

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96294; File No. SR-CboeBYX-2022-025)

November 10, 2022

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.9(f) to Permit Affiliated Users to Enable Match Trade Prevention

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 October 27, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 Exchange Rule 11.9(f) (“Match Trade Prevention (“MTP”) Modifiers”) to permit affiliated Users to enable Match Trade Prevention at the parent company level. 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 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

The Exchange proposes to amend Rule 11.9(f) ("Match Trade Prevention ("MTP") Modifiers") to add the term "affiliate identifier" to the definition of "Unique Identifier" while also adding a description of eligibility to utilize the proposed affiliate identifier. Adding an affiliate identifier for MTP functionality on the Exchange would allow affiliated Users⁵ to enable MTP at the affiliate level, in addition to the current MTP functionality based on market participant identifier ("MPID"), Exchange Member identifier, trading group identifier, or

⁵ See Exchange Rule 1.5(cc). "User" is defined as "[a]ny Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." The "System" is "[t]he electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." See Exchange Rule 1.5(aa). The term "Member" means any registered broker or dealer that has been admitted to membership in the Exchange. See Exchange Rule 1.5(n).

Exchange Sponsored Participant identifier (any such existing identifier, a “Unique Identifier”).⁶

Currently, the Exchange’s MTP functionality prevents certain contra side orders entered by a User from executing, provided that each order has been marked with the same Unique Identifier.⁷ MTP functionality is currently available only to individual Users on the Exchange, and cannot be enabled by affiliated Users who each maintain individual Exchange memberships or Sponsored Participant relationships.

As noted above, there are currently four Unique Identifiers that a User may choose from when submitting an order subject to MTP: (i) MPID⁸; (ii) Exchange Member identifier; (iii) trading group identifier; and (iv) Exchange Sponsored Participant identifier.⁹ MTP functionality is optional for Users and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. For example, a User who enables MTP functionality

⁶ See Exchange Rule 11.9(f).

⁷ Id.

⁸ An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

⁹ See Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) SR-BYX-2010-002 (“Notice of Filing of Proposed Rule Change To Amend BATS Y-Exchange Rules to Conform to the Current Rules of BATS Exchange”). See also Securities Exchange Act Release No. 60266 (July 9, 2009), 74 FR 34380 (July 15, 2009) SR-BATS-2009-022 (“Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BATS Rule 11.9, Entitled “Orders and Modifiers””), in which the Exchange’s affiliate Cboe BZX Exchange adopted Member Match Trade Prevention (now known as MTP) and designated MPID, Exchange Member identifier, or Exchange Sponsored Participant identifier as Unique Identifiers. See also Securities Exchange Act Release No. 67092 (June 1, 2012), 77 FR 33800 (June 7, 2012) SR-BYX-2012-009 (“Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BYX Rules Related to the Operation of BATS Post Only Orders and Match Trade Prevention Functionality”), which amended the definition of Unique Identifier to include trading group identifier.

using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables MTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The trading group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm, but allows orders from outside such group or desk to interact with other firm orders. Users who enable MTP functionality using the Exchange Sponsored Participant Unique Identifier will prevent matched trades between contra side orders with an identical Sponsored Participant identifier. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.9(f) and enhance its existing MTP functionality by introducing a fifth Unique Identifier, affiliate identifier, which will allow a User to prevent its orders from matching with another User that is an affiliate of the User. In addition to the proposed addition of the affiliate identifier, the Exchange also proposes to add language to Rule 11.9(f) in order to provide clarity to Users about how eligibility for use of the affiliate identifier will be determined.¹⁰ The proposed addition of the affiliate identifier does not present any new or novel MTP functionality, but rather would extend existing MTP functionality to a User who demonstrates an affiliate relationship with another User who maintains a separate membership or Sponsored Participant relationship on the Exchange. Generally speaking, an affiliated entity is an organization that directly or indirectly controls another entity, or is directly controlled by another entity, or which is under common control alongside another entity. The concept of affiliation is formally recognized in securities law, particularly Rule 405 of the

¹⁰ Infra note 14.

Securities Act of 1933.¹¹ As applied to the Exchange, there are situations where two separate entities (i.e., Users) maintain individual memberships or Sponsored Participant relationships on the Exchange even as Firm A owns a controlling percentage of Firm B (i.e., Firm A and Firm B are affiliated entities). The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales¹² and self-trades.¹³ Additionally, the proposed functionality would provide Users an additional solution to manage order flow by preventing undesirable executions against the User’s affiliates. As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed MTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow affiliated Users that maintain individual Exchange memberships or Sponsored Participant relationships to utilize MTP where one User is an affiliate

¹¹ See 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

¹² A “wash sale” is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, e.g., 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) (“Other Trading Practices”).

¹³ Self-trades are “transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.” FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02.

of another User.¹⁴ Specifically, the Exchange is proposing to allow affiliated Users to use MTP functionality in order to prevent executions from occurring between those individual Users.

When a User requests MTP at the affiliate level and an affiliate relationship is confirmed by the Exchange, the Exchange will assign an identical affiliate identifier to each User that will be used to prevent executions between contra side orders entered by the Users using the same affiliate identifier. The purpose of this proposed change is to extend MTP functionality to affiliated Users in order to prevent transactions between Users who maintain individual memberships on the Exchange but where an affiliate relationship exists for which MTP functionality may be useful.

To demonstrate how MTP will operate with the proposed affiliate identifier, the Exchange has included examples of potential scenarios in which MTP may be used by affiliated Users. For all examples below, Firm A and Firm B are presumed to have a controlling affiliate relationship and will use an affiliate identifier of “A” when requesting MTP at the affiliate level. Firm C is unaffiliated with Firms A and B and uses an affiliate identifier of “C”.

Affiliate Level MTP

Scenario 1: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm C has not enabled MTP. Firm A’s buy order is prevented from executing with Firm B’s sell order as each firm has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A’s buy order will be permitted to execute with Firm C’s sell order because Firm C has not enabled MTP.

¹⁴ The Exchange will consider a User to be an affiliate of another User if: (i) Greater than 50% ownership is identified in a User’s Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users.

Scenario 2: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has not enabled MTP. Firm C has enabled MTP at the affiliate level using an affiliate identifier of C. Firm A's order will be eligible to trade with both Firm B and Firm C. Firm A's order is eligible to trade with Firm B because Firm B did not enable MTP. In order for MTP to prevent the matching of contra side orders, both the buy and sell order must contain an MTP modifier. Firm A's order is also eligible to trade with Firm C because even though Firm A and Firm C have both enabled MTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

Scenario 3: Firm A submits a buy order and a sell order. Firm B submits a buy order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's sell order is not eligible to execute with Firm B's buy order because both Firm A and Firm B have enabled MTP at the affiliate level using an affiliate identifier of A.

Scenario 4: Firm A submits a buy order and a sell order. Firm B submits a sell order. Firm C submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm C has enabled MTP at the affiliate level using an affiliate identifier of C. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm B's sell order because both Firm A and Firm B have enabled MTP at the affiliate level

using an affiliate identifier of A. Firm A’s buy order is eligible to execute with Firm C’s sell order because while Firm A and Firm C have enabled MTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

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.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ 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 the Section 6(b)(5)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed affiliate level MTP functionality promotes just and equitable principles of trade by allowing Users to better manage order flow and prevent undesirable trading activity such as wash sales¹⁸ or self-trades¹⁹ that may occur as a

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Id.

¹⁸ Supra note 5.

¹⁹ Supra note 6.

result of the velocity of trading in today's high-speed marketplace. The proposed affiliate identifier and description of eligibility to utilize the proposed affiliate identifier does not introduce any new or novel functionality, but rather will extend the Exchange's MTP functionality in a manner generally consistent with the functionality currently offered at the MPID, Exchange Member, trading group, and Sponsored Participant levels because the proposed Users are required to have control over the affiliated User and transactions entered by the firms may be viewed as functionally originating from one User.²⁰ For instance, the Users may share traders or trading strategies, and elected to not impose information barriers between trading desks. In this regard, Users may desire MTP functionality on an affiliate level that will help them achieve compliance²¹ with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current MTP functionality applies on the existing Unique Identifier level. In this regard, the proposed affiliate level MTP functionality will permit Users that have separate memberships or Sponsored Participant relationships but who also maintain an affiliate relationship, to prevent the execution of transactions by and between the Users.

The Exchange also believes that the proposed rule change is fair and equitable, and is not

²⁰ The Exchange notes that the proposed rule filing is similar in concept to how derivatives markets sometimes contemplate ownership and relationship between accounts. Specifically, in the derivatives markets, rules have developed around of the idea of "beneficial ownership", and whether separate accounts have common ownership. For example, the CME Group ("CME"), an operator of global derivatives markets, recognizes that "buy and sell orders for different accounts with common beneficial ownership...shall also be deemed to violate the prohibition on wash trades." See CME Rule 534. See also <https://www.cmegroup.com/rulebook/files/cme-group-Rule-534.pdf>, FAQ Q2, which describes "common beneficial ownership" as accounts with common beneficial ownership that is less than 100%.

²¹ The Exchange reminds Users that while they may utilize MTP to help develop potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

designed to permit unfair discrimination. By way of example, subject to appropriate information barriers, many firms that are Users of the Exchange operate both a principal market making desk, which is responsible for handling and executing orders for the benefit of the User, and an agency trading desk that is responsible for handling and executing customer orders. In such instances, the User may elect to utilize MTP to prevent transactions between their market maker desk and their agency trading desk. In contrast, other firms may be part of a corporate structure that separates those business lines into separate, but affiliated, entities either for business, compliance, or historical reasons, with each entity maintaining its own Exchange membership. In scenarios where one User indirectly or directly controls the other User (e.g., voting power, shared traders and algorithms, shared trading strategies, shared technology, etc.), it is logical that the Users, though separate entities, may determine that transactions between their firms would potentially run afoul of certain securities rules, laws, or regulations, such as wash sales and self-trades. In this regard, absent the proposed rule change, such affiliated entities would not receive the same treatment as firms operating similar business lines within a single entity that is a User of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory.

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. MTP is an optional functionality offered by the Exchange and Users are free to decide whether to use MTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed affiliate identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users.

The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing MTP functionality to Users who have an affiliate relationship with another User of the Exchange. Additionally, the proposed rule specifies which Users are eligible to use the proposed affiliate identifier, which will be available to any User who satisfies such criteria. MTP will continue to be an optional functionality offered by the Exchange and the addition of affiliate level MTP will not change how the current Unique Identifiers and MTP functionality operate.

The Exchange believes that the proposed affiliate identifier does not impose any undue burden on intermarket competition. MTP is an optional functionality offered by the Exchange and Users are not required to use MTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer MTP and is choosing to do so as a benefit for Users who wish to enable MTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

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 Act²² and Rule 19b-4(f)(6)²³ thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition;

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.²⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁵ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁶ permits the Commission to 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 so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would permit affiliated Users to immediately enable MTP functionality in order to better manage order flow and assist with preventing undesirable executions in the same manner as individual Users who currently enable MTP at either the MPID, Exchange Member identifier, or Exchange Sponsored Participant identifier levels. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²⁷

²⁴ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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.²⁸

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-2022-025.

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-2022-025. 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

²⁸ 15 U.S.C. 78s(b)(3)(C).

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-2022-025, 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.²⁹

J. Matthew DeLesDernier,
Deputy Secretary.

²⁹ 17 CFR 200.30-3(a)(12).