

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88160; File No. SR-CboeBYX-2020-006)

February 11, 2020

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the BYX Fee Schedule to Correct an Inadvertent Drafting Error Introduced in a Previous Rule Filing

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 January 31, 2020, 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 (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the BYX Fee Schedule to correct an inadvertent drafting error introduced in a previous rule filing. 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 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 amend the BYX Fee Schedule to correct an inadvertent drafting error introduced in a previous rule filing that adopted the definition of “Step-Up Add TCV”.

On January 2, 2020, the Exchange filed a proposed rule change to replace the Non-Displayed Liquidity Incentives with Step-Up Tiers.³ The purpose of that filing was to offer Step-Up Tiers that would provide Members an opportunity to receive a discounted rate from the standard fee assessment for displayed liquidity adding orders that yield fee codes “B”,⁴ “V”,⁵ or “Y”.⁶ Specifically, to qualify for Tier 1, a Member must have a “Step-Up Add TCV” from December 2019 of greater than or equal to 0.05%. Accordingly, the Exchange also adopted a definition of “Step-Up Add TCV” to the Fee Schedule which would mean add ADV as a

³ See Securities Exchange Act Release No. 34-87960 (January 14, 2020) 85 FR 3437 (January 21, 2020) (SR-CboeBYX-2020-0001[sic]).

⁴ “B” is appended to displayed orders that add liquidity to BYX(Tape B).

⁵ “V” is appended to displayed orders that add liquidity to BYX (Tape A).

⁶ “Y” is appended to displayed order that add liquidity to BYX (Tape C).

percentage of TCV in the relevant baseline month subtracted from current add ADV as a percentage of TCV. In its adoption of the definition of “Step-Up Add TCV”, the Exchange inadvertently referenced the terms “add ADV” rather than “ADAV”.⁷ Therefore, the Exchange now proposes to amend the definition of Step-Up Add TCV to reference the term ADAV rather than add ADV. The Exchange notes that the proposed definition is substantially consistent with the definition in the Fee Schedules of the Exchange’s affiliated exchanges.⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. Specifically, the Exchange believes that the proposed rule change is reasonable, equitable, and not unfairly discriminatory as it does not change the fees or rebates assessed by the Exchange, but rather corrects an inadvertent error to a definition noted in the Fee Schedule. The Exchange believes that amending the terms “add ADV” to “ADAV” in the definition of “Step-Up Add TCV” would reduce confusion around the Exchange’s charges and ensure that these fees are appropriately referenced on the Fee Schedule.

⁷ “ADAV” means average daily volume calculated as the number of shares added per day and “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis.

⁸ See Cboe BZX U.S. Equities Exchange Fee Schedule, Definitions; Cboe EDGX U.S. Equities Exchange Fee Schedule, Definitions.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

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. Rather, the proposed rule change is designed to reduce potential confusion to the definition of “Step-Up Add TCV” referenced in the Fee Schedule by amending the terms “add ADV” to “ADAV”. The Exchange believes that this change would increase transparency to the benefit of members and investors without having any impact on competition.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)¹³ of the Act 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 No. SR-CboeBYX-2020-006 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File No. SR-CboeBYX-2020-006. 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

¹³ 15 U.S.C. 78s(b)(2)(B).

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 No. SR-CboeBYX-2020-006, 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).