

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91593; File No. SR-CboeBYX-2021-010)

April 16, 2021

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 12, 2021, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX” or “BYX Equities”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend its Fee Schedule. The text of the proposed rule change 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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 Exchange proposes to amend its Fee Schedule to decrease the standard liquidity removing rebate and eliminate the Step-Up Tiers provided under footnote 2. The Exchange proposes to implement the proposed change to its Fee Schedule on April 1, 2021.⁴

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange has more than 16% of the market share.⁵ Thus, in such a low-concentrated and highly competitive market, no single

⁴ The Exchange initially filed the proposed fee changes April 1, 2021 (SR-CboeBYX-2021-007). On April 12, 2021, the Exchange withdrew that filing and submitted this proposal.

⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (March 30, 2021), available at https://markets.cboe.com/us/equities/market_statistics/.

equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Taker-Maker” model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange’s Fees Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.00050 per share for orders that remove liquidity and assesses a fee of \$0.00200 per share for orders that add liquidity. For orders priced below \$1.00, the Exchange does not assess a fee or provide a rebate for orders that add liquidity and assesses a fee of 0.10% of total dollar value for orders that remove liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

As stated above, the Exchange currently provides a standard rebate of \$0.00050 per share for liquidity removing orders (i.e., those yielding fee codes N,⁶ W,⁷ and BB⁸) in securities priced at or above \$1.00. Orders in securities priced below \$1.00 that remove liquidity are assessed a fee of 0.10% of the total dollar value. The Exchange now proposes to decrease the current standard rebate of \$0.00050 per share to \$0.00020 per share for orders that remove liquidity for securities priced at or above \$1.00. Orders that remove liquidity in securities priced

⁶ Orders yielding Fee Code “N” are orders removing liquidity from BYX (Tape C).

⁷ Orders yielding Fee Code “W” are orders removing liquidity from BYX (Tape A).

⁸ Orders yielding Fee Code “BB” are orders removing liquidity from BYX (Tape B).

below \$1.00 would continue to be assessed a fee of 0.10% of the total dollar value. Although this proposed standard rebate for liquidity removing orders is lower than the current base rate for such orders, other taker-maker exchanges charge a fee for firms removing liquidity that do not meet certain volume thresholds.⁹

The tiered pricing models set forth in footnote 2 of the Fee Schedule (Step-Up Tiers) provide Members an opportunity to qualify for a reduced fee on their orders that add liquidity where they increase their relative liquidity each month over a predetermined baseline. Tier 1 of the Step-Up Tiers provides a reduced fee of \$0.0016 per share to a Member that has a Step-Up Add TCV¹⁰ from December 2019 equal to or greater than 0.05%. The Exchange now proposes to eliminate the Step-Up Tiers and reserve footnote 2. The Exchange no longer wishes to, nor is it required to, maintain such a tier and therefore proposes to eliminate the Step-Up Tier from the Fee Schedule. Specifically, the proposed rule change removes this tier as the Exchange would rather redirect resources and funding into other programs and tiers intended to incentivize increased order flow. As a result of the proposed change, the Exchange also proposes to eliminate references to footnote 2 from fee codes B,¹¹ V,¹² and Y.¹³

⁹ E.g., the Nasdaq BX offers rebates ranging from \$0.0009 to \$0.0018 to firms reaching certain adding and removing liquidity volume thresholds; however, it charges a fee of \$0.0007 to firms removing liquidity that do not reach the adding and removing volume thresholds. See <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹⁰ “Step-Up Add TCV” means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

¹¹ Orders yielding Fee Code “B” are orders adding liquidity to BYX (Tape B).

¹² Orders yielding Fee Code “V” are orders adding liquidity to BYX (Tape A).

¹³ Orders yielding Fee Code “Y” are orders adding liquidity to BYX (Tape C).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),¹⁵ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes that the proposed amendment to reduce the standard liquidity removing rebate is reasonable, equitable and non-discriminatory because the proposed change represents a rebate decrease and such rebates are equally applicable to liquidity removing orders and thus are also equally applicable to all Members of the Exchange. Additionally, the proposed rebate for liquidity removing orders are still higher than rebates offered at other exchanges for similar transactions.¹⁶

The Exchange also believes the proposed amendment to remove the Step-Up Tier is reasonable because no Member has achieved this tier in several months. Furthermore, the Exchange is not required to maintain this tier and as discussed, Members still have a number of other opportunities and a variety of ways to receive reduced fees, including the including

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ Supra note 7[sic].

existing Tiers 1 through 5 of the Add/Remove Volume Tiers. The Exchange believes the proposal to eliminate the Step-Up Tier is also equitable and not unfairly discriminatory because it applies to all Members.

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of 16 equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar rates and tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes apply to all liquidity removing orders equally, and thus apply to all Members equally. Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purpose of the Act.

As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.¹⁷ Therefore, no exchange possesses significant pricing power in the execution of order

¹⁷ Supra note 3[sic].

flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, 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.”¹⁸ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”¹⁹ Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁹ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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)²⁰ of the Act and paragraph (f) of Rule 19b-4²¹ 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, 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-2021-010 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-2021-010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

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-2021-010, 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.²²

J. Lynn Taylor
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).