

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98834; File No. SR-CboeBYX-2023-016)

November 1, 2023

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Rules Relating to the Continuing Education for Registered Persons

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 October 19, 2023, 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 its rules relating to the Continuing Education for Registered Persons as provided under Exchange Rule 2.16.01. 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.

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).

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 proposed rule change amends Exchange Rule 2.16.01 to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program (“MQP”).

In 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) implemented rule changes, which amended FINRA’s Continuing Education (“CE”) Program requirements to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual continuing education through a new program, the MQP.⁵ Under FINRA Rule 1240.01, the MQP designated a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to March 15, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the

⁵ See Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR-FINRA-2021-015). Other exchanges, including BYX, subsequently filed copycat rule filings to align their continuing education rules with those of FINRA. See Securities Exchange Act Release No. 94532 (March 28, 2022), 87 FR 19159 (April 1, 2022), (SR-CboeBYX-2022-006).

Financial Services Affiliate Waiver Program (“FSAWP”)⁶ under FINRA Rule 1210.09 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member) immediately prior to March 15, 2022 (collectively, “Look-Back Individuals”).

In response to FINRA’s rule changes and to facilitate compliance with the Exchange’s CE Program requirements by members of multiple exchanges, the Exchange implemented rule changes to align with FINRA’s CE Program and adopted, among other rule changes, Exchange Rules 2.16(c), 2.16.01, and 2.16.02. Such rules, among other things, provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education through the MQP. Further, Exchange Rule 2.16.01 includes a look-back provision that, subject to specified conditions, extends the option for maintaining qualifications following a registration category termination to (i) individuals who have been registered as a representative or principal within two years immediately preceding March 15, 2022, and (ii) individuals who have been participants of the FSAWP immediately preceding March 15, 2022 implementation (i.e., Look-Back Individuals). With respect to the FSAWP, the Exchange made the look-back provision available to individuals who are participants in the FSA waiver programs of Exchange’s affiliates, Cboe Exchange, Inc. (“Cboe Options”) and Cboe C2 Exchange, Inc. (“C2 Options”), and/or FINRA immediately preceding March 15, 2022. Look-Back Individuals who elected to participate in the new MQP were required to make such election by March 15, 2022 (the implementation date of the MQP).⁷

⁶ The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. FINRA stopped accepting new participants for the FSAWP beginning on March 15, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

⁷ See Rule 2.16.01. If such individuals elect to participate, they would be required to complete their initial annual content by the end of 2022 (i.e., by the end of the calendar year in which the proposed rule change is

FINRA recently submitted a proposal related to its CE Program (the “FINRA Rule Change”).⁸ The proposal set forth changes to FINRA Rule 1240.01, which provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the “Second Enrollment Period”).⁹ In addition, the proposed rule change requires that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024. In the FINRA Rule Change, FINRA noted that in Regulatory Notice 21-41 (November 17, 2021), it announced that Look-Back Individuals who wanted to take part in the MQP were required to make their election between January 31, 2022, and March 15, 2022 (the “First Enrollment Period”). In addition to the announcement in Regulatory Notice 21-41, FINRA notified the Look-Back Individuals about the MQP and the First Enrollment Period via two separate mailings of postcards to their home addresses and communications through their FINRA Financial Professional Gateway (“FinPro”) accounts.¹⁰

In the FINRA Rule Change, FINRA further noted that shortly after the First Enrollment Period had ended, a number of Look-Back Individuals contacted FINRA and indicated that they had only recently become aware of the MQP. FINRA noted that it also received anecdotal information that a number of these individuals may not have learned of the MQP, or the First Enrollment Period, in a timely manner, or at all, due to communication and operational issues.¹¹

implemented). In addition, if such individuals elect to participate, their initial participation period would be adjusted based on the date that their registration was terminated.

⁸ See Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 28, 2023) (SR-FINRA-2023-005).

⁹ To reflect the availability of the Second Enrollment Period, FINRA Rule 1240.01 clarifies that for all Look-Back Individuals who elect to participate in the MQP, their participation period would also be for a period of five years following the termination of their registration categories, as with other MQP participants.

¹⁰ Look-Back Individuals were able to notify FINRA of their election to participate in the MQP through their FinPro accounts.

¹¹ According to FINRA, this may have been a result of the timing of FINRA’s announcements relating to the MQP, which coincided with the holiday season and the transition to the New Year. Further, given that

In addition, the original six-week enrollment period may not have provided Look-Back Individuals with sufficient time to evaluate whether they should participate in the MQP. For these reasons, FINRA recently amended its rules to provide Look-Back Individuals a second opportunity to elect to participate in the MQP.

For similar reasons and to facilitate compliance with the Exchange's CE Program requirements by members of multiple exchanges, the Exchange is also proposing to amend its rules (i.e., Exchange Rule 2.16.01) to provide Look-Back Individuals with a Second Enrollment Period. The Exchange also understands that other exchanges have or will propose similar amendments based on FINRA's rule changes. The Second Enrollment Period will be between the effective date of this filing, and December 31, 2023.¹² In addition, the proposed rule change requires that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.¹³

The Exchange proposes to revise Exchange Rule 2.16.01 to state that persons eligible under Exchange Rule 2.16.01 shall make their election to participate in the continuing education program under Exchange Rule 2.16(c) by either (1) March 15, 2022; or (2) between the effective date of this filing, and December 31, 2023.

Look-Back Individuals were out of the industry at the time of these announcements, it was unlikely that they would have learned of the MQP, or the First Enrollment Period, through informal communication channels.

¹² The current rule text also provides that if Look-Back Individuals elect to participate in the MQP, the Exchange shall adjust their participation period by deducting from that period the amount of time that has lapsed between the date that such persons terminated their registration categories and March 15, 2022. To reflect the availability of the Second Enrollment Period, the proposed rule change clarifies that for all Look-Back Individuals who elect to participate in the MQP, their participation period would also be for a period of five years following the termination of their registration categories, as with other MQP participants. See supra note 9.

¹³ Look-Back Individuals who elect to enroll in the MQP during the Second Enrollment Period would also need to pay the annual program fee of \$100 for both 2022 and 2023 at the time of their enrollment.

The Exchange also proposes to amend Exchange Rule 2.16.01 to state that eligible persons who elect to participate in the continuing education program between the effective date of this filing, and December 31, 2023, must complete any prescribed 2022 and 2023 continuing education content by March 31, 2024.

Finally, the Exchange proposes to amend Exchange Rule 2.16.01 to remove reference to Exchange Rule 2.5.08. This Exchange Rule references the FSA waiver programs of Cboe Options Rule 3.30.09, C2 Options Chapter 3, Section B and/or FINRA Rule 1210.09.¹⁴ As there were no participants in the FSA waiver programs of the Exchange’s affiliates, Cboe Options or C2 Options, immediately preceding March 15, 2022, the Exchange proposes to amend Exchange Rule 2.16.01 to refer specifically to FINRA Rule 1210.09 and clarify that anyone participating in the FINRA FSAWP immediately preceding March 15, 2022 would still be eligible to participate in the MQP, provided conditions in Exchange Rule 2.16(c) are met.¹⁵

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.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

¹⁴ The Exchange notes that the text proposed for deletion includes an incorrect rule reference to Rule 2.5.08; the FSA Waiver Program is described in Rule 2.5.07. The Exchange further notes that, as described herein, while the Exchange’s affiliates, Cboe Options or C2 Options, maintained FSA waiver programs, there were no participants in their FSA waiver programs immediately preceding March 15, 2022.

¹⁵ The Exchange also proposes a non-substantive change to Exchange Rule 2.5.07, to correct the referenced FINRA Rule from Rule 2110.09 to Rule 1210.09.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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)¹⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP is warranted because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the individuals working in the industry. The Exchange believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP will further these goals and objectives.

Further, the Exchange believes the proposed amendments reduce the possibility of a significant regulatory gap between Exchange and FINRA rules, providing more uniform standards across the securities industry. The Exchange believes that the proposed rule change will bring consistency and uniformity with FINRA's recently amended CE Program, which will, in turn, assist Members and their associated persons in complying with these rules and improve

¹⁸ Id.

regulatory efficiency. The proposed rule changes make ministerial changes to the Exchange's continuing education rules to align them with the continuing education rules of FINRA and other exchanges as discussed above, in order to prevent unnecessary regulatory burdens and to promote efficient administration of the rules.

Finally, the Exchange believes the proposed amendments to remove reference to Exchange Rule 2.5.08, which references the FSA waiver programs under Cboe Options Rule 3.30.09, C2 Options Chapter 3, Section B and/or FINRA Rule 1210.09, and to amend Exchange Rule 2.16.01 to refer specifically to FINRA Rule 1210.09 will add clarity to the Exchange Rules, as there were no participants in the FSA waiver programs of the Exchange's affiliates, Cboe Options or C2 Options, immediately preceding March 15, 2022. Further, the Exchange believes that the amendments to clarify that anyone participating in the FINRA FSAWP immediately preceding March 15, 2022 would still be eligible to participate in the MQP, provided conditions in Exchange Rule 2.16(c) are met, ensures consistency and uniformity with FINRA's recently amended CE Program, which, as noted above, will in turn assist Members and their associated persons in complying with these rules and improve regulatory efficiency.

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. The Exchange believes that the proposed rule changes which are, in all material respects, based upon and substantially similar to, recent rule changes adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE Program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the

national market system and promoting competition among participants across the multiple national securities exchanges.

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

BYX has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰ 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.²¹

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²³ 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 so that the proposal may become operative immediately upon filing. BYX has indicated that the immediate operation of the proposed rule change is

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

appropriate because it would allow the Exchange to implement the proposed changes to its continuing education rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA rules and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. BYX also noted that FINRA plans to conduct additional public outreach efforts to promote awareness of the MQP and the availability of the Second Enrollment Period among Look-Back Individuals. Therefore, BYX indicated that the immediate operation of the proposed rule change is also appropriate because it would help to further notify Look-Back Individuals of their options and provide additional time for them to consider whether they wish to participate in the MQP before the December 31, 2023 deadline. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁴

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 shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change'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-2023-016 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-2023-016. 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-2023-016 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.²⁵

Sherry R. Haywood,

Assistant Secretary.

²⁵ 17 CFR 200.30-3(a)(12).