

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85665; File No. SR-CboeBYX-2019-004)

April 16, 2019

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Program Related to BYX Rule 11.18, Trading Halts Due to Extraordinary Market Volatility, to the Close of Business on October 18, 2019

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 12, 2019, 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 extend the pilot program related to BYX Rule 11.18, Trading Halts Due to Extraordinary Market Volatility, to the close of business on October 18, 2019. The text of the proposed rule change is attached as Exhibit 5 [sic].

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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/](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

BYX Rules 11.18(a) through (d), (f) and (g) describe the methodology for determining when to halt trading in all stocks due to extraordinary market volatility, i.e., market-wide circuit breakers. The market-wide circuit breaker mechanism was approved by the Commission to operate on a pilot basis, the term of which is to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the "LULD Plan" or "Plan"),<sup>5</sup> including any extensions to the pilot period for the Plan. The Commission published an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis on December 18, 2018,<sup>6</sup> and the Commission approved that amendment on April 11, 2019.<sup>7</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

<sup>6</sup> See Securities Exchange Act Release No. 84843 (December 18, 2018), 83 FR

Market-wide circuit breakers provide an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equities exchanges have similar rules related to market-wide circuit breakers, which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity. Market-wide circuit breakers provide for trading halts in all equities markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to BYX Rule 11.18, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2) and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 circuit breaker after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 circuit breaker, at any time during the trading day, would halt market-wide trading for the remainder of the trading day. The Exchange proposes to amend BYX Rule 11.18 to untie the market-wide circuit breaker pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.

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66464 (December 26, 2018) (Amendment No. 18 Proposing Release).

<sup>7</sup> See Securities Exchange Act Release No. 85623 (April 11, 2018) (federal register publication pending) (Amendment No. 18 Approval Order).

In addition, the Exchange proposes to amend BYX Rule 11.18 such that the pilot only applies to the provisions of paragraphs (a) through (d), (f) and (g) of BYX Rule 11.18 – i.e., the provisions related to the market-wide circuit breaker mechanism, and not paragraph (e), which discusses provisions implementing the LULD Plan.<sup>8</sup> The Exchange is required by the LULD Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan. BYX Rule 11.18(e) states that the Exchange is a Participant in the LULD Plan, and requires that members comply with the provisions of the Plan. Furthermore, BYX Rule 11.18(e) describes order handling performed by the Exchange to maintain compliance with the LULD Plan. Specifically, the rule: (1) provides that the System shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan; and (2) describes how the System re-prices and/or cancels buy (sell) interest that is priced or could be executed above (below) the Upper (Lower) Price Band. With the approval of the LULD Plan to operate on a permanent basis, the Exchange believes that the provisions of BYX Rule 11.18(e) should similarly be permanent, thus ensuring continued compliance with the Plan.

The Exchange intends to file a separate proposed rule change with the Commission to operate the provisions of paragraphs (a) through (d), (f) and (g) of BYX Rule 11.18 on a permanent, rather than pilot, basis. Extending the effectiveness of such provisions to the close of business on October 18, 2019 should provide the Commission adequate time to consider whether to approve the Exchange's separate proposal to

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<sup>8</sup> Paragraph (e) of BYX Rule 11.18, which is being made permanent, is subject to a pilot coterminous with the LULD Plan today.

operate the market-wide circuit breaker mechanism on a permanent basis.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. The Exchange believes that extending the market-wide circuit breaker pilot program for an additional six months would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission considers whether to approve the pilot program on a permanent basis. The proposed rule change would thus promote fair and orderly markets and the protection of investors and the public interest. Based on the foregoing, the Exchange believes the benefits to market participants from the market-wide circuit breaker mechanism should continue on a pilot basis while the Commission considers whether to permanently approve those rules.

The Exchange also believes that it is consistent with the public interest and the protection of investors to make permanent the order handling provisions of BYX Rule

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<sup>9</sup> 15 U.S.C. § 78f(b).

<sup>10</sup> 15 U.S.C. § 78f(b)(5).

11.18. Today, like the market-wide circuit breaker rules, those rules are operated under a pilot that coincides with the pilot period for the LULD Plan. Unlike the market-wide circuit breaker rules, however, these rules directly implement the requirements of the LULD Plan, including by implementing order handling that is consistent with the requirements of the Plan. As such, the Exchange believes that it is appropriate to make these rules permanent now that the Plan is no longer operating on a pilot basis. Making these rules permanent would ensure continued compliance by the Exchange and its members with the requirements of the LULD Plan as the Plan transitions to permanent status.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change implicates any competitive issues because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission considers whether to permanently approve the market-wide circuit breaker mechanism under BYX Rule 11.18. The Exchange believes that FINRA and other national securities exchange will also file similar proposals to extend their respective market-wide circuit breaker pilot programs with the Commission so that the market-wide circuit breaker mechanism may continue uninterrupted while the Commission considers whether to approve its operation on a permanent basis. Furthermore, the proposed rule change would ensure continued compliance with the requirements of the LULD Plan as it

becomes permanent, which the Exchange believes would not have a significant impact on competition.

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

No comments were solicited or received 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 Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may 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 so that the Exchange may implement the proposed rule change immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Commission approved making the Plan pilot permanent on April 11, 2019, and therefore the Exchange's proposed changes to its rules reflecting that the Plan is now

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Commission has waived this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

permanent should go into effect immediately. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.<sup>15</sup>

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 shall institute proceedings to determine whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2019-004 on the subject line.

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<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2019-004. 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, D.C. 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-2019-004 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.<sup>16</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).