

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94507; File No. SR-CboeBYX-2022-004)

March 24, 2022

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the 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 March 14, 2022, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) filed with the Securities and Exchange Commission (“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” or “BYX Equities”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amend its Fees Schedule to adopt fees for Certification Logical Port fees, effective March 1, 2022.³

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange’s System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports⁴, Purge Ports⁵, Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports⁶. For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange’s certification environment to test proprietary systems and applications (*i.e.*, “Certification Logical Ports”). The certification environment facilitates testing using replicas of the Exchange’s production environment process configurations which provide

³ The Exchange initially filed the proposed fee changes on March 1, 2022 (SR- CboeBYX-2022-002). On March 14, 2022, the Exchange withdrew that filing and submitted this proposal.

⁴ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁵ Purge Ports are dedicated ports that permit a User to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁶ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange’s Multicast PITCH data feeds.

for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. Historically, the Exchange has not assessed fees for Certification Logical Ports. The Exchange now proposes to establish a monthly fee for Certification Logical Ports. Particularly, the Exchange proposes to adopt a monthly fee of \$250 per Certification Logical Port. However, the Exchange notes that it will continue to offer free of charge one Certification Logical Port per logical port type offered in the production environment (i.e., Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) to each Member or non-Member, as applicable. Any additional Certification Logical Ports will be assessed \$250 per month per port.⁷ The Exchange notes that purchasing additional Certification Logical Ports is voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.⁸ Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.⁹

⁷ For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed \$500 per month for Certification Logical Port Fees (i.e., 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports x \$0 and 2 FIX Certification Logical Ports x \$250).

⁸ For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each User, but rather must be proactively requested by Users.

⁹ See e.g., Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. See also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

Lastly, the Exchange does not intend to prorate Certification Logical Ports for the first month of service and intends to make this clear in the notes section under the Logical Port Fees section of the Fees Schedule.

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange’s certification environment provides a robust and realistic testing experience using a replica of the Exchange’s production environment process configurations. This environment enables market participants to manage risk more effectively

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(4).

through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. As such, the Exchange believes it's reasonable to adopt a Certification Logical Port fee as it better enables the Exchange to continue to maintain and improve its testing environment, which the Exchange believes serves to improve live production trading on the Exchange. The Exchange also believes the proposed Certification Logical Port fee is reasonable because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for each type of logical port that are currently offered in the production environment. Notably, the Exchange believes one Certification Logical Port per logical port type will be sufficient for most users and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. More specifically, while the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates approximately 19% of Users to be assessed fees for Certification Logical Ports (i.e., request Certification Ports in excess of the Certification Logical Ports provided free of charge). For those users who wish to obtain additional Certification Logical Ports based on their respective business needs, they are able to do so for a modest fee. Indeed, the proposed fee is lower than the fees assessed for the corresponding logical ports used in the Exchange's production environment.¹³ Additionally, the Exchange notes other exchanges similarly assess fees relating to their respective testing environments.¹⁴ Further, the decision to purchase additional ports is optional and no

¹³ See Cboe BYX Fees Schedule, Logical Port Fees.

¹⁴ See e.g., Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. See also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.¹⁵

The Exchange believes the proposed fee is also equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports. The Exchange also believes the proposed fee is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to be efficient with their respective Certification Logical Port usage. Without some sort of fee for its Certification Logical Ports, the Exchange believes that Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange in supporting testing and certifying Members and non-Members to the detriment of all market participants as Exchange resources are diverted away from other trading operations. Additionally, similar to its production environment, the Exchange's certification environment does not have unlimited system capacity to support unlimited testing. As such, the proposed fee structure also ensures that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. The Exchange lastly believes that its proposed fee is aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has "levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets."¹⁶

¹⁵ Although many Users use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by User and depends on a User's business needs. To the extent a User purchases additional Certification Logical Ports and its respective needs change or it determines it no longer wishes to maintain excess Certification Logical Ports, the User is free to cancel such ports for the following month(s).

¹⁶ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251

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. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type offered in the production environment. Although the Exchange now proposes to charge users for additional Certification Logical Ports, the Exchange believes without some sort of fee assessed for excess Certification Logical Ports, Members and non-Members may be less efficient in testing their systems, potentially resulting in excessive time and resources being consumed by the Exchange and also potentially impacting the certification environment's capacity thresholds. The proposed fee structure therefore would ensure that market participants that pay the proposed fee are the ones that demand the most resources from the Exchange. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have

(December 5, 2014) (File No. S7-01-13) (Regulation SCI Adopting Release).

numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall 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.”¹⁷ 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’”¹⁸ 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.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁸ *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)).

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 Act¹⁹ and paragraph (f) of Rule 19b-4²⁰ 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, 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-2022-004 on the subject line.

Paper comments:

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

- 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-2022-004. 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-2022-004 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.²¹

J. Matthew DeLesDernier
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).