

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95865; File No. SR-CboeBYX-2022-022)

September 22, 2022

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Eliminate the Listings Standards Provided for in Chapter XIV of the Exchange's Rulebook

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 9, 2022, Cboe BYX Exchange, Inc. 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 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") is filing with the Securities and Exchange Commission ("Commission") a proposed amendment to eliminate the listings standards provided for in Chapter XIV of the Exchange Rulebook as the Exchange is not a listing venue.³ The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As noted in a recent filing, the Exchange represented that it planned to submit a proposal to amend its applicable Rules set forth in Chapter XIV in order to reflect that the Exchange does not currently list any securities, nor does it intend to list any securities, in the foreseeable future. Accordingly, the Exchange is now proposing to amend its Rules. See Securities Exchange Act No. 89012 (June 4, 2020) 85 FR 35467 (June 10, 2020) (SR-CboeBYX-2020-017).

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 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

As part of this proposal, the Exchange proposes to (1) adopt a new definition for Derivative Security, move the definition of unlisted trading privileges ("UTP") Derivative Security⁴ from Rule 14.1(c) to Exchange Rule 1.5(ee), and amend Rule 3.21 to reference proposed Rule 1.5(ee); (2) eliminate listing standards and any references to Exchange listed securities from Chapter XIV (Securities Traded) and Rules 3.7, 11.2, and 13.6; (3) amend Rule 14.1(a) to provide for NMS stocks rather than equity securities and amend the Exchange's additional rules applicable to UTP Derivative Securities as provided in Rule 14.1(c)(1)-(6); and (4) amend Rule 14.10 to make ministerial changes to update paragraph numbering. As discussed in further detail below, all of the proposed changes are substantially similar to other exchange rules.

⁴ See Rule 14.1(c) and proposed Rule 1.5(dd).

(1) Proposal to Define Derivative Security in Exchange Rule 1.5(dd) and add the definition of UTP Derivative Security to Re-lettered Exchange Rule 1.5(ee).

The Exchange proposes to define “Derivative Security” in proposed Rule 1.5(dd) and amend existing Rule 1.5(ee) to add the definition of “UTP Derivative Security”. “Derivative Security” would be a new definition and would mean a security that meets the definition of “new derivative securities product” in Rule 19b-4(e) under the Act. “UTP Derivative Security” would refer to any one of a list of Derivative Securities that trades on the Exchange pursuant to unlisted trading privileges. The list of proposed Derivative Securities that may meet the definition of UTP Derivative Security are as follows: Equity Linked Notes; Index Fund Shares listed pursuant to Cboe BZX Exchange, Inc. (“BZX”) Rule 14.11(c) or Nasdaq Stock Market LLC (“Nasdaq”) Rule 5705(b) and Investment Company Units listed pursuant to NYSE Arca, Inc. (“NYSE Arca”) Rule 5.2- E(j)(3); Index-Linked Exchangeable Notes; Equity Gold Shares; Equity Index-Linked Securities; Commodity-Linked Securities; Currency-Linked Securities; Fixed Income Index-Linked Securities; Futures-Linked Securities; Multifactor Index-Linked Securities; Trust Certificates; Currency and Index Warrants; Portfolio Depository Receipts; Trust Issued Receipts; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Paired Trust Shares; Trust Units; Managed Fund Shares; Managed Trust Securities; Managed Portfolio Shares; Tracking Fund Shares listed pursuant to BZX Exchange Rule 14.11(m), Active Proxy Portfolio Shares listed pursuant to NYSE Arca Rule 8.601-E, and Proxy Portfolio Shares listed pursuant to Nasdaq Stock Market LLC Rule 5750; Selected Equity-linked Debt Securities (“SEEDS”); Exchange-Traded Fund Shares; and Contingent Value Rights (“CVRs”).⁵ The proposed definition of UTP Security and

⁵ For inclusiveness, all Derivative Securities that are subject to unlisted trading privileges have been identified in the list of proposed UTP Derivative Securities.

UTP Derivative Security is substantially similar to BZX Rule 1.5(ee), except that the list of Derivative Securities that may be UTP Derivative Securities includes CVRs. Further, the proposal is substantially similar to NYSE National, Inc. (“NYSE National”) Rule 1.1(m), but the list of Derivative Securities that may be UTP Derivative Securities includes three additional Derivative Securities, SEEDS, Exchange-Traded Fund Shares, and CVRs. While SEEDS and Exchange-Traded Fund Shares are not included in NYSE National Rule 1.1(m), they are Derivative Securities set forth not only in BZX Exchange Rules 14.11(e)(12) and 14.11(l), respectively, but also in section 5700 of the Nasdaq Rules. Further, while CVRs are not currently provided for in NYSE National Rule 1.1(m) or BZX Rule 1.5(ee), CVRs meet the definition of “new derivative securities product” in Rule 19b-4(e) under the Act and also may currently be traded on the Exchange pursuant to existing BYX Rule 14.1(a).

The Exchange also proposes to re-letter existing Rules 1.5(dd) through (ee) to allow for the addition of proposed Rule 1.5(dd). Further, the Exchange proposes to amend Rule 3.21 to reference the proposed definition of UTP Derivative Securities in Rule 1.5(ee).

(2) Proposal to Eliminate Listings Standards for UTP Derivative Securities

Unlike its affiliate exchange BZX, the Exchange is not a listing venue and thus trades securities on a UTP basis only. Nonetheless, currently Chapter XIV of the Exchange’s Rulebook provides for listing standards for Derivative Securities that are generally based on BZX Rule 14.11. Exchange Rule 14.1 also provides that the Exchange will not list an equity security, and that the provisions of Rules 14.2 through 14.9,⁶ and Rules 14.11 through 14.13 that permit such listing of an equity security are not effective until the Exchange files a proposed rule change

⁶ Exchange Rule 14.10 sets forth the requirements for securities issued by the Exchange or its affiliates.

under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rules 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Given that the Exchange does not list securities, the Exchange believes it is not necessary for the Exchange to have listings rules for Derivative Securities. Therefore, the Exchange proposes to eliminate Exchange Rules 14.2 through 14.9 and 14.11 through 14.13, which set forth the initial and continued listing rules for certain Derivative Securities.

Exchange Rule 14.1 establishes the Exchange's authority to trade securities on a UTP Basis. Based on the proposed amendment to eliminate Derivative Security listings standards, the Exchange also proposes to amend Rule 14.1(a) to eliminate any references to the listing of securities on the Exchange. Additionally, the Exchange proposes to eliminate the definition of Equity Security from Rule 14.1 and to instead reference NMS Stock, as defined in Rule 4.5(cc). Lastly, based on the above proposals, the Exchange proposes to eliminate any reference to products listed on the Exchange as provided in Rules 3.7, 11.2, and 13.6.

(3) Proposal to Amend the Exchange's Additional Rules Applicable to UTP Derivative Securities

Existing Rule 14.1(c) defines UTP Derivative Security. However, as the Exchange proposes to redefine such term in Rule 1.5(ee), it proposes to eliminate the definition from Rule 14.1(c). Existing Rule 14.1(c) also provides that a UTP Derivative Security is subject to additional rules, as set forth in subparagraphs (1) through (6). Now, the Exchange proposes to modify certain of those subparagraphs.

First, the Exchange proposes to eliminate existing Rule 14.1(c)(1), which provides that the Exchange shall file with the Commission a Form 19b-4(e) with respect to each UTP Derivative Security. The Exchange believes that it should not be necessary to file a Form 19b-

4(e) with the Commission if it begins trading a UTP Derivative Security because Rule 19b-4(e) under the Act refers to the “listing and trading” of a “new derivative securities product”. The Exchange believes that the requirements of Rule 19b-4(e) refer to when an exchange lists and trades a Derivative Security, and not when an exchange seeks only to trade such product on a UTP basis pursuant to Rule 12f-2 under the Act.⁷ The proposal is substantially identical to rule amendments made by other exchanges.⁸

The Exchange also proposes to replace the term “new derivative securities product” with the term Derivative Security in order to provide for consistent nomenclature in Exchange Rules. The proposed change is not a substantive change as the proposed definition of Derivative Security is equivalent to the definition of “new derivative securities product” under Rule 19b-4(e) under the Exchange Act, as set forth in proposed Rule 1.5(dd).

The Exchange proposes to add additional explanatory language to paragraph (c)(4) that states nothing in the Rule will limit the power of the Exchange under the Rules or procedures of the Exchange with respect to the Exchange's ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest. The proposed text is substantively identical to that included in NYSE National Rule 5.1(a)(2)(C) and BZX Rule 14.11(j)(3). Further, the proposed text reinforces existing Exchange Rule 11.18(d).

Lastly, based on the proposal to eliminate Rule 14.1(c)(1), the Exchange proposes to renumber existing paragraphs (c)(2) through (c)(6) accordingly.

(4) Proposal to Amend Rule 14.10

⁷ 17 CFR 240.12f-2.

⁸ See Securities Exchange Act Nos. 83289 (May 17, 2018) 83 FR 23968 (May 23, 2018) (SR-NYSENAT-2018-02); 84546 (November 7, 2018) 83 FR 56888 (November 14, 2018) (SR-BX-2018-051); and 92015 (May 25, 2021) 86 FR 29305 (June 1, 2021) (SR-CboeBZX-2021-041).

Finally, the Exchange is proposing to renumber Rule 14.10 to Rule 14.2 in order to reflect the elimination of Rule 14.2 through Rule 14.9 that the Exchange is proposing to delete as part of this proposal.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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 the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.¹¹

In particular, the Exchange believes the proposed definitions of Derivative Security and UTP Derivative Security are reasonable as the proposed substantive changes are substantially similar to other exchanges' rules. Specifically, the proposed definition of Derivative Security in

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(1).

Rule 1.5(dd) is substantially similar to the definition of Exchange Traded Product provided for in NYSE National Rule 1.1(m), except that it better conforms to the defined term “new derivative securities product” of Rule 19b-4(e) under the Act. The proposed definition of UTP Derivative Security is substantially similar to BZX Rule 1.5(ee), except that the list of Derivative Securities that may be UTP Derivative Securities includes CVRs. Further, the proposal is substantially similar to NYSE National Rule 1.1(m), but the list of Derivative Securities that may be UTP Derivative Securities includes three additional Derivative Securities, SEEDS, Exchange-Traded Fund Shares, and CVRs. While SEEDS and Exchange-Traded Fund Shares are not included in NYSE National Rule 1.1(m), they are Derivative Securities set forth not only in BZX Exchange Rules 14.11(e)(12) and 14.11(l), respectively, but also in section 5700 of the Nasdaq Rules. Further, while CVRs are not currently provided for in NYSE National Rule 1.1(m) or BZX Rule 1.5(ee), CVRs meet the definition of “new derivative securities product” in Rule 19b-4(e) under the Act and also may currently be traded on the Exchange pursuant to existing BYX Rule 14.1(a) on a UTP basis.

The Exchange believes that its proposal to remove listings standards from Chapter XIV of the Exchange’s Rulebook and references elsewhere in the Exchange’s Rulebook will eliminate potential investor confusion as the Exchange is not a listing venue. Given this, the Exchange believes the removal of such rules from Chapter XIV and reference to such listings standards in Rules 3.7, 11.2, and 13.6 will simplify and clarify the Exchange’s Rulebook. Further, as proposed Chapter XIV is substantially similar to Chapter 5 of the NYSE National rulebook.

The Exchange’s proposal to eliminate the definition of Equity Security from Rule 14.1 and to instead reference NMS Stock as defined in Rule 4.5(cc) will add consistency and clarity to the Exchange’s rulebook.

Eliminating the requirement to file a Form 19b-4(e) for each Derivative Security is consistent with the Act because the regulatory requirement was not intended to apply in the context of Derivative Securities trading on a UTP basis. Moreover, the proposal to eliminate Rule 14.1(c)(1) will provide for a more efficient process for adding Derivative Securities to trading on the Exchange on a UTP basis. The Exchange also notes that the proposal is substantially identical to other exchange rules.¹²

The Exchange believes that its proposal to amend Rule 14.1(c)(2), which eliminates redundant language and uses the defined term Derivative Security in lieu of the term “new derivatives securities product”, to amend Rule 14.1(c)(3) to substantially conform to NYSE National Rule 5.1(a)(2)(C) (trading halts), and to renumber existing paragraphs 14.1(c)(2)-(c)(6) based on its proposal to eliminate Rule 14.1(c)(1), will clarify and simplify the Exchange’s Rulebook as well as provide consistency in the Exchange’s Rules.

Lastly, the Exchange believes its proposed renumber of Rule 14.10 to Rule 14.2, is appropriate in order to reflect the elimination of Rule 14.2 through Rule 14.9 that the Exchange is proposing to delete as part of this proposal.

In light of the above proposals, the Exchange has also proposed to make corresponding changes to Rules 1.5, 3.7, 3.21, 11.2, 13.6 to renumber or re-letter certain paragraphs or subparagraphs of the Rule, eliminate any reference to Exchange listing rules in Chapter XIV, and update applicable rule references.

The proposal is intended to simplify and clarify the Exchange’s Rules as they relate to UTP Derivative Securities and to reflect that BYX is not a listing venue which the Exchange believes will remove impediments to, and perfect the mechanism of, a free and open market and

¹² See supra note 8.

a national market system and, in general, to protect investors and the public interest. The Exchange believes that renumbering and re-lettering current Rules to correspond to the proposed changes will allow the Exchange to maintain a clear and organized rule structure, thus preventing investor confusion. For these reasons, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 competition that is not necessary or appropriate in furtherance of the purposes of the Act. Allowing the Exchange to make the above proposed modifications will clarify that the Exchange is not a listing venue by eliminating listing standards and any references to Exchange listed securities. Further, the proposed rule change will harmonize certain Exchange Rules with those of other exchanges, including the Exchange's affiliate BZX, which will simplify and clarify the Exchange's rulebook and promote consistency and transparency on both the Exchange and its affiliated exchanges, thus making the Exchange's rules easier to navigate.

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)(iii) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange to implement the proposal as soon as possible. The Exchange states that the proposed changes are based on rules of other exchanges and that waiver would allow Members to benefit immediately from the clarified and simplified provisions. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁷

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

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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-2022-022 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-2022-022. 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

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-2022-022 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.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).