

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88770; File No. SR-CboeBYX-2020-005)

April 29, 2020

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend Certain Rules Within Rules 4.5 through 4.16, which Contains the Exchange’s Compliance Rule (“Compliance Rule”) Regarding the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”), to be Consistent with Certain Proposed Amendments to and Exemptions from the CAT NMS Plan as well as to Facilitate the Retirement of Certain Existing Regulatory Systems

I. Introduction

On January 22, 2020, Cboe BYX Exchange, Inc. (“Cboe BYX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Exchange’s compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan”).<sup>3</sup> The proposed rule change was published for comment in the Federal Register on February 5, 2020.<sup>4</sup> On March 20, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to May 5, 2020.<sup>5</sup> The Commission received no comments

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

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

<sup>3</sup> The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

<sup>4</sup> See Securities Exchange Act Release No. 88100 (January 30, 2020), 85 FR 6624 (“Notice”).

<sup>5</sup> See Securities Exchange Act Release No. 88438, 85 FR 17138 (March 26, 2020).

on the proposal. This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File No. SR-CboeBYX-2020-005.<sup>6</sup>

## II. Description of the Proposed Rule Change

The Exchange proposes to amend certain rules within Rules 4.5 through 4.16 of the Exchange’s rulebook (“Compliance Rule”), which sets forth rules regarding Industry Member<sup>7</sup> compliance with the CAT NMS Plan. Specifically, the proposed rule change would make the following changes to the Compliance Rule to be consistent with certain proposed amendments to and exemption requests submitted by the Participants<sup>8</sup> of the CAT NMS Plan: (1) revise data reporting requirements for the Firm Designated ID<sup>9</sup> based on a proposed amendment to the CAT NMS Plan filed with the Commission;<sup>10</sup> (2) amend the dates for required testing and reporting in

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

<sup>7</sup> Industry Member means a member of a national securities exchange or a member of a national securities association. See CAT NMS Plan, supra note 3, at Section 1.1.

<sup>8</sup> The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors’ Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

<sup>9</sup> As proposed, “Firm Designated ID” would mean a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member; provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account. See proposed Exchange Rule 4.5.

<sup>10</sup> See Notice, supra note 4, at 6625. See also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (April 14, 2020). The Commission has not approved or disapproved the changes proposed in this amendment.

the Compliance Rule for Industry Member reporting;<sup>11</sup> (3) amend the rules to require Industry Members to submit trade reports for executions and cancellations for cancelled trades to the FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility;<sup>12</sup> (4) revise the timestamp granularity requirement to require Industry Members with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report timestamps up to nanoseconds when reporting Industry Member data<sup>13</sup> to

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<sup>11</sup> See Notice, supra note 4, at 6629-33. On February 19, 2020, the Participants submitted a request for exemptive relief from the reporting dates required by the CAT NMS Plan. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020). On April 20, 2020, the Commission granted limited exemptive relief to allow for the implementation of phased reporting for Industry Members. See Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020).

<sup>12</sup> See Notice, supra note 4, at 6633-34. On February 12, 2020, the Participants submitted a request for exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require Industry Members to record and report, if an order is executed, the SRO-Assigned Market Participant Identifier of the clearing broker, and if a trade is cancelled, the cancelled trade indicator. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (Feb. 12, 2020). If granted, the exemptive relief would revise CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information would be available from FINRA's trade reports submitted to CAT.

<sup>13</sup> See Notice, supra note 4, at 6634. On February 3, 2020, the Participants filed a request for exemptive relief from the current CAT NMS Plan requirement to record and report Industry Member Data with time stamps consistent with their system, a requirement from which the Exchange requests an exemption. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020). On April 8, 2020, the Commission granted the exemptive relief for timestamp granularity. See Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

the Central Repository;<sup>14</sup> (5) revise the reporting requirements for circumstances in which an Industry Member uses an established trading relationship for an individual Customer, instead of an account, on the order reported to CAT;<sup>15</sup> and (6) revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, social security numbers, or account numbers for individuals.<sup>16</sup>

The Exchange also proposes to amend the Exchange’s Compliance Rule to facilitate the retirement of certain existing regulatory systems, specifically the Financial Industry Regulatory Authority, Inc.’s (“FINRA”) Order Audit Trail System, by adding additional data elements to the

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<sup>14</sup> The Central Repository, as defined in the CAT NMS Plan, means “the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement.” See CAT NMS Plan, *supra* note 3, at Section 1.1.

<sup>15</sup> See Notice, *supra* note 4, at 6634. On February 3, 2020, the Participants filed a request for exemptive relief from the CAT NMS Plan requirement that Participants, through their Compliance Rules, require Industry Members to record and report to the Central Repository the account number, the date account opened, and the account type for individual customers in circumstances in which an Industry Member uses an established trading relationship for the individual customer. Instead, the Participant would require Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) the relationship identifier instead of the account number, (ii) the “account type” as a “relationship”, and (3) the account effective date instead of the “date account opened.” See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

<sup>16</sup> See Notice, *supra* note 4, at 6635. The Participants requested and have received exemptive relief from the requirement of Section 6.4(d)(ii)(C) of the CAT NMS Plan for the Participants, in their Compliance Rules, to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. See Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). See also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

CAT reporting requirements for Industry Members,<sup>17</sup> additional reporting requirements for alternative trading systems,<sup>18</sup> and additional data elements related to OTC Equity Securities<sup>19</sup> that FINRA currently receives from alternative trading systems that trade OTC Equity Securities.<sup>20</sup>

### III. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>21</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>22</sup> the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,<sup>23</sup> which requires, among other things, that the rules of a national

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<sup>17</sup> See Notice, supra note 4, at 6625-26.

<sup>18</sup> See Notice, supra note 4, at 6626-28.

<sup>19</sup> OTC Equity Security, as defined in the CAT NMS Plan, means any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities. See CAT NMS Plan, supra note 3, at Section 1.1.

<sup>20</sup> Id. at 6628-29.

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “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.”<sup>24</sup> The Commission believes that several of the proposed rule changes are not consistent with the CAT NMS Plan or exemptive relief that has been granted as of the date of this Order.

#### IV. Commission’s Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5)<sup>25</sup> or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>26</sup> any request for an opportunity to make an oral presentation.<sup>27</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication

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<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 17 CFR 240.19b-4.

<sup>27</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding - either oral or notice and opportunity for written comments - is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. 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](mailto:rule-comments@sec.gov). Please include File Numbers SR-CboeBYX-2020-005 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-2020-005. 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-2020-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>28</sup> 17 CFR 200.30-3(a)(12).