

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97986; File No. SR-CboeBYX-2023-011)

July 25, 2023

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rules to Provide Users with a Risk Setting they may Elect to Apply to their Orders that will Allow them to Reject Market Orders During Continuous Trading and/or Auctions

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 July 14, 2023, Cboe BYX Exchange, Inc. (the “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 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 proposal to amend Interpretation and Policy .01 to Rule 11.13 in connection with a risk setting that Users³ may elect to apply to their orders that will allow them to reject market orders during continuous trading and/or auctions.⁴ 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 A User is any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.13. See Rule 1.5(cc).

⁴ The Exchange plans to implement the proposed rule change on a date that will be circulated in a notice from the Cboe Trade Desk to all Members.

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 purpose of this proposal is to amend Interpretation and Policy .01 to Rule 11.13 to allow the Exchange to offer its Users the ability to apply a risk setting to their orders that will allow them to reject market orders during continuous trading or auctions ("Market Order Check"). Pursuant to Interpretation and Policy .01 to Rule 11.13, the Exchange currently offers certain optional risk settings applicable to a User's activities on the Exchange. Specifically, pursuant to Interpretation and Policy .01(c) to 11.13, the Exchange currently offers Users with the controls to restrict order types or modifiers that can be utilized (including pre-market, post-market, short sales, ISOs, and Directed ISOs). When utilized, this optional risk tool acts as a risk filter by evaluating a User's orders to determine whether the orders comply with certain criteria established by the User.

Based on feedback from its Members, the Exchange now seeks to expand this risk setting to allow a User to restrict additional order types from being entered – market orders during

continuous trading and/or market orders during auctions (“Market Order Check”).⁵ The Market Order Check will reside at a User’s port level, a User-specific logical session used to access the Exchange. A User may utilize the Market Order Check to control the acceptance of, or rejection of, its inbound market orders. Similarly, a Sponsoring Member⁶ may utilize the check to control the acceptance of, or rejection of, its Sponsored Participants⁷ inbound market orders.

Specifically, when utilized the Market Order Check will allow a User to (1) permit market orders; (2) reject market orders during continuous trading and allow market orders during auctions, or (3) reject market orders during continuous trading and also during auctions. In the case of Sponsored Participants, the Sponsoring Member will be responsible for their Sponsored Participant’s Market Order Check settings. The Market Order Check will apply only to equities orders and will not apply to market on open or market on close orders. The proposed Market Order Check is similar in nature to the Order Type/Attribution check offered by Nasdaq Stock Exchange, LLC (“Nasdaq”), which prevents the entry of certain order types or modifiers that can be utilized, including but not limited to, non-auction market orders.⁸ While the proposed Market

⁵ The Exchange notes that the proposed Market Order Check will treat Stop Orders as regular market orders. A “Stop Order” Stop Order is an order that becomes a BYX market order when the stop price is elected. A Stop Order to buy is elected when the consolidated last sale in the security occurs at, or above, the specified stop price. A Stop Order to sell is elected when the consolidated last sale in the security occurs at, or below, the specified stop price. See Rule 11.9(c)(16), definition of “Stop Order”.

⁶ The term “Sponsoring Member” shall mean a broker-dealer that has been issued a membership by the Exchange who has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System. The Sponsoring Member shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm. See Rule 1.5(y), definition of, “Sponsoring Member”.

⁷ The term “Sponsored Participant” shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3. See Rule 1.5(x), definition of, “Sponsored Participant”.

⁸ See Nasdaq Equity 6, Section 5. Risk Settings (b), “Order Type/Attribution Check – This control relates to the order types or modifiers that can be utilized (including pre-market, post-market, short sales, non-auction market orders and Intermarket Sweep Orders)”, available at: <https://listingcenter.nasdaq.com/rulebook/Nasdaq/rules/Nasdaq%20Equity%206/market%20impact%20check/EQUALS/#position>; see also Securities Exchange Act Release No. 34-95495 (August 12, 2022), 87 FR 50902 (August 18, 2022) (SR-NASDAQ-2022-047) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend

Order Check differs slightly from that offered by Nasdaq in that it includes functionality that prohibits the entry of both auction and non-auction market orders, the intended purpose of the control – a risk management tool designed to prevent the entry of orders that may cause undue market impact – remains the same.

Importantly, as is the case with the existing risk settings, the User, and not the Exchange, will have the full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, the Exchange does not believe that the use of the Market Order Check can replace User-managed risk management solutions, and use of the Market Order Check does not automatically constitute compliance with Exchange rules.

The Exchange proposes to make the risk setting available to its Users upon request and will not require Users to utilize the Market Order Check. The Exchange will not provide preferential treatment to Users utilizing the Market Order Check. However, the Exchange believes the Market Order Check will offer Exchange Users another option in efficient risk management of its access to the Exchange. For instance, the Market Order Check may assist some Users in mitigating the risk of receiving executions at unfavorable prices due to market fluctuations and/or available liquidity in the subject security. Similarly, the Market Order Risk Check may serve as a supplemental tool for Sponsoring Members to ensure that market orders entered by their Sponsored Participants do not unexpectedly cause undue impact to the market for a security, which may occur when the market fluctuates, and an order executes at prices significantly different from the price of the security at the time of order entry.

Nasdaq Equity 6, Section 5).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, in that it is 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 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. Period footnote throughout [sic]

Specifically, the proposed Market Order Check is designed to protect investors and the public interest because it will provide Users with a tool to help prevent the entry of market orders that may cause unintentional market impact, and reduce the potential for disruptive, market-wide events. The proposed Market Order Check may also assist Users in managing their financial exposure by preventing executions at unfavorable prices, thereby fostering the integrity of trading on the securities markets and helping to assure the stability of the financial system. Finally, the Exchange believes that the proposed rule change does not unfairly discriminate among the Exchange's Users because like each of the other Exchange's risk settings, use of the Market Order Check is optional and available to all Users, and its use is not a prerequisite for participation on the Exchange.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather,

⁹ 15 U.S.C. § 78f(b).

¹⁰ 15 U.S.C. § 78f(b)(5).

the proposed Market Order Check will foster competition because it would allow the Exchange to offer a risk check that is similar to functionality being offered by Nasdaq,¹¹ which offers an order type/attribution check that prevents the entry of certain order types or modifiers that can be utilized, including but not limited to, non-auction market orders. Additionally, by providing Users with additional means to monitor and control their risk, the proposed Market Order Check may enhance proper functioning of the markets and contribute to additional competition among trading venues and broker-dealer dealers. Finally, the proposed Market Order Check will enable Users to strengthen their risk management capabilities, which, in turn, may enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposal. No written comments were solicited or received 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 (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) 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) of the Act¹² and Rule 19b-4(f)(6)¹³ thereunder.

¹¹ Supra note 10.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the 30-day operative delay will allow the Exchange to immediately offer its Users an additional means to mitigate unintended market impact, thus fostering the protection of investors and the public interest. Because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁶

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.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 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).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBYX-2023-011 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-2023-011. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBYX-2023-011 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Deputy Secretary.

¹⁷ 17 CFR 200.30-3(a)(12), (59).