to increase their Periodic Auction participation, thereby further enhancing the Periodic Auction liquidity pool and the ability of investors to execute larger orders that may otherwise be difficult to execute without market impact in the continuous market. Additionally, because Periodic Auctions are price-forming, the enhanced liquidity pools would indeed augment Periodic Auction's valuable price discovery function, which may be particularly helpful for investors when trading securities that typically trade with wider spreads.

Again, while the proposed MTP functionality may not apply a User's MTP modifiers in all instances, the Exchange as well as its Users believe that some level of MTP protection is more beneficial than completely foregoing MTP protection in its entirety. By making clear to Users how MTP for Periodic Auction Orders will operate, Users can better manage their use of MTP modifiers, and anticipate how their Periodic Auction Orders will behave. Similarly, while Periodic Auction Orders entered as Minimum Quantity Orders, as well as an MTP Modifier, will in certain circumstances

(discussed *supra*) cause the System to ignore a User's Minimum Quantity requirements and instead apply MTP, Users have indicated that they would prefer that MTP apply consistently so as to prevent undesirable wash sales.

Finally, the Exchange further believes that the proposed rule change does not unfairly discriminate amongst Users because the proposal will allow all Periodic Auction Users to utilize MTP just as all Users entering Continuous Book Orders may utilize MTP today. In this regard, the proposed amendment will avoid disparate treatment of Users. Furthermore, the bypassing or amending of MTP modifiers, as described in the Examples above, will apply equally to all Periodic Auction Users, regardless of their size.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. MTP is an optional functionality offered by the Exchange and Periodic Auction Users are free to decide whether to use MTP in their decision-making process when submitting Periodic Auction Orders to the Exchange.

Similarly, the Exchange does not believe that the proposed amendment poses a burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. Indeed, the proposed rule change is designed to increase competition by offering Periodic Auction Users the ability to better manage their order flow and prevent undesirable executions. In turn, Users may be further incentivized to send additional orders to BYX's Periodic Auction mechanism, thereby fostering competition amongst exchanges, as well as with off-exchange venues (e.g., alternative trading systems) where

Users that may otherwise utilized Periodic Auctions, typically seek to source block-sized liquidity.[48]

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Securities and Exchange Commission (the "Commission") action on the proposed rule change specified in Section 19(b)(2) of the Act.[49]

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) The Exchange requests that the Commission approve the proposed Amendment No. 1 on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it

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48 See "Trade Big with Cboe U.S. Periodic Auctions," available at: https://www.cboe.com/us/equities/trading/offerings/periodic_auctions/. ("Cboe created its patented Periodic Auctions to establish an on-exchange alternative to the growth of off-exchange liquidity. Most recently, the use of conditional order types on Alternative Trading Systems (ATSs) has reached new highs as a percentage of ATS volumes. Periodic Auctions would offer a new price forming auction for investors seeking liquidity, including but not limited to block size transactions, during the course of the trading day. These intraday auctions may be a useful tool to attract buyers and sellers in less liquid or wider spread names, and would create an equal and fair market for market participants and investors that wish to either initiate or respond to such auctions. Periodic Auctions will be available on Cboe's BYX™ market center.").

49 15 U.S.C. 78s(b)(2).

may be operative as soon as practicable. Proposed Amendment No. 1 largely clarifies rule text proposed in the Initial Filing and does not change the proposed functionality. While Amendment No. 1 does introduce new rule text stating that the System will, in certain circumstances, ignore a Periodic Auction Order's Minimum Quantity instruction when such order also contains an MTP modifier, and instead apply MTP, this proposed functionality is designed to assist Users in preventing undesirable executions, such as wash sales. The Exchange believes, and has received feedback from Users, that such conservative application of MTP functionality is more desirable than permitting such Periodic Auction Orders to participate in the Periodic Auction and potentially trade against another order originating from the same Unique Identifier. Together, these edits are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, as well as to protect investors and the public interest.

Moreover, just discussed in the Initial Filing, Amendment No. 1 makes clear that there will be instances where the Exchange has elected to temporarily bypass a User's MTP modifier. The proposed edits relating to these scenarios do not add, remove, or modify the situations in which the System may ignore a User's MTP modifier, but are instead intended only to make the outcomes clearer. In this regard, proposed Amendment No. 1 does not present any new or novel issues for Users to consider. Similarly, while Amendment No. 1 also seeks to add new Minimum Quantity Order functionality, by ignoring a Periodic Auction Order's Minimum Quantity instruction (that also has an MTP modifier), MTP will always be applied, thereby providing Users with predictable outcomes and a reliable protection against undesirable executions. As such, the proposed Minimum Quantity Order functionality should not present any challenging or complex issues for Members to consider.

Accordingly, the Commission should approve the Exchange's proposed Amendment No. 1.

The Exchange further believes that the approval of the proposed rule change on an accelerated basis will help to quickly provide both current and prospective Periodic Auction Users with a tool to prevent against undesirable executions, such as wash sales. By having the ability to prevent such undesirable executions, more market participants may be encouraged to utilize Periodic Auctions, thereby potentially increasing Periodic Auction volumes, and provide market participants with an alternative to off-exchange venues' (e.g., alternative trading systems) block-sized liquidity offerings.[50] As such, the proposed amendments are designed to foster the protection of investors, as well as remove impediments to and perfect the mechanism of a free and open market and a national market system.

Accordingly, the proposed rule change will not significantly affect the protection investors and the public interest. Therefore, the Exchange believes it is appropriate for the Commission to approve the proposed Amendment No. 1 on an accelerated basis.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

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50 Supra note 48.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 2-4. Not applicable.

Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CboeBYX-2024-009]

[Insert date]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Exchange Rule 11.25(e) ("Priority and Execution of Orders")

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on [insert date], Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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

Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") proposes to amend Exchange Rule 11.25(e) ("Priority and Execution of Orders") to allow (1) Users to utilize the Exchange's Match Trade Prevention ("MTP") functionality when entering Periodic Auction Orders onto the Exchange for execution and (2) add new rule text providing that in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could either trade with a contra-side Continuous Book Order or initiate a Periodic Auction with a contra-side

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

Periodic Auction Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply MTP regardless of whether the Minimum Quantity is satisfied. This Amendment No. 1 replaces SR-CboeBYX-2024-009 ("Initial Filing")[3] as originally filed and supersedes the Initial Filing its entirety. The text of the proposed rule changes is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/byx/), 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 (1) amend Rule 11.25(e) to allow Users[4] to utilize the Exchange's Match Trade Prevention ("MTP") functionality when entering Periodic

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[3] See Securities Exchange Act Release No. 100337 (June 14, 2024), 89 FR 52148 (June 21, 2024) (SR-CboeBYX-2024-009).

[4] The term "User" shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. See Rule 1.5(cc), definition of "User".

Auction Orders[5] onto the Exchange for execution,[6] and (2) add new rule text providing that in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could either trade with a contra-side Continuous Book Order or initiate a Periodic Auction with a contra-side Periodic Auction Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply MTP regardless of whether the Minimum Quantity is satisfied.

By way of background, MTP is an existing process[7] through which Users can prevent their incoming orders designated with a MTP modifier from executing against a resting opposite side order also designated with an MTP modifier and originating from the same market participant identifier ("MPID"), Exchange Member identifier, trading group identifier, Exchange Sponsored Participant identifier, affiliate identifier, or Multiple Access identifier (any such identifier, a "Unique Identifier").[8] Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. MTP is a valuable tool for Exchange Users because it allows them to better manage order flow and prevent undesirable trading

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5 The term "Periodic Auction Order" shall mean a "Periodic Auction Only Order" or "Periodic Auction Eligible Order" as those terms are defined in Rules 11.25(b)(1)-(2), and the term "Periodic Auction Book" shall mean the System's electronic file of such Periodic Auction Orders. See Rule 11.25(a)(6). Hereinafter, a Periodic Auction Only Order may be referred to as a "PAO Order", and a Periodic Auction Eligible Order may be referred to as a, "PAE Order".

6 The Exchange plans to implement the proposed rule change on a date that will be circulated in a notice from the Cboe Trade Desk to all Members.

7 The Exchange notes that previous proposals extending the functionality of MTP to other trading scenarios were effective upon filing with the Commission. See generally Securities and Exchange Act Release No. 53429 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR-EDGX-2010-18); Securities and Exchange Act Release No. 34-96292 (November 10, 20220), 87 FR 68766 (November 16, 2022) (SR-CboeEDGX-2022-048).

8 See Rule 11.9(f) – Match Trade Prevention ("MTP") Modifiers.

activity such as wash sales[9] or self-trades[10] that may occur because of the high-speed nature of trading in today's marketplace.

Currently, Rule 11.25(e) states that all MTP modifiers (as defined in Rule 11.9(f)(1)-(5)) for Periodic Auction Orders will be ignored for executions occurring during a Periodic Auction. As part of the Exchange's prior Periodic Auction Rule filings,[11] the Exchange reasoned that MTP is mainly designed for use on the Continuous Book,[12] and use of MTP for Periodic Eligible Orders[13] and Periodic Auction Only Orders[14] (collectively, Periodic Auction Orders) may complicate the execution of an auction that requires the pooling and matching of multiple orders against other orders at

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9 A "wash sale" is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, e.g., 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) ("Other Trading Practices").

10 Self-trades are "transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security." FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02, available at: https://www.finra.org/rules-guidance/rulebooks/finra-rules/5210.

11 See Securities and Exchange Act Release No 34-91423 (March 26, 2021), 86 FR 17230 (April 1, 2021) (SR-CboeBYX-2020-021).

12 The term "Continuous Book" shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term "Continuous Book" shall mean the System's electronic file of such Continuous Book Orders. See Rule 11.25(a)(2), definition of "Continuous Book Order".

13 "A 'Periodic Auction Eligible Order' is a non-displayed limit order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible…Periodic Auction Eligible Orders will be ranked as Non-Displayed Limit Orders consistent with the priority of order outlined in Rule 11.12(a). An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book. Incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a). Periodic Auction Eligible Orders will not trade on the Continuous Book during a Periodic Auction Period in the security." See 11.25(b)(2).

14 "A 'Periodic Auction Only Order' is a non-displayed limit order entered with an instruction to participate solely in Periodic Auctions pursuant to this Rule 11.25. Periodic Auction Only Orders are not eligible for executions on the Continuous Book." See Rule 11.25(b)(1). Hereinafter, Periodic Auction Only Orders as, "PAO Orders."

the Periodic Auction Book Price.[15] Based on User feedback, however, Users of Periodic Auctions desire the ability to utilize MTP for their Periodic Auction Orders (when the Periodic Auction is not in progress) to help them manage their order flow and prevent undesirable executions against themselves. Users are not asking to utilize MTP for their Periodic Auction Orders when a Periodic Auction is occurring.

Accordingly, the Exchange now seeks to allow Users to utilize MTP when entering Periodic Auction Orders onto the Exchange.[16] Importantly, allowing Users to designate Periodic Auction Orders with MTP modifiers will not impact how the Periodic Auction itself is conducted, and the proposed MTP functionality will not prevent the completion of a Periodic Auction once it has been initiated.

As proposed, however, there will be instances where the Exchange has elected to temporarily bypass a User's MTP instruction. These instances are demonstrated in Examples 5 and 8, below, and generally involve scenarios where (i) a Periodic Auction is in progress, and the temporary bypassing of the MTP modifier on Firm A's inbound Continuous Book Order is necessary to prevent the cancelation of Firm A's Periodic Auction Order with an MTP modifier that is currently participating in the Periodic Auction, or (ii) a Periodic Auction is in progress, and the bypassing of Firm A's MTP

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15 "The term 'Periodic Auction Book Price' shall mean the price within the Collar Price Range at which the most shares from the Periodic Auction Book would match. In the event of a volume-based tied at multiple price-levels, the Periodic Auction Book Price will be the price that results in the minimum total imbalance. In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Book Price will be the price closest to the Volume Based Tie Breaker. The Periodic Auction Book Price will be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Book Price." See 11.25(a)(5), definition of "Periodic Auction Book Price".

16 The Exchange notes that previous proposals extending the functionality of MTP to other trading scenarios were effective upon filing with the Commission. See Securities and Exchange Act Release No. 53429 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR-EDGX-2010-18); see also Securities and Exchange Act Release No. 34-96292 (November 10, 20220), 87 FR 68766 (November 16, 2022) (SR-CboeEDGX-2022-048).

modifier on its inbound Periodic Auction Order is necessary to prevent – depending on the relevant MTP instruction –the cancelation of Firm A's resting Continuous Book Order, or the cancelation of the inbound Periodic Auction Order itself, preventing such order from participating in the Periodic Auction.

In each instance, the temporary bypassing of the inbound order's MTP modifier is intended to prevent the cancelation of orders where an immediate execution would not occur. Importantly, the bypassing of an inbound order's MTP modifier is *temporary* and occurs only upon entry of the inbound order. The Exchange believes this behavior is necessary and appropriate to help strike a responsible balance between providing Users with an optional risk tool to prevent undesirable executions and ensuring that Periodic Auctions will complete. Moreover, the current architecture and design of Exchange Systems require that MTP for Periodic Auctions function as described.

Additionally, the Exchange proposes to add new rule text providing that in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could either trade with a contra-side Continuous Book Order or initiate a Periodic Auction with a contra-side Periodic Auction Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply MTP regardless of whether the Minimum Quantity is satisfied.

To illustrate how Periodic Auction Orders designated with MTP modifiers will behave, the Exchange offers the following examples:[17]

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[17] For each example, assume that all trade prices are within the National Best Bid or National Best Offer ("NBBO"). Additionally, note that while Exchange Rule 11.9(f) provides for various MTP modifiers - including Cancel Newest, Cancel Oldest, Decrement and Cancel, Cancel Both, and Cancel Smallest – the Examples provided in this rule filing only demonstrate how certain of these

Example 1: Two PAE Orders matching – MTP Action Occurs:

Example 1 illustrates how MTP will operate when Firm A's resting PAE Order with an MTP modifier of MTP Cancel Oldest ("MCO"),[18] interacts with a subsequent inbound PAE Order submitted by Firm A with an MTP modifier of MCO and a Periodic Auction is not in progress. Here, MTP operates in the same manner[19] as it would for Continuous Book Orders; i.e., because Firm A's inbound PAE Order was entered with an MTP modifier of MCO, the System will cancel Firm A's Order 1,[20] which is the "oldest" contra-side Firm A order that is marketable versus Firm A's inbound PAE Order to sell. This MTP action prevents Firm A from potentially trading with itself either on the Continuous Book or during a Periodic Auction.[21]

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modifiers will operate. Including examples for every possible MTP scenario would be difficult to efficiently demonstrate in a rule filing. Nevertheless, the MTP modifier exemplified in the provided Examples is not critical to understanding how the proposed functionality will operate because as demonstrated below, when a Periodic Auction is not in progress MTP will operate as it does today, and when a Periodic Auction is in progress, the System will, as described below, temporarily bypass an order's MTP instruction.

18 MTP Cancel Oldest ("MCO") is defined as "[a]n incoming order marked with the "MCO" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The resting order marked with the MCO modifier will be cancelled back to the originating User(s). The incoming order marked with the MCO modifier will remain on the BYX Book. See Rule 11.9(f)(2).

19 See Rule 11.9(f) - Match Trade Prevention ("MTP") Modifiers. Any incoming order designated with an MTP modifier will be prevented from executing against a resting opposite side order also designated with an MTP modifier and originating from the same market participant identifier ("MPID"), Exchange Member identifiers, trading group identifier, Exchange Sponsored Participant identifier, affiliate identifier, or Multiple Access identifier (any such identifier, a "Unique Identifier"). The order canceled by the System will depend on the incoming order's MTP modifier, as described in 11.9(f)(1)-(5).

20 See Rule 11.9(f)(2).

21 As MTP action is controlled by the incoming order ("…the MTP modifier on the incoming order controls the interaction between two orders marked with MTP modifiers." See Rule 11.21(g)), Firm A's Order 1 was correctly cancelled in this situation. Note, however, that if Firm A's Order 2 had included an MTP modifier of MTP Cancel Newest ("MCN"), the result would simply be that Order 2 is instead canceled. MTP Cancel Newest ("MCN") is defined as "[a]n incoming order marked with the "MCN" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The incoming order marked with the MCN modifier will be cancelled back to the originating User(s). The resting order marked with an MTP modifier will remain on the BYX Book." See Rule 11.9(f)(1). Similarly, if we changed Order 1's MTP Modifier to Cancel Newest and Order 2 remained as MTP Cancel Oldest,

- *Order 1 – Resting (Firm A): PAE Order (MTP = Cancel Oldest), Buy 100 @ 1.00*
- *Order 2 – Inbound order (Firm A): PAE Order (MTP = Cancel Oldest), Sell 200 @ 1.00*
- *Result: Order 1 is canceled.*

Example 2: Two PAO Orders matching – MTP Action Occurs:

Example 2 illustrates how MTP will operate when Firm A's resting PAO Order with an MTP Modifier of MCN, interacts with Firm A's inbound PAO Order with an MCN modifier, and a Periodic Auction is not in progress. Here, MTP operates in the same manner[22] as it would for Continuous Book Orders; i.e., because Firm A has designated its inbound Order 2 with MCN, the System will cancel Firm A's Order 2,[23] which is Firm's A's newest contra-side order that is marketable versus Firm A's resting Order 1. This MTP action prevents Firm A from potentially trading with itself during a Periodic Auction.

- *Order 1 – Resting (Firm A): PAO Order (MTP = Cancel Newest), Buy 100 @ 1.00*
- *Order 2 – Inbound order (Firm A): PAO Order (MTP = Cancel Newest), Sell 200 @ 1.00*
- *Result: Order 2 is canceled*

For the sake of clarity, the Exchange also wishes to explain what would happen to Order 2 if a Periodic Auction was in progress when Order 2 arrived.[24] To address this

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Order 1 would be canceled as Order 2's instruction controls MTP action.

22 Supra note 19.

23 See Rule 11.9(f)(1).

24 This iteration of Example 2 demonstrates the functionality described in proposed Rule

scenario, assume an inbound Periodic Auction Order from Firm B – Order X - arrived between Order 1 and Order 2, and initiated a Periodic Auction with Order 1. Here, when Order 2 arrives, and the Periodic Auction is in progress, Order 2 would still be canceled. When a Periodic Auction is in progress, and an inbound Periodic Auction Order is designated with an MTP modifier, and such order matches against a resting contra-side Periodic Auction Order originating from the same Unique Identifier that is also designated with a MTP modifier, the inbound Periodic Auction Order will be canceled. This behavior will enable Users to better manage their order flow and prevent undesirable executions in Periodic Auctions, just as they do today for their Continuous Book orders.

Example 3: Incoming PAE Order matching against a PAO Order – MTP Action Occurs:

Example 3 illustrates how MTP will operate when Firm A's resting PAO Order with a MTP modifier of MTP Cancel Smallest ("MCS"),[25] interacts with Firm A's inbound PAE Order with an MCS modifier, and an auction is not in progress. Here, MTP operates in the same manner[26] as it would for Continuous Book Orders; i.e., because Firm A has designated its orders with the MTP modifier, MCS, the System will cancel

11.25(e)(1)(B).

25 MTP Cancel Smallest ("MCS") is defined as "[a]n incoming order marked with the "MCS" modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled back to the originating User(s). If the orders are not equivalent in size, the smaller of the two orders will be cancelled back to the originating User and the larger order will remain on the book. See Rule 11.9(f)(5).

26 Supra note 19.

Firm A's Order 1, which is Firm A's small quantity order.[27] This MTP action prevents Firm A from potentially trading with itself during a Periodic Auction.

- *Order 1 – Resting (Firm A): PAO Order (MTP = Cancel Smallest), Buy 100 @ 1.00*
- *Order 2 – Inbound order (Firm A): PAE Order (MTP = Cancel Smallest), Sell 200 @ 1.00*
- *Result: Order 1 is canceled.*

Example 4: Incoming PAE Order matching against a Continuous Book Order – MTP Action Occurs:

Example 4 illustrates how MTP will operate when Firm A's incoming PAE Order with a MCS modifier, matches against Firm A's resting Continuous Book Order, and a Periodic Auction is not in progress. Here, MTP operates in the same manner[28] as it would for Continuous Book Orders; i.e., Firm's A's Order 1 is canceled[29] based on Firm A's Order 2 MCS modifier because Order 1 is smaller than Order 2. Because a PAE Order is eligible to receive an execution on the Continuous Book,[30] and both Order 1 and Order 2 are designated with MTP modifiers, the System correctly cancels Order 1, thereby preventing Firm A from potentially trading with itself on the Continuous Book.

- *Order 1 – Resting (Firm A): Continuous Book order (MTP = Cancel Smallest), Buy 100 @ 1.00*

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27 See Rule 11.9(f)(5).

28 Supra note 19.

29 Supra note 31.

30 Supra note 14.

- *Order 2 – Inbound order (Firm A): PAE Order (MTP = Cancel Smallest), Sell 200 @ 1.00*
- *Result: Order 1 is canceled.*

Example 5 - Incoming PAE Order matching against a Continuous Book Order when a Periodic Auction is in Progress – No MTP Action Occurs:

For the sake of clarity, the Exchange wishes to describe what would happen to Order 1 if a Periodic Auction is in progress and an inbound Periodic Auction Order arrives (e.g., Order 4). [31] First, note that a Continuous Book Order cannot initiate a Periodic Auction.[32] Therefore, to initiate a Periodic Auction in this example, assume that two Periodic Auction Orders arrived, from Firm B and Firm C, prior to Order 1 and Order 4 – e.g., Order X (Firm B) and Order Y (Firm C). Further assume that Order X and Order Y are marketable versus each other and initiated a Periodic Auction. Additionally, assume that Order 1, a Continuous Book Order is entered prior to Order 4, and that Order 1 and Order 4 are designated with MTP modifiers originating from the same Unique Identifiers. Upon the arrival of Order 4, a Periodic Auction Order, the System will temporarily bypass[33] Order 1's and Order 4's MTP instruction, and Order 4 will join the Periodic Auction. Order 1 will remain on the Book. If Order 1 did not execute in the Continuous Book while the Periodic Auction was in progress, then Order 1

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31 This iteration of Example 4 demonstrates the proposed functionality described in proposed Rule 11.25(e)(1)(A).

32 See Rule 11.25(c), Initiation and Publication of Periodic Auction Information, "A Periodic Auction will be initiated in a security during Regular Trading Hours when one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell pursuant to this Rule 11.25."

33 The Exchange notes that the bypassing of the MTP modifiers in this scenario is *temporary*. Should the Periodic Auction complete and Order 1 does not have the opportunity to trade with Order 4 in the Periodic Auction, then Order 1 would remain posted on the Continuous Book with its MTP modifier and be afforded the protections of MTP.

could potentially execute with Order 4, provided that Order 1 has priority as determined by Rule 11.25(f). The bypassing of the MTP modifiers in this scenario occurs only upon entry of Order 4 to prevent the cancelation of orders in situations where an immediate execution would not occur.

- *NBBO: 10.00 x 10.05*
- *Order X (Firm B): Buy 100 @ 10.03 – Midpoint Peg PAO*
- *Order Y (Firm C): Sell 100 @ 10.02 – Midpoint Peg PAO*
- *Auction is initiated between Order X and Order Y*
- *Order 1 (Firm A): Buy 100 @ 10.03 – Midpoint Peg Continuous Book Order – MTP=Cancel Oldest*
- *Order 4 (Firm A): Sell 100 @ 10.02 – Midpoint Peg PAE – MTP=Cancel Oldest*
- *MTP would be bypassed when Order 4 is entered and Order 4 would join the Periodic Auction in progress.*
- *Result: Order X and Order Y trade 100 @ 10.025 in Periodic Auction. Order 1 and Order 2 trade 100 @ 10.025 in Periodic Auction*

Here, even though Order 1 and Order 4 both originated from Firm A, and are designated with an MTP modifier, Order 1 is not canceled upon Order 4's arrival because Order 1 is a Continuous Book Order that may or may not end up trading with Order 4 once the Periodic Auction is complete. Because Order 1 could receive an execution on the Continuous Book while the Periodic Auction is in progress, the Exchange temporarily bypasses Order 1's MTP instruction upon Order 4's arrival to prevent Order 1 from

forfeiting a Continuous Book execution based on a *possibility* that Order 1 would be executable versus Order 4 at the completion of the Periodic Auction.

Example 6: Incoming Continuous Book order matching against a PAO Order – No MTP Action occurs:

Example 6 illustrates how MTP will operate when Firm A's incoming Continuous Book Order with an MCS modifier matches with Firm A's resting PAO Order with an MCS modifier, and a Periodic Auction is *not* in progress. Here, MTP will not be applied because PAO Orders and Continuous Book Orders are not permitted to trade with one another.[34] As such, MTP is not needed to prevent Firm A's Order 1 from trading with Firm A's Order 2 and as such, Order 2 is permitted to post to the BYX Book.

- *Order 1 – Resting (Firm A): PAO Order (MTP = Cancel Smallest), Buy 100 @ 1.00*
- *Order 2 – Inbound order (Firm A): Continuous Book order (MTP = Cancel Smallest), Sell 200 @ 1.00*
- *Result: Order 2 will rest in the Continuous Book, and there is no MTP action.*

Example 7: Incoming order is canceled due to "Periodic Auction in Progress" involving a PAO Order:

Example 7 illustrates how an incoming order with a MTP modifier is canceled because a Periodic Auction is in progress.[35] Here, Firm A's inbound Order 2, a PAE Order to sell 200 @ 1.00, with a MTP modifier of MTP Cancel Both ("MCB"),[36]

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34 Supra note 16 ("Periodic Auction Only Orders are not eligible for execution on the Continuous Book.").

35 Example 7 demonstrates the proposed functionality described in 11.25(e)(1)(B).)(1)(B).

36 MTP Cancel Both ("MCB") is defined as "[a]n incoming order marketed with the "MCB" modifier will not execute against opposite side resting interest marked with any MTP modifier

immediately starts an auction with Firm B's Order 1, a resting PAO Order to Buy 100 @ 1.00, that is participating in the Periodic Auction. While the Periodic Auction is in progress, Firm A enters Order 3, a PAE Order to Buy 200 @ 1.00 with an MCB instruction.

The entry of Order 3 presents a scenario in which the Exchange seeks to implement MTP functionality that behaves differently than demonstrated in each of the preceding five examples. Specifically, if a Periodic Auction is in progress, and an inbound Periodic Auction is designated with an MTP modifier, and such order matches against a resting contra-side Periodic Auction Order, that is participating in the Periodic Auction, originating from the same Unique Identifier that is also designated with an MTP modifier, then the Periodic Auction Order will be cancelled. Importantly, this behavior is necessary to help ensure that once a Periodic Auction is initiated it will be completed.

Applying this proposed behavior to Example 7's fact pattern, when Firm A's Order 3, a PAE Order with an MCB modifier is entered after Periodic Auction has been initiated and Order 3 subsequently matches with Firm A's Order 2 (a PAE Order with a MCB modifier), Order 3 will be cancelled. Without this proposed behavior, Order 3 would otherwise be included in the Periodic Auction, and its MTP Cancel Both instruction would result in the cancelation of Order 2,[37] preventing the Periodic Auction from completing, and denying Firm A an execution it would otherwise have expected to receive. The Exchange believes that this proposed behavior appropriately balances the

originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User(s). See Rule 11.9(f)(4). demonstrates the proposed functionality described in proposed Rule 11.25(e

[37] See Rule 11.9(f)(4).

dual goals of ensuring that Periodic Auctions complete once initiated and providing Members the ability to utilize MTP for their Periodic Auction Orders in each of the scenarios described in the preceding five examples.[38]

- *Order 1 – Resting (Firm B): PAO Order, Buy 100 @ 1.00*
- *Order 2 – Inbound Order (Firm A): PAE Order (MTP = Cancel Both[39]), Sell 200 @ 1.00*
- *Action: Order 2 initiates a Periodic Auction with Order 1*
- *Order 3 – Inbound order (Firm A): PAE Order (MTP = Cancel Both), Buy 200 @ 1.00*
- *Result: Order 3 is canceled in order to prevent Order 3 participating in the Periodic Auction, canceling Order 2, and disrupting the completion of the Periodic Auction.*

Example 8: Incoming order has MTP temporarily bypassed in a Periodic Auction:

Example 8 is another example of MTP being temporarily bypasses when a Periodic Auction is in progress, despite the Member adding MTP instructions to their Periodic Auction Order(s) and Continuous Book Order(s). Here, Firm B's Order 2, a PAE Order with an MCO modifier, initiates a Periodic Auction upon entry with Firm A's

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38 The Exchange notes that the proposed MTP functionality is intended as a supplementary risk tool that Members may voluntarily use to help them manage their risk and compliance with applicable securities rules. As registered broker-dealers, Members are ultimately responsible for compliance with applicable securities rules, and should not rely on the proposed functionality as a sole means of compliance. As such, while the proposed MTP functionality will, in some instances, operate differently than it does outside of the context of Periodic Auctions, its design as a supplementary risk tool will still serve to benefit Members that choose to utilize this tool.

39 MTP Cancel Both is defined as "[a]n incoming order marked with the "MCB" modifier will not execute against the opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User (s). See Rule 11.9(f)(4).

Order 1, a resting PAE Order with an MCO modifier. Firm A subsequently enters a Continuous Book Order (Hidden) with an MCO modifier. Here, the Exchange will temporarily bypass[40] an inbound Continuous Book Order's MTP modifier when a Periodic Auction is in progress, and such Continuous Book Order would post to the Continuous Book, and be eligible to participate in the Periodic Auction, or alternatively receive an execution from the Continuous Book. In such instance, applying the Continuous Book Order's MTP modifier and canceling such order based on the *potential* that the order could trade in the Periodic Auction, would be unnecessarily prohibitive. By posting to the Continuous Book, such order could still execute without violating its MTP instructions.

Based on the proposed MTP functionality, Order 3 will post to the BYX Book prior to the end of the Periodic Auction as the MTP modifier is temporarily bypassed.[41] Order 1 and Order 2 will trade in the Periodic Auction for 500 shares @ 10.02. After trading with Order 2, Order 1 still has 500 shares remaining. Prior to the end of the Periodic Auction, Order 3 will be matched in the Periodic Auction and trade 200 shares with Order 1 @ 10.02, bypassing the MCO modifier assigned by Firm A to its Order 1 and Order 3.

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40 The Exchange notes that the bypassing of the Continuous Book Order's MTP modifier in this scenario is *temporary*. Should the Periodic Auction complete and Order 3 does not have the opportunity to trade with Order 1 in the Periodic Auction, then Order 3 would remain posted on the Continuous Book with its MTP modifier and be afforded the protections of MTP.

41 The Exchange notes that the bypassing of the Continuous Book Order's MTP modifier in this scenario is *temporary*. Should the Periodic Auction complete and Order 3 does not have the opportunity to trade with Order 1 in the Periodic Auction, then Order 3 would remain posted on the Continuous Book with its MTP modifier and be afforded the protections of MTP.

The Exchange believes that temporarily bypassing an MTP modifier in this scenario is necessary to ensure that a Periodic Auction completes once it is initiated.[42] Additionally, bypassing Order 3's MTP instruction is also necessary to avoid disrupting trading in the Continuous Book, because Order 3 could perhaps post and trade while the Periodic Auction is in progress. The Exchange therefore believes cancelling Order 3 based on its *potential* to trade in the Periodic Auction would unnecessarily prevent a Member from potentially receiving a Continuous Book execution. While the proposed MTP functionality will explicitly and automatically temporarily bypass a Member's MTP modifier when the scenario described in Example 8 is present, the Exchange believes that such behavior appropriately balances the dual goals of ensuring that Periodic Auctions operate as designed (i.e., once initiated they will complete, executing the maximum number of shares), and still provides Members the ability to utilize MTP for their Periodic Auction Orders in majority of instances described in each of the preceding six examples.[43]

- *Order 1 – Firm A: PAE Order (MTP = Cancel Oldest), Buy 1000 @ 10.02*
- *Order 2 – Firm B: PAE Order (MTP = Cancel Oldest), Sell 500, @ 10.02*
- *Action: Order 2 initiates an auction with Order 1, because Firm A and Firm B are different entities.*

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42 Example 8 demonstrates the proposed functionality described in proposed Rule 11.25(e)(1)(C).

43 The Exchange notes that the proposed MTP functionality is intended as a supplementary risk tool that Members may voluntarily use to help them manage their risk and compliance with applicable securities rules. As registered broker-dealers, Members are ultimately responsible for compliance with applicable securities rules, and should not rely on the proposed functionality as a sole means of compliance. As such, while the proposed MTP functionality will, in some instances, operate differently than it does outside of the context of Periodic Auctions, its design as a supplementary risk tool will still serve to benefit Members that choose to utilize this tool.

- *Order 3 – Inbound order (Firm A): Continuous Book Order (MTP = Cancel Oldest), Sell 200 @ 10.02*
- *Action: MTP modifier on Order 3 is temporarily bypassed*
- *Result: Order 3 posts to the BYX Book prior to the end of the auction; Order 1 and Order 2 trade in the Periodic Auction for 500 @ 10.02; Order 3 then trades 200 @ 10.02 with Order 1 (bypassing MTP).*

Example 9: Minimum Quantity Order Unable to be Filled (PAE vs. PAE)[44]

Example 9 illustrates how the System will ignore the Minimum Quantity instruction on a Periodic Auction Order that is also designated with an MTP modifier, when the Minimum Quantity cannot be satisfied. Specifically, in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could initiate a Periodic Auction with a contra-side Periodic Auction Order or trade with a Continuous Book Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply ignore Order 1's Minimum Quantity instruction, and apply MTP, regardless of whether the Minimum Quantity is satisfied. Here, upon entry of Order 2, the System will ignore Order 1's Minimum Quantity instruction, and instead apply MTP, resulting in the cancelation of Order 1.

- *Order 1 (Firm A): Buy 1000 @ 10.02 – PAE – Min Quantity = 500 (MTP=any)*
- *Order 2 (Firm A): Sell 400 @ 10.02 – PAE order (MTP=Cancel Oldest)*

[44] Example 9 demonstrates the proposed functionality described in 11.25(e)(2).

- *Result: Order 2 cannot initiate an auction with Order 1 due to the MIN quantity on Order 1. 'MIN' on Order 1 is ignored and Order 2 cancels Order 1. Order 2 posts to the book.*

Example 10: Minimum Quantity Order Able to be Filled (PAE vs. PAE)[45]

Example 10 illustrates how the System will ignore the Minimum Quantity instruction on a Periodic Auction Order that is also designated with a an MTP modifier, when the Minimum Quantity is satisfied. Here, even though the Minium Quantity for Order 1 can be satisfied by Order 2, the System will apply MTP resulting in the cancelation of Order 1.

- *Order 1 (Firm A): Buy 1000 @ 10.02 – PAE – Min Quantity = 500 (MTP = any)*
- *Order 2 (Firm 2): Sell 1000 @ 10.02 – PAE (MTP = Cancel Oldest)*

  Result: The System applies MTP, and cancels Order 1

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[46] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[47] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

45 Example 10 demonstrates the proposed functionality described in 11.25(e)(2)

46 15 U.S.C. 78f(b).

47 15 U.S.C. 78f(b)(5).

securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[48] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that its proposed MTP functionality is designed to promote the just and equitable principles of trade, and to protect investors and the public interest, by enabling Users to better prevent undesirable trading activity such as wash sales or self-trades for not only their Continuous Book Orders, but their Periodic Auction Orders as well. Additionally, by providing Users with a supplemental risk tool that will better enable them to achieve compliance with applicable securities rules and regulations, the proposed rule change will help to further ensure that orders eligible for execution in the Periodic Auction indeed represent genuine trading interest from separate and distinct firms. While the proposed MTP functionality would not operate identically to MTP as it is used in non-Periodic Auction scenarios, the Exchange believes that its proposal strikes an appropriate balance between ensuring Users receive executions in the Periodic Auction and providing Users' the ability to utilize MTP in most trading situations involving Periodic Auctions. By making this clear to Users,[49] they will be able to anticipate how MTP modifiers will interact with their Periodic Auction Orders and mitigate any confusion that Users may have in using the proposed functionality.

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48 Id.

49 In addition to codifying the proposed functionality, the Exchange will send out a Member notice that includes information about the proposed MTP functionality for Periodic Auctions.

Similarly, by making clear to Users that when they enter their Periodic Auction Orders as Minimum Quantity Orders, and designate them with an MTP instruction, and such Periodic Auction Orders attempt to execute versus contra-side Periodic Auction Orders or Continuous Book orders with a MTP modifier originating from the same Unique Identifier, that the Minimum Quantity instruction will not be enforced, Users will be better informed as to how MTP operates in conjunction with Minimum Quantity restrictions, and will be better able to manage their Periodic Auction Orders and when it may be sensible to enter Periodic Auction Orders with both a Minimum Quantity restriction and an MTP modifier.

Additionally, the Exchange believes that the proposed rule changes are designed to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Based on User feedback, the lack of MTP functionality for Periodic Auction Orders may discourage Users from entering Periodic Auction Orders because they do not have an automated way to systematically prevent undesirable executions resulting from orders originating from a User's algorithm or trading desk, or their related algorithms or trading desks. In this regard, the proposed rule changes may encourage Users to increase their Periodic Auction participation, thereby further enhancing the Periodic Auction liquidity pool and the ability of investors to execute larger orders that may otherwise be difficult to execute without market impact in the continuous market. Additionally, because Periodic Auctions are price-forming, the enhanced liquidity pools would indeed augment Periodic Auction's valuable price discovery function, which may be particularly helpful for investors when trading securities that typically trade with wider spreads.

Again, while the proposed MTP functionality may not apply a User's MTP modifiers in all instances, the Exchange as well as its Users believe that some level of MTP protection is more beneficial than completely foregoing MTP protection in its entirety. By making clear to Users how MTP for Periodic Auction Orders will operate, Users can better manage their use of MTP modifiers, and anticipate how their Periodic Auction Orders will behave. Similarly, while Periodic Auction Orders entered as Minimum Quantity Orders, as well as an MTP Modifier, will in certain circumstances (discussed *supra*) cause the System to ignore a User's Minimum Quantity requirements and instead apply MTP, Users have indicated that they would prefer that MTP apply consistently so as to prevent undesirable wash sales.

Finally, the Exchange further believes that the proposed rule change does not unfairly discriminate amongst Users because the proposal will allow all Periodic Auction Users to utilize MTP just as all Users entering Continuous Book Orders may utilize MTP today. In this regard, the proposed amendment will avoid disparate treatment of Users. Furthermore, the bypassing or amending of MTP modifiers, as described in the Examples above, will apply equally to all Periodic Auction Users, regardless of their size.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. MTP is an optional functionality offered by the Exchange and Periodic Auction Users are free to decide whether to use MTP in their decision-making process when submitting Periodic Auction Orders to the Exchange.

Similarly, the Exchange does not believe that the proposed amendment poses a burden on intermarket competition that is not necessary or appropriate in furtherance of

the Act. Indeed, the proposed rule change is designed to increase competition by offering Periodic Auction Users the ability to better manage their order flow and prevent undesirable executions. In turn, Users may be further incentivized to send additional orders to BYX's Periodic Auction mechanism, thereby fostering competition amongst exchanges, as well as with off-exchange venues (e.g., alternative trading systems) where Users that may otherwise utilized Periodic Auctions, typically seek to source block-sized liquidity.[50]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register 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 Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

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[50] See "Trade Big with Cboe U.S. Periodic Auctions," available at: https://www.cboe.com/us/equities/trading/offerings/periodic_auctions/. ("Cboe created its patented Periodic Auctions to establish an on-exchange alternative to the growth of off-exchange liquidity. Most recently, the use of conditional order types on Alternative Trading Systems (ATSs) has reached new highs as a percentage of ATS volumes. Periodic Auctions would offer a new price forming auction for investors seeking liquidity, including but not limited to block size transactions, during the course of the trading day. These intraday auctions may be a useful tool to attract buyers and sellers in less liquid or wider spread names, and would create an equal and fair market for market participants and investors that wish to either initiate or respond to such auctions. Periodic Auctions will be available on Cboe's BYX™ market center.").

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBYX-2024-009 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-CboeBYX-2024-009. 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 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-CboeBYX-2024-009 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Sherry R. Haywood,

Assistant Secretary.

[51] 17 CFR 200.30-3(a)(12).