

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93148; File No. SR-CboeBYX-2021-022)

September 28, 2021

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 21, 2021, Cboe BYX Exchange, Inc. ("Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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" or "BYX Equities") 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 applicable to its equities trading platform (“BYX Equities”) to modify the rebate associated with certain routing fee codes and eliminate certain routing fee codes.³

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,⁴ no single registered equities exchange has more than 14% of the market share. 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 believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, discontinue, or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the

³ The Exchange initially filed the proposed fee changes September 1, 2021 (SR-CboeBYX-2021-019). On September 13, 2021, the Exchange withdrew that filing and re-submitted the proposed fee changes (SR-CboeBZX-2021-021). On September 21, 2021, the Exchange withdrew that filing and re-submitted this proposal.

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (August 26, 2021), available at https://markets.cboe.com/us/equities/market_statistics/.

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.

The Exchange assesses fees and provides rebates in connection with orders routed away to various exchanges. Now, the Exchange proposes to modify certain routing fee codes currently under the Fee Codes and Associated Fees section of the Fee Schedule. First, the Exchange proposes to modify fee code C, which is appended to orders routed to Nasdaq BX, Inc. (“Nasdaq BX”) using destination specific, TRIM or SLIM routing strategies, and currently provides a rebate of \$0.00100 per share. Specifically, the Exchange proposes to reduce the rebate to \$0.00050 per share.

Second, the Exchange proposes to modify fee code NX, which is appended to orders routed to NYSE National, Inc. (“NYSE National”) using the TRIM or SLIM routing strategy, and currently provides a rebate of \$0.00200 per share. The Exchange proposes to reduce the rebate to \$0.00050 per share.

Finally, as a result of minimal use in the last months, the Exchange proposes to eliminate fee codes BO, IX, and SX in their entirety. Fee code BO is appended to orders routed using a destination specific routing strategy unless otherwise specified, and currently assesses a fee of \$0.00300 per share. Fee code IX is appended to orders routed to the Investors Exchange LLC (“IEX”) using a destination specific routing strategy, and currently assesses a fee of \$0.00300 per share. Fee code SX is appended to orders routed using the SLIM routing strategy (except to Cboe BZX Exchange, Inc. (“BZX Equities”), Cboe EDGA Exchange, Inc. (“EDGA Equities”) Nasdaq BX, NYSE American LLC (“NYSE American”) or NYSE National), and currently assesses a fee of \$0.00290 per share. The Exchange believes that because so few users elect to route their orders with specifications to which fee code BO, IX, or SX is applicable, the current demand

does not warrant the infrastructure and ongoing Systems maintenance required to support the separate fee codes. Therefore, the Exchange now proposes to delete fee code BO, IX, and SX in the Fee Schedule. The Exchange notes that users will continue to be able to choose to route their orders with the same specifications to which fee codes BO, IX, and SX currently applies —such orders will simply be assessed the fees currently in place for routed orders generally.⁵ That is, if any of the routed orders to which fee code BO, IX, or SX currently apply fee code X will be appended to such orders, which assesses a fee of \$0.00300 per share.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4),⁷ 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)⁸ 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

⁵ The Exchange notes that there are other fee codes that apply to certain other routing specifications, however, those routed orders not otherwise specified in such other routing fee code descriptions yield the general routing fee code X.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f.(b)(5).

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 Exchange believes that its proposal to reduce the rebates applicable to fee codes C and NX is fair, equitable, and reasonable because the proposed fees and rebate remain consistent with pricing offered by the Exchange's affiliates and competitors and does not represent a significant departure from the Exchange's general pricing structure. Specifically, the proposed rebates applicable to fee codes C and NX are more than that offered by the Nasdaq Stock Market LLC ("Nasdaq"), which does not provide a standard rebate for similar orders.⁹ Therefore, the Exchange believes the proposed rebates associated with fee codes C and NX remain consistent with pricing previously offered by the Exchange's affiliates and other exchanges and does not represent a significant departure from such pricing.

The Exchange believes the proposed rule change to remove fee code BO, IX, and SX is reasonable as the Exchange has observed a minimal amount of volume in orders yielding the fee code and, therefore, the continuation of these fee codes does not warrant the infrastructure and ongoing Systems maintenance required to support separate fee codes for specific routed orders. As such, the Exchange also believes that is reasonable and equitable to assess routed orders which meet the specifications to which fee code BO, IX, and SX are currently applicable the standard routing fee currently in place for all other routed orders — via fee code X. The fee

⁹ See "Route Rates" on the Nasdaq fee schedule at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

associated with fee code X is \$0.00300, which is the same as the fee currently assessed for orders yielding fee code BO and IX, and is only slightly higher than the fee currently assessed for fee code SX. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because Members will continue to have the option to elect to route their orders in the same manner and will be automatically and uniformly assessed the applicable standard rates in place for generally all other routed orders. Further, if members do not favor the Exchange's pricing for routed orders, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is optional, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

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. The Exchange does not believe that the proposed modifications represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Further, while the Exchange is proposing to eliminate fee codes BO, IX, and SX orders that meet specifications of fee code BO, IX, or SX going forward will be assessed the rate for orders routed generally. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

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 fee and rebate modifications will continue to apply to all Members equally, and as noted above, orders currently meeting the specifications of fee code BO, IX, or SX will be assessed the rate for orders routed generally under fee code X. 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. 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 14% of the market share.¹⁰ 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 competition in its broader forms that are most important to investors and listed companies.”¹¹ The fact that this market is competitive has also long been

¹⁰ Supra note 3.

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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’”¹² Accordingly, the Exchange does not believe its proposed fee change 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 upon filing pursuant to Section 19(b)(3)(A)¹³ of the Act and paragraph (f)(2) of Rule 19b-4¹⁴ 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 Commission shall institute proceedings under Section

¹² *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)).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

19(b)(2)(B)¹⁵ 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 Number SR-CboeBYX-2021-022 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 Number SR-CboeBYX-2021-022. 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

¹⁵ 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 will also 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-2021-022 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).