

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93291; File No. SR-CboeBYX-2021-023)

October 12, 2021

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a Rule Regarding the Allowance of Off-Exchange Transactions by a Member Acting as Agent Otherwise than on BYX in Accordance with Rule 19c-1 under the Securities Exchange Act of 1934

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 September 29, 2021, Cboe BYX Exchange, Inc. (the “Exchange”) 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 adopt a rule regarding the allowance of off-exchange transactions by a Member acting as agent otherwise than on BYX in accordance with Rule 19c-1 under the Securities Exchange Act of 1934 (the “Act”).⁵ The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See 17 CFR § 240.19c-1.

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 adopt a rule regarding off-exchange transactions by a Member acting as agent. Rule 19c-1 and Rule 19c-3 under the Act⁶ describe rule provisions that each national securities exchange must include in its Rules regarding the ability of members to engage in transactions off an exchange. While the Exchange already incorporates the required provision in Rule 19c-3 under the Act into Rule 13.6, and its stated policies and practices are consistent with these provisions of the Act, the Exchange Rules do not currently include the provisions in Rule 19c-1 under the Act. Therefore, the proposed rule change adopts this provision in new Rule 13.6(a)⁷ in accordance with Rule 19c-1 under the Act. Specifically, proposed Rule 13.6(a) (in accordance with Rule 19c-1 under the Act) provides that no rule, stated policy, or practice of this

⁶ See 17 CFR § 240.19c-1 and § 240.19c-3.

⁷ The proposed rule change also updates the provision in current Rule 13.6 (which incorporate Rule 19c-3 under the Act) to be Rule 13.6(b).

Exchange shall prohibit or condition, or be construed to prohibit or condition, or otherwise limit, directly or indirectly, the ability of any Member acting as agent to effect any transaction otherwise than on this Exchange with another person (except when such Member also is acting as agent for such other person in such transaction) in any equity security listed on this Exchange or to which unlisted trading privileges on this Exchange have been extended.

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.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ 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.

In particular, the Exchange believes proposed Rule 13.16(a) is consistent with the Act, because it adopts an Exchange Rule specifically required by Rule 19c-1 regarding off-exchange transactions for members’ agency transactions. The Exchange’s current Rule 13.6 and stated policies and procedures currently comply with provisions governing off-exchange trading in Rule 19c-3 under the Act. The proposed rule change is designed to prevent fraudulent and

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

manipulative practices, promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system as it will add transparency to the Exchange Rules by making it explicit in its Rules the provisions of Rule 19c-1 under the Act, as is required by all national exchanges.

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. The proposed rule change is not intended as a competitive trading tool, rather it makes explicit the provisions governing off-exchange trading by a Member acting as agent in Rule 19c-1 of the Act within the Exchange Rules, which were previously inadvertently excluded. The provisions regarding off-exchange trading by a Member acting as agent apply equally to all Members, and each national securities exchange is required to include the provision of Rule 19c-1 under the Act in its rules.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay for this filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to immediately update its rules to reflect the requirements of Rule 19c-1 of the Act.¹⁴ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹⁵

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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 17 CFR 240.19c-1.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall 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-2021-023 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-2021-023. 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-2021-023, 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).