

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86670; File No. SR-CboeBYX-2019-012)

August 14, 2019

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Introduce a Small Retail Broker Distribution Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 1, 2019, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) 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 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. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to introduce a Small Retail Broker Distribution Program. The text of the proposed changes to the fee schedule are enclosed [sic] as 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to introduce a pricing program that would allow small retail brokers that purchase top of book market data from the Exchange to benefit from discounted fees for access to such market data. The Small Retail Broker Distribution Program (the "Program") would reduce the distribution and consolidation fees paid by small broker-dealers that operate a retail business. In turn, the Program may increase retail investor access to real-time U.S. equity quote and trade information, and allow the Exchange to better compete for this business with competitors that offer similar optional products.

Current Fees

Today, the Exchange offers two top of book data feeds that provide real-time U.S. equity quote and trade information to investors. First, the Exchange offers the BYX Top Feed, which is an uncompressed data feed that offers top of book quotations and execution information based on equity orders entered into the System.³ The fee for external distribution of BYX Top data is

³ See BZX Rule 11.22(d).

\$1,000 per month, and external distributors are also liable for a fee of \$1 per month for each Professional User, and \$0.025 per month for each Non-Professional User.

Second, the Exchange offers the Cboe One Summary Feed, which offers similar information based on equity orders submitted to the Exchange and its affiliated equities exchanges – i.e., Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe EDGA Exchange, Inc. Specifically, the Cboe One Summary Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges. The Cboe One Summary Feed also contains the individual last sale information for the Exchange and each of its affiliated exchanges, and consolidated volume for all listed equity securities. The fee for external distribution of the Cboe One Summary Feed is \$5,000 per month, and external distributors are also liable for a Data Consolidation Fee of \$1,000 per month, and User fees equal to \$10 per month for each Professional User, and \$0.25 per month for each Non-Professional User.⁴

Small Retail Broker Eligibility Requirements

The Exchange proposes to introduce a Program that would reduce costs for small retail brokers that provide top of book data to their clients. In order to be approved for the Small Retail Broker Distribution Program, Distributors would have to provide either the BYX Top Feed or Cboe One Summary Feed (“BYX Equities Exchange Data”) to a limited number of clients with which the firm has established a brokerage relationship, and would have to provide such data primarily to Non-Professional Data Users. Specifically, distributors would have to attest that

⁴ The Exchange also offers an Enterprise license for the BYX Top and Cboe One Summary Feeds. An Enterprise license permits distribution to an unlimited number of Professional and Non-Professional Users, keeping costs down for firms that provide access to a large number of subscribers. An Enterprise license is \$10,000 per month for the BYX Top Feed, and \$50,000 per month for the Cboe One Summary Feed.

they meet the following criteria: (1) Distributor is a broker-dealer distributing BYX Equities Exchange Data to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship; (2) More than 50% of the Distributor's total Data User population must consist of Non-Professional Data Users, inclusive of those not receiving BYX Equities Exchange Data; and (3) Distributor distributes BYX Equities Exchange Data to no more than 5,000 Non-Professional Data Users.⁵

These proposed requirements for participating in the Program are designed to ensure that the benefits provided by the Program inure to the benefit of small retail brokers that provide BYX Equities Exchange Data to a limited number of subscribers. As explained later in this filing, distributors that provide BYX Exchange Data to a larger number of subscribers can benefit from the current pricing structure through scale, due to subscriber fees that are significantly lower than those charged by the Exchange's competitors, and an Enterprise license that caps the total fees to be paid by firms that distribute market data to a sizeable customer base. The Exchange believes that offering similarly attractive pricing to small retail brokers, including regional firms both inside and outside of the U.S. that may not have the same established client base as the larger retail brokers, would make the Exchange's data a more competitive alternative for those firms, and would help ensure that such information is widely available to a larger number of retail investors globally. The Program would also be available to retail brokers more generally, regardless of size, that wish to trial the Exchange's top of book products with a limited number of subscribers before potentially expanding distribution to additional clients, potentially further increasing the accessibility of the Exchange's market data to retail investors. The

⁵ Distributors would have to meet these requirements for whichever product they would like to distribute pursuant to the Program. For example, a distributor that distributes Cboe One Summary Feed data pursuant to the Program, would be limited to distributing the Cboe One Summary Feed to no more than 5,000 Non-Professional Data Users.

Program would be exclusive to the Exchange's top of book offerings as retail investors typically do not need or use depth of book data to facilitate their equity investments, and their brokers typically do purchase such market data on their behalf.

Discounted Fees

Distributors that participate in the Program would be liable for lower distribution fees for access to the BYX Top Feed, and lower distribution and consolidation fees for access to the Cboe One Summary Data Feed.⁶ First, the distribution fee charged for BYX Top would be lowered by 75% from the current \$1,000 per month to \$250 per month for distributors that meet the requirements of the Program. Second, the distribution fee charged to these distributors for the Cboe One Summary Feed would be lowered by 30% from the current \$5,000 per month to \$3,500 per month. Finally, the Data Consolidation Fee charged for the Cboe One Summary Feed would be lowered by 65% from the current \$1,000 per month to \$350 per month. User fees for any Professional or Non-Professional Users that access BYX Top or Cboe One Summary Feed data from a distributor that participates in the Program would remain at their current levels as the current subscriber charges are already among the most competitive in the industry.⁷

The Exchange believes that these fees, which represent a significant cost savings for small retail brokers, would help ensure that retail investors continue to have fair and efficient access to U.S. equity market data. While retail investors normally pay a fixed commission when buying or selling equities, and do not typically pay separate fees for market data, the Exchange

⁶ New external distributors of the BYX Top Feed or Cboe One Summary Feed are not currently charged external distributor fees for their first month of service. This would continue to be the case for external distributors that participate in the Program.

⁷ By comparison, The Nasdaq Stock Market LLC ("Nasdaq") charges a subscriber fee for Nasdaq Basic that adds up to \$26 per month for Professional Subscribers and \$1 per month for Non-Professional Subscribers (Tapes A, B, and C). See Nasdaq Equity Rules, Equity 7, Pricing Schedule, Section 147(b)(1).

believes that the proposed reduction in fees would make the Exchange's data more competitive with other available alternatives, and may encourage retail brokers to make such data more readily available to their clients. In sum, the Exchange believes that the proposed fee reductions may facilitate more cost effective access to top of book data that is purchased on a voluntary basis by retail brokers and provided to their retail investor clients.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors ("SIPs") to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange.⁸ The BYX Top Feed and Cboe One Summary Feed therefore compete with the SIP and with similar products offered by other national securities exchanges that offer their own competing top of book products. In fact, there are ten competing top of book products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates.⁹ The purpose of the proposed rule change is to further increase the competitiveness of the Exchange's top of book market data products compared to competitor offerings that may

⁸ By contrast, Rule 603(c) of Regulation NMS (the "Vendor Display Rule") effectively requires that SIP data or some other consolidated display be utilized in any context in which a trading or order-routing decision can be implemented.

⁹ Competing top of book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, and IEX TOPS.

currently be cheaper for firms with a limited subscriber base that do not yet have the scale to take advantage of the lower subscriber fees offered by the Exchange. In turn, the Exchange believes that this change may benefit market participants and investors by spurring additional competition and increasing the accessibility of the Exchange's top of book data.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4),¹¹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.¹² Specifically, the proposed rule change supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹³ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78k-1.

¹³ See 17 CFR 242.603.

spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, and in particular retail investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁴ The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for its proprietary top of book data offerings.

The proposed fee change would reduce fees charged to small retail brokers that provide access to two top of book data products: the BYX Top Feed and the Cboe One Summary Feed. The BYX Top Feed provides top of book quotations and transactions executed on the Exchange, and provides a valuable window into the market for securities traded on a market that accounts for about 4% of U.S. equity market volume today.¹⁵ The Cboe One Summary Feed is a competitively-priced alternative to top of book data disseminated by SIPs, or similar data

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ See https://markets.cboe.com/us/equities/market_share/.

disseminated by other national securities exchanges.¹⁶ It provides subscribers with consolidated top of book quotes and trades from four Cboe U.S. equities markets, which together account for about 17% of consolidated U.S. equities trading volume.¹⁷ Together, these products are purchased by a wide variety of market participants and vendors, including data platforms, websites, fintech firms, buy-side investors, retail brokers, regional banks, and securities firms inside and outside of the U.S. that desire low cost, high quality, real-time U.S. equity market data. By providing lower cost access to U.S. equity market data, the BYX Top and Cboe One Summary Feeds benefit a wide range of investors that participate in the national market system. Reducing fees for broker-dealers that represent retail investors and that may have more limited resources than some of their larger competitors would further increase access to such data and facilitate a competitive market for U.S. equity securities, consistent with the goals of the Act.

While the Exchange is not required to make any data, including top of book data, available through its proprietary market data platform, the Exchange believes that making such data available increases investor choice, and contributes to a fair and competitive market. Specifically, making such data publicly available through proprietary data feeds allows investors to choose alternative, potentially less costly, market data based on their business needs. While some market participants that desire a consolidated display choose the SIP for their top of book data needs, and in some cases are effectively required to do so under the Vendor Display Rule, others may prefer to purchase data directly from one or more national securities exchanges. For example, a buy-side investor may choose to purchase the Cboe One Summary Feed, or a similar product from another exchange, in order to perform investment analysis. The Cboe One Summary Feed represents quotes from four highly liquid equities markets. As a result, the Cboe

¹⁶ See e.g., supra note 5 (discussing Nasdaq Basic).

¹⁷ Id.

One Summary Feed is within 1% of the national best bid and offer approximately 98% of the time,¹⁸ and therefore serves as a valuable reference for investors that do not require a consolidated display that contains quotations for all U.S. equities exchanges. Making alternative products available to market participants ultimately ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchanges top of book data fees as more or less attractive than the competition they can and frequently do switch between competing products. In fact, the competitiveness of the market for such top of book data products is one of the primary factors animating this proposed rule change, which is designed to allow the Exchange to further compete for this business.

The Exchange believes that the proposed fees are reasonable as they represent a significant cost reduction for smaller, primarily regional, retail brokers that provide top of book data from BYX and its affiliated equities exchanges to their retail investor clients. The market for top of book data is intensely competitive due to the availability of substitutable products that can be purchased either from other national securities exchanges, or from registered SIPs that make such top of book data publicly available to investors at a modest cost. The proposed fee reduction is being made to make the Exchange's fees more competitive with such offerings for this segment of market participants, thereby increasing the availability of the Exchange's data products, and expanding the options available to firms making data purchasing decisions based on their business needs. The Exchange believes that this is consistent with the principles

¹⁸ See https://markets.cboe.com/us/equities/market_data_services/cboe_one/.

enshrined in Regulation NMS to “promote the wide availability of market data and to allocate revenues to SROs that produce the most useful data for investors.”¹⁹

Today, the Exchange’s top of book market data products are among the most competitively priced in the industry due to modest subscriber fees, and a lower Enterprise cap, both of which keep fees at a relatively modest level for larger firms that provide market data to a sizeable number of Professional or Non-Professional Users. Distributors with a smaller user base, however, may choose to use competitor products that have a lower distribution fee and higher subscriber fees. The Program would help the Exchange compete for this segment of the market, and may broaden the reach of the Exchange’s data products by providing an additional low cost alternative to competitor products for small retail brokers. While such firms may already utilize similar market data products from other sources, the Exchange believes that offering its own data to small retail brokers at lower distribution and data consolidation costs has the potential to increase choice for market participants, and ultimately increase the data available to retail investors when coupled with the Exchange’s lower subscriber fees.

The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory as the proposed fee structure is designed to decrease the price and increase the availability of U.S. equities market data to retail investors. The Program is designed to reduce the cost of top of book market data for broker-dealers that provide such data to Non-Professional Data User clients that make up the majority of the distributor’s total subscriber population. As such, the Program would be broadly available to a wide range of retail brokers that either purchase the BYX Top Feed or Cboe One Summary Feed today, or that may choose to switch from competing products due to the potential cost savings. Dozens of distributors that currently

¹⁹ See Regulation NMS Adopting Release, *supra* note 10, at 37503.

purchase top of book data from one of the four Cboe U.S. equities exchanges, and many more prospective customers, could benefit from the Program. Each of these current or prospective retail broker customers would receive the same benefits in terms of reduced distribution and consolidation fees based on the product that they purchase from the Exchange.

The Commission has long stressed the need to ensure that the equities markets are structured in a way that meets the needs of ordinary investors. For example, the Commission's strategic plan for fiscal years 2018-2022 touts "focus on the long-term interests of our Main Street investors" as the Commission's number one strategic goal.²⁰ The Program would be consistent with the Commission's stated goal of improving the retail investor experience in the public markets. Furthermore, national securities exchanges commonly charge reduced fees and offer market structure benefits to retail investors, and the Commission has consistently held that such incentives are consistent with the Act. The Exchange believes that the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

In addition, while the Program would be effectively limited to smaller firms that distribute data to no more than 5,000 Non-Professional Data Users, the Exchange does not believe that this limitation makes the fees inequitable, unfairly discriminatory, or otherwise contrary to the purposes of the Act. Large broker-dealers and/or vendors that distribute the Exchange's data products to a sizeable number of investors benefit from the current fee structure, which includes lower subscriber fees and Enterprise licenses. Due to lower subscriber fees, distributors that provide BYX Equities Exchange Data to more than 5,000 Non-Professional Data Users already enjoy cost savings compared to competitor products. The Program would

²⁰ See U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018-2022, available at https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf.

therefore ensure that small retail brokers that distribute top of book data to their retail investor customers could also benefit from reduced pricing, and would aid in increasing the competitiveness of the Exchange's data products for this key segment of the market.

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) competition among exchanges that offer similar data products to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and the thirteen equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce the cost of top of book data provided by small retail brokers to their retail investor clients. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting the retail investors that are provided access to such market data.

The Exchange does not believe that this price reduction would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. Indeed, as explained in the basis section of this proposed rule change, the Exchange's decision to lower its distribution and consolidation fees for small retail brokers is itself a competitive response to different fee

structures available on competing markets. The Exchange therefore believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers. The Exchange also believes that the proposed reduction in fees for small retail brokers would not cause any unnecessary or inappropriate burden on intramarket competition. Although the proposed fee discount would be largely limited to small retail broker subscribers, larger broker-dealers and vendors can already purchase top of book data from the Exchange at prices that represent a significant cost savings when compared to competitor products that combine higher subscriber fees with lower fees for distribution. In light of the benefits already provided to this group of subscribers, the Exchange believes that additional discounts to small retail brokers would increase rather than decrease competition among broker-dealers that participate on the Exchange. Furthermore, as discussed earlier in this proposed rule change, the Exchange believes that offering pricing benefits to brokers that represent retail investors facilitates the Commission's mission of protecting ordinary investors, and is therefore consistent with the Act.

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

No written comments were either solicited or received.

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 Act²¹ and paragraph (f) of Rule 19b-4²² thereunder. 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,

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f).

for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or 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 (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2019-012 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-2019-012. 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-CboeBYX-2019-012 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.²³

Jill M. Peterson
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).