

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92301; File No. SR-CboeBYX-2021-014)

June 30, 2021

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Content of the Cboe One Feed under Rule 11.22(i) to Identify the Current Day Consolidated High and Low Prices

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 June 17, 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 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 amend the content of the Cboe One Feed under Rule 11.22(i) to identify the current day consolidated high and low prices. The text of the proposed rule change is provided in Exhibit 5.

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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

The Exchange proposes to enhance the content of the Cboe One Feed under Rule 11.22(i) to identify the current day consolidated high and low price for all listed equity securities.

The Cboe One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on BYX and its affiliated exchanges.<sup>5</sup> Among other things, the Cboe One Feed also includes consolidated volume for all listed equity securities regardless of where the transaction was executed, the Cboe One Opening

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<sup>5</sup> BYX's affiliated exchanges are the Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGA Exchange, Inc. ("EDGA"), and Cboe EDGX Exchange, Inc. ("EDGX", and together with BZX, BYX, and EDGA, the "Cboe Equity Exchanges"). See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Cboe (formerly Bats) One Feed) ("Cboe One Approval Order").

Price and the Cboe One Closing Price,<sup>6</sup> and the primary listing market's official opening and closing price.

Now, in addition to the information currently provided in the Cboe One Feed, the Exchange is proposing to include the current day consolidated high and low price for all listed equity securities as obtained directly from the securities information processors ("SIPs"). The consolidated high and low price for all listed equity securities would be disseminated via the Cboe One Feed after the Consolidated Tape Association ("CTA") and Unlisted Trading Privileges ("UTP") Plan SIP delay period, which is currently 15 minutes.

Such information would provide Cboe One Feed users with a static benchmark against which to compare price movements shown on Cboe One using high and low prices in the consolidated market. The Exchange's proposal is in response to requests by Members using the Cboe One Feed, and also partly in response to recent changes by a competitor exchange to their end of day messages.<sup>7</sup>

The Exchange proposes that this change become operative on July 16, 2021. To ensure consistency across the Cboe Equity Exchanges, BZX, EDGA, and EDGX will be filing companion proposals to reflect these changes in their respective rulebooks. The Exchange is not proposing any change to the Cboe One Feed fee as a result of this modification.

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<sup>6</sup> For securities listed on Cboe BZX Exchange, Inc. ("BZX"), the Cboe One Opening Price shall be the BZX Official Opening Price as defined in BZX Rule 11.23(a)(5) and the Cboe One Closing Price shall be the BZX Official Closing Price as defined in BZX Rule 11.23(a)(3). For securities not listed on BZX, the Cboe One Opening Price shall be the first last sale eligible trade that occurred on the Exchange or any of its affiliates after 9:30 a.m. Eastern Time, and the Cboe One Closing Price shall be the final last sale eligible trade to occur on the Exchange or any of its affiliates prior to 4:00 p.m. Eastern Time. See Exchange Rule 11.22(i).

<sup>7</sup> See e.g., Securities Exchange Act No. 91241 (March 2, 2021) 86 FR 13427 (March 8, 2021) (SR-NASDAQ-2021-010) (amending the content of the Nasdaq Last Sale ("NLS")) Plus to identify the high, low and closing price published by the SIPs).

## 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.<sup>8</sup> Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)<sup>9</sup> 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. The Exchange also believes that the proposed rule changes are consistent with Section 11(A) of the Act<sup>10</sup> in that it supports (1) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (2) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule changes are consistent with Rule 603 of Regulation NMS,<sup>11</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data products to the public. It was believed that this

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78k-1.

<sup>11</sup> See 17 CFR 242.603.

authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The proposed change to Exchange Rule 11.22(i) is designed to 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 by identifying the consolidated high and low price for all listed equity securities as obtained directly from the SIPs. Such information would provide Cboe One Feed users with a static benchmark against which to compare price movements shown on the Cboe One Feed using high and low prices in the consolidated market. Therefore, the consolidated high and low price for listed equity securities would provide meaningful information to investors. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving such information. As noted above, another exchange currently provides consolidated high and low price information in their competing market data products.<sup>12</sup> Therefore, the Exchange believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest as it would provide an additional avenue for investors to receive this information from a competing product. The proposal would not permit unfair discrimination because the consolidated high and low price will be available to all of the Exchange's customers and market data vendors on an equivalent basis. In addition, any customer that wishes to receive this information via a different source will be able to do so.

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<sup>12</sup> Supra note 7.

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

The Exchange does not believe that the proposed change to Rule 11.22(i) will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will enhance competition because it would enable the Exchange to include the consolidated high and low price as part of the Cboe One Feed, thereby enabling it to better compete with similar market data products currently offered by another exchange that includes such information.<sup>13</sup> The Exchange is not the exclusive distributor of the consolidated high and low price for all listed equity securities, and a vendor seeking to offer a similar product that includes this information would be able to do so on the same terms as the Exchange. Specifically, a competing vendor could receive the consolidated high and low price from the SIPs and include that information as part of their market data products to be disseminated to customers pursuant to the same terms and policies as the Exchange.<sup>14</sup>

The Exchange believes the proposal will have no impact on intramarket competition as the proposal is not targeted at, or expected to be limited in its applicability to, any particular segment of market participants and no segment of retail investors, the general investing public, or any other market participant is expected to benefit more than any other. Therefore, the Exchange believes the inclusion of the consolidated high and low price in the Cboe One Feed would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>13</sup> Id.

<sup>14</sup> See CTA Consolidated Volume Display Policy with FAQ at <https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Consolidated%20Volume%20Policy%20FAQ.pdf>.

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 Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>18</sup> 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 proposed to implement this proposed rule change on July 16, 2021 and 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, as it will provide an additional option for investors to receive consolidated high and low price information, which the Exchange states is meaningful information for investors, on the proposed implementation date of July 16, 2021.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 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.

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.<sup>19</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 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](mailto:rule-comments@sec.gov). Please include File No. SR-CboeBYX-2021-014 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-2021-014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>19</sup> 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).

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 No. SR-CboeBYX-2021-014, 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>20</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).