

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92933; File No. SR-CboeBYX-2021-018)

September 10, 2021

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

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 1, 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, II, and III, 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”) proposes 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amend the criteria for Add Volume Tiers 1 through 4, effective September 1, 2021.

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.³ Thus, in such a low-concentrated and highly competitive market, no single 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 Fee 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 \$0.00020 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

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (August 30, 2021), available at https://markets.cboe.com/us/equities/market_statistics/.

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.

Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For example, the Exchange currently offers various Add/Remove Volume Tiers under footnote 1 of the Fee Schedule, which offer various enhanced rebates and reduced fees for reaching certain, incrementally more challenging volume-based thresholds.

The Exchange proposes to amend the criteria for Add Volume Tiers 1 through 4 under footnote 1 of the Fee Schedule, which tiers currently provide Members an opportunity to qualify for reduced fees for orders yielding fee codes B⁴, V⁵, and Y⁶ where a Member meets certain required volume-based criteria. Specifically, Add Volume Tiers 1 through 4 are as follows:

⁴ Orders yielding Fee Code B are displayed orders that add liquidity to BYX (Tape B) and are assessed a standard fee of \$0.00200.

⁵ Orders yielding Fee Code V are displayed orders that add liquidity to BYX (Tape A) and are assessed a standard fee of \$0.00200.

⁶ Orders and orders yielding Fee Code Y are displayed orders that add liquidity to BYX (Tape C) and are assessed a standard fee of \$0.00200.

- Tier 1 provides a reduced fee of \$0.0017 per share to a Member that has an ADAV⁷ as a percentage of TCV⁸ greater than or equal to 0.25%.
- Tier 2 provides a reduced fee of \$0.0014 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.30%.
- Tier 3 provides a reduced fee of \$0.0013 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.45%.
- Tier 4 provides a reduced fee of \$0.0012 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 1.00%.

Now, the Exchange proposes to modify these tiers to reduce the ADAV as a percentage of TCV thresholds. The proposed Add Volume Tiers are as follows:

- To meet the proposed criteria in Tier 1, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.20% (instead of 25%).
- To meet the proposed criteria in Tier 2, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.25% (instead of 30%).
- To meet the proposed criteria in Tier 3, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.30% (instead of 45%).
- To meet the proposed criteria in Tier 4, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.60% (instead of 1.00%).

⁷ “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

⁸ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

The proposed changes to these tiers are designed to make each tier's criteria easier to reach by lowering the volume-based criteria (i.e., the ADAV as a percentage of TCV thresholds). The Exchange believes that by easing the tiers' criteria difficulty it will encourage those Members who could not previously achieve these Tiers to increase their order flow as a means to receive the Tiers' proffered fee reductions. The Exchange does not propose any changes to the corresponding reduced fee under each tier and notes that it believes the current rates remain commensurate with each tier's criteria, even as amended. The Exchange also believes the Add Volume Tiers, as amended, continue to provide liquidity providing Members on the Exchange additional opportunities to receive discounted rates. The Add Volume Tiers are designed to provide Members that submit displayed liquidity on the Exchange incentives to contribute to a deeper, more liquid market, in turn, providing additional execution opportunities at transparent prices as a result of such increased, displayed liquidity. The Exchange believes that this benefits all Members by enhancing overall market quality and contributing towards a robust and well-balanced market ecosystem. The Exchange notes the modified tiers are available to all Members.

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. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹¹ requirements

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f.(b)(5).

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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, 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. Also, as described above, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹² including the Exchange,¹³ and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

¹² See e.g., Nasdaq BX, Equity 7 Pricing Schedule, Section 118.

¹³ See BYX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

In particular, the Exchange believes the proposed changes to ease the volume-based criteria under Add Volume Tiers 1 through 4 is a reasonable means to encourage Members to increase their add liquidity on the Exchange. Further, the Exchange believes that the proposed changes are reasonable as the proposed criteria does not represent a significant departure from the criteria currently required of each tier. Additionally, the Exchange believes Add Volume Tiers 1 through 4 will continue to provide Members additional opportunities to meet criteria to receive a reduced fee, even as modified. The Exchange also believes that the proposed reduced fees under Add Volume Tiers 1 through 4, which are not being changed, continue to be commensurate with the new criteria.

As noted above, the Exchange believes the proposed changes incentivize Members to increase their overall add volume order flow, which may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes signals an increase in activity from other market participants. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

The Exchange believes that the proposed rule change represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members are eligible for the Add Volume Tiers and have the opportunity to meet the tiers' criteria and receive the corresponding reduced fees if such criteria, even as amended, is met. The Exchange notes that currently one Member is satisfying the current criteria under Add Volume Tier 2 and no Members are satisfying the current criteria under Add Volume Tiers 1, 3 or 4. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity. However, the Exchange

anticipates that at least one Member will be able to satisfy the criteria proposed under Add Volume Tier 3 and does not anticipate any firms immediately satisfying Add Volume Tiers 1, 2 or 4. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebate offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive the corresponding reduced fees.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to Add Volume Tiers 1 through 4 applies to all Members equally in that all Members are eligible for these tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the reduced fee on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BYX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their

participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, 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 purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. 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.¹⁴ Therefore, no exchange possesses significant pricing power in the execution of order 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

¹⁴ See supra note 3.

competition in its broader forms that are most important to investors and listed companies.”¹⁵

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’”¹⁶ Accordingly, the Exchange does not believe its proposed fee changes imposes 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.

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) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ 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,

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁶ *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)).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

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-2021-018 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-2021-018. 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-2021-018 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.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).