

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94634; File No. SR-CboeBYX-2022-010)

April 7, 2022

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Applicable to Various Market Data Products

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 April 1, 2022, 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. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fees applicable to various market data products. 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 the Market Data section of its Fees Schedule for its equities trading platform ("BYX Equities"). Particularly, the Exchange proposes to adopt a free trial program for Exchange market data products, effective April 1, 2022.

The Exchange proposes a 30-day free trial for any User or Distributor that subscribes to or distributes, respectively, an Exchange real-time market data product ("Product") listed on the Fee Schedule for the first time. As proposed, a first-time User would be any entity or individual that has not previously subscribed to a particular Product and a first-time Distributor would be any entity that has not previously distributed, internally or externally, a particular Product. A first-time User or Distributor of a particular Exchange market data product would not be charged any applicable fees listed in the Fee Schedule for that product for the duration of the 30 days.³ For example, a firm that currently subscribes to BYX Top would be eligible to receive a free 30-day trial of BYX Depth, whether in a display-only format or for non-display use. However, a firm that currently receives BYX Depth for non-display use would not be eligible to receive a free 30-day trial of BYX Depth in a display-only format. The Exchange would provide the 30-day free trial for each particular product to each first-time User or Distributor once.

³ For example, if a User that has elected to participate in the free trial program for BYX Top data is approved on April 15, 2022, that User will not be subject to any applicable fees (i.e., User Fee) through May 14, 2022.

The Exchange believes that providing a 30-day free trial to Exchange real-time market data products listed on the Exchange's Fee Schedule would enable potential Users and Distributors to determine whether a particular Exchange market data product provides value to their business models or investment strategies, as applicable, before fully committing to expend development and implementation costs related to the receipt or distribution of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Users or Distributors would ordinarily have to expend before using a product. The Exchange notes that other exchanges have similar free trial programs.⁴

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4),⁶ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.⁷

⁴ See The Nasdaq Stock Market LLC ("Nasdaq") Equity 7 Pricing Schedule, Section 112(b)(1) and New York Stock Exchange LLC ("NYSE") Proprietary Market Data Fees Schedule, General.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78k-1.

Finally, the proposed rule change is also consistent with Rule 603 of Regulation NMS,⁸ 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.

The Exchange believes that adopting a free trial program for real-time market data products listed in its Fees Schedule is equitable and reasonable. Particularly, providing Exchange real-time market data products to new Users and Distributors free-of-charge for the first 30 days is reasonable because it would allow vendors and subscribers to become familiar with the feeds and determine whether they suit their needs without incurring fees. It is also intended to incentivize Distributors to enlist more Users to subscribe to Exchange market data products in an effort to broaden the products' distribution. Making a new market data product available for free for a trial period is also consistent with offerings of other exchanges. For example, NYSE and Nasdaq offer similar free trial programs.⁹

The Exchange believes the proposal to provide the Exchange market data products to new Users or Distributors free-of-charge for their first 30 days subscribing or distributing the data, as applicable, is equitable and not unfairly discriminatory because it applies to any first-time User or Distributor, regardless of the use they plan to make of the feed. As proposed, any first-time User or Distributor would not be charged any applicable fee listed in the Fee Schedule for any of the Exchange's real-time market data products listed in the Fee Schedule for 30 days. The Exchange believes it is equitable to restrict the availability of this free trial to Users or Distributors that have not previously subscribed to, or distributed, respectively the particular

⁸ See 17 CFR 242.603.

⁹ See Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

market data product, since Users or Distributors who are current or previous subscribers or Distributors, respectively of that product are already familiar with the product and whether it would suit their needs.

The Exchange believes that the proposed rule change providing for a free trial period to test is not unfairly discriminatory because the financial benefit of the fee waiver would be available to all Users subscribing to, and all Distributors distributing, an Exchange Product for the first time on a free-trial basis. The Exchange believes there is a meaningful distinction between Users and Distributors that are subscribing to or distributing a market data product for the first time, who may benefit from a period within which to set up and test use of the product before it becomes fee liable, and Users and Distributors that are already receiving or distributing the Exchange's market data products and are deriving value from such use. The Exchange believes that the limited period of the free trial would not be unfairly discriminatory to other users of the Exchange's market data products because it is designed to provide a reasonable period of time to set up and test a new market data product. The Exchange further believes that providing a free trial for 30 days would ease administrative burdens for data recipients to subscribe to or distribute a new data product and eliminate fees for a period before such users are able to derive any benefit from the data.

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by competition among exchanges that offer similar data products to their customers. The Exchange believes that the proposed free trial program does not put any market

participants at a relative disadvantage compared to other market participants. As discussed, the proposed trial would apply to first time Users and Distributors on an equal and non-discriminatory basis. Further, the Exchange believes that the proposed program does not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to lower their prices or provide a free trial to better compete with the Exchange's offering. Indeed, other national securities exchanges already offer similar free trial programs today.¹⁰ The proposed amendments are also designed to enhance competition by providing an incentive to Distributors to enlist new subscribers and Users to subscribe to Exchange real-time market data products.

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 Act¹¹ and paragraph (f) of Rule 19b-4¹² 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

¹⁰ See Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

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-2022-010 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-2022-010. 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. 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-2022-010, 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.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).