

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82048; File No. SR-BatsBYX-2017-29)

November 9, 2017

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Cboe BYX Exchange, Inc.

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 October 31, 2017, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) (formerly known as Bats BYX Exchange, Inc.) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ and non-Members of the Exchange pursuant to BYX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange’s website at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

www.markets.cboe.com, at the principal office of the Exchange, 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 parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to amend Tier 7 under footnote 1, Add/Remove Volume Tiers. The Exchange currently offers eight tiers under footnote 1 that offer reduced fees for displayed orders that yield fee codes B,⁶ V⁷ and Y,⁸ and an enhanced rebate for orders that remove liquidity yielding fee codes BB,⁹ N¹⁰ and W.¹¹ The Exchange

⁶ Fee code B is appended to displayed orders that add liquidity to BYX (Tape B) and is assessed a fee of \$0.0018 per share. See the Exchange's fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.

⁷ Fee code V is appended to displayed orders that add liquidity to BYX (Tape A) and is assessed a fee of \$0.0018 per share. Id.

⁸ Fee code Y is appended to displayed orders that add liquidity to BYX (Tape C) and is assessed a fee of \$0.0018 per share. Id.

⁹ Fee code BB is appended to orders that remove liquidity from BYX (Tape B) and is assessed a rebate of \$0.0010 [sic] per share. Id.

¹⁰ Fee code N is appended to orders that remove liquidity from BYX (Tape C) and is assessed a rebate of \$0.0010 [sic] per share. Id.

proposes to amend Tier 7 under footnote 1, under which a Member currently receives an enhanced rebate of \$0.0015 per share on orders that yield fee codes BB, N or W, where that Member has an ADV¹² equal to or greater than 0.05% of the TCV.¹³ The Exchange proposes to increase the tier's criteria by also requiring that the Member have an ADAV¹⁴ equal to or greater than 500,000 shares to receive the tier's enhanced rebate. The Exchange does not propose [sic] to amend the tier's rebate. The Exchange proposes to implement the above changes to its fee schedule on November 1, 2017.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(4),¹⁶ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed amendment to Tier 7 under footnote 1 is equitable and reasonable because such pricing programs reward a Member's growth pattern on the Exchange and such increased volume will allow the Exchange to continue to provide and potentially expand the [sic] its incentive

¹¹ Fee code W is appended to orders that remove liquidity from BYX (Tape A) and is assessed a rebate of \$0.0010 [sic] per share. See the Exchange's fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.

¹² ADV is defined as average daily volume calculated as the number of shares added or removed, combined, per day. *Id.*

¹³ TCV is defined as the total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *Id.*

¹⁴ ADAV is defined as the average daily volume calculated as the number of shares added per day. See the Exchange fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(4).

programs. The Exchange believes that providing the enhanced rebate to Members under proposed Tiers 7 continues to be reasonable compared to the proposed more stringent requirements because the amended criteria reflects the difficulty to achieve the tier, especially as the amount of trading activity on the Exchange has increased over time. The increased criteria should incentive Members to provide additional liquidity on the Exchange in order to achieve the tier's enhanced rebate. The Exchange further believes that the proposal is reasonable, fair and equitable because the liquidity from the proposed changes would benefit all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. These pricing programs are also not unfairly discriminatory in that it is available to all Members.

In addition, volume-based fees such as that proposed herein have been widely adopted by exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) the value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposal is a reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and rebates, because it will provide Members with an additional incentive to add more liquidity on the Exchange to achieve the tier's increased criteria to receive the enhanced rebate.

(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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that this change represents a significant departure from previous

pricing offered by the Exchange or from pricing offered by the Exchange's competitors. The proposal would apply uniformly to all Members, and Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Further, excessive rates would serve to impair an exchange's ability to compete for order flow and members rather than burdening competition. The Exchange believes that its proposal would not burden intramarket competition because the proposal would apply uniformly to all Members.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4 thereunder.¹⁸ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

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 (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BatsBYX-2017-29 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BatsBYX-2017-29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsBYX-2017-29 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).