

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-82303; File No. SR-CboeBYX-2017-002

December 12, 2017

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 11.9, Primary Pegged Order

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 November 29, 2017, Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) 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 Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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

The Exchange filed a proposal to amend paragraph (c)(8)(A) of Exchange Rule 11.9, Primary Pegged Order, to restrict the Time-In-Force (“TIF”) instruction that a displayed Primary Pegged Order that includes a Primary Offset Amount (defined below) may have to Regular

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

Hours Only (“RHO”)⁵ or Day⁶ if entered during Regular Trading Hours.⁷

The text of the proposed rule change is available at the Exchange’s website at www.markets.cboe.com, at the principal office of the Exchange, 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 parts 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 paragraph (c)(8)(A) of Exchange Rule 11.9, Primary Pegged Order, to restrict the TIF instruction that a displayed Primary Pegged Order with a Primary Offset Amount may have to RHO, or if entered during Regular Trading Hours, a TIF instruction of Day. Exchange Rule 11.9(c)(8) describes a Pegged Order as a limit order that after entry into the System,⁸ the price of the order is automatically adjusted by the System in response

⁵ See Exchange Rule 11.9(b)(7) (defining a TIF of RHO as a limit or market order that is designated for execution only during Regular Trading Hours).

⁶ See Exchange Rule 11.9(b)(2) (defining a TIF of Day as a limit order to buy or sell which, if not executed, expires at the end of Regular Trading Hours).

⁷ Regular Trading Hours is defined as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See Exchange Rule 1.5(w).

⁸ See Exchange Rule 1.5(aa).

to changes in the National Best Bid or Offer (“NBBO”). Exchange Rule 11.9(c)(8)(A) states that a User⁹ entering a Pegged Order can specify that such order’s price will offset the inside quote on the same side of the market by an amount set by the User (“Primary Offset Amount”). The Primary Offset Amount for a displayed Primary Pegged Order must result in the price of such order being inferior to or equal to the inside quote on the same side of the market.

Some available TIF instructions enable a Primary Pegged Order to expire at a time past the end of Regular Trading Hours at 4:00 p.m. Eastern Time. These TIF instructions are Good-‘til Extended Day (“GTX”), Good-‘til Day (“GTD”), Pre-Opening Session ‘til Extended Day (“PTX”), and Pre-Opening Session ‘til Day (“PTD”).¹⁰

The Exchange has observed that Primary Pegged Orders displayed on the BYX Book with non-aggressive Primary Offset Amounts and similar orders entered on away exchanges that remain active after the end of Regular Trading Hours may be pegged to and repriced off of each other during extended hours trading when no other reference price is available due to orders expiring or being cancelled at 4:00 p.m. Eastern Time. The following example illustrates this scenario. Assume the NBBO is \$0.00 by \$0.00. Market Maker 1 enters an order on Exchange A to buy 100 shares at \$10.00 resulting in a new NBBO of \$10.00 by \$0.00. Market Maker 2 sends a Displayed Primary Peg order to Exchange B to buy 100 with a -\$0.01 Primary Offset Amount. That order is posted on Exchange B at \$9.99. Market Maker 3 then also sends a Displayed Primary Peg order to Exchange C to buy 100 with a -\$0.01 Primary Offset Amount. That order is posted on Exchange C at \$9.99. The NBBO remains \$10.00 by \$0.00. Market Maker 1 cancels their order to buy 100 shares at \$10.00. The NBBO is now \$9.99 by \$0.00. Exchange B

⁹ See Exchange Rule 1.5(cc).

¹⁰ See Exchange Rule 11.9(b) (defining each of these TIF instructions).

re-prices Market Maker 2's Displayed Primary Peg order to buy to \$9.98, one cent below Market Maker 3's Displayed Primary Peg order on Exchange C. The NBBO is now \$9.98 by \$0.00. Exchange C then re-prices Market Maker 3's Displayed Primary Peg order to buy to \$9.97, one cent below Market Maker 2's Displayed Primary Peg order on Exchange B. In the absence of new additional liquidity being entered at the NBB, each order would continue to be re-priced off each other until each reach \$0.00.¹¹

To prevent this from occurring, the Exchange proposes to restrict the TIF instruction that a displayed Primary Pegged Order with a Primary Offset Amount may have to RHO, or, if entered during Regular Trading Hours, a TIF instruction of Day. Doing so, [sic] would cause displayed Primary Pegged Orders resting on the BYX Book to be eligible for execution from 9:30 a.m. to 4:00 p.m. Eastern Time. Limiting the TIF instructions to RHO and Day only for displayed Primary Pegged Orders with Primary Offset Amounts would ensure that these orders are eligible for execution during Regular Trading Hours, which is the most liquid portion of the trading day, thereby significantly decreasing the possibility that such orders may re-price off similar orders entered on away exchanges in the absence of additional liquidity at the NBB or NBO. The proposed rule change would cause displayed Primary Pegged Orders with Primary Offset Amounts to expire at the end of Regular Trading Hours when a vast majority of orders expire and do not participate in extended hours trading. As amended, paragraph (c)(8)(A) of the Rule 11.9 would be amended to state that a displayed Primary Pegged Order with a Primary

¹¹ While this behavior may occur in less liquid securities during Regular Trading Hours, the Exchange has only witnessed [sic] this occurring after the close of trading, on only one occasion, and not with the use of any other pegged order type or instruction. The Exchange intends to monitor the use of displayed Primary Pegged Orders that include a Primary Offset Amount during Regular Trading Hours to identify when the situation subject to this proposal may occur.

Offset Amount shall only include a TIF of RHO or, if entered during Regular Trading Hours, a TIF instruction of Day. As is the case today, Users may continue to enter displayed Primary Pegged Orders with Primary Offset Amounts and TIF instructions of RHO beginning at 6:00 a.m. Eastern Time. However, those orders would not be eligible for execution until 9:30 a.m. Eastern Time, the start of Regular Trading Hours.¹² Displayed Primary Peg orders with Primary Offset Amounts and a TIF of Day will be rejected if entered prior to 9:30 a.m., the start of Regular Trading Hours. Primary Pegged orders that do not include a Primary Offset Amount or that are not displayed on the BYX Book would have no restrictions on the TIF instructions that may be attached to the order.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁴ in particular, in that it is designed 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. The proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system by ensuring that Primary Pegged Orders with Primary Offset Amounts displayed on the EDGX [sic] Book do not inadvertently re-price off similar orders on away exchanges in absence of other liquidity creating the illusion of aberrant prices for the security. The proposed rule change would restrict the use

¹² See Exchange Rule 11.1(a).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

of the order type to Regular Trading Hours only, the most liquid part of the trading day, thereby significantly decreasing the possibly [sic] of such orders re-pricing off of each other in the absence of additional liquidity. The Exchange does not propose to amend or alter the operation of Limit Orders with a Pegged instruction in any other manner. The proposed rule change also promotes just and equitable principles of trade by limiting the times at which such orders are active so as to ensure that the order pegs to prices that reflect the true NBBO of the security and not the Primary Offset Amount of a pegged order in the absence of other liquidity.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change is intended to ensure Limit Orders with a Primary Pegged instruction and Primary Offset Amount displayed on the BYX Book do not inadvertently re-price off similar orders on away exchanges in absence of other liquidity. It is not intended to have a competitive impact.

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

No 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: (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) of the

Act¹⁵ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁶

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁷ 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 requested that the Commission waive the 30-day operative delay so that the proposed rule change will become operative upon filing. The Exchange stated that such waiver will enable the Exchange to update its functionality during the operative delay period such that Limit Orders with a Primary Pegged instruction and Primary Offset Amount displayed on the BYX Book do not inadvertently re-price off of similar orders on away exchanges in the absence of other liquidity. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would enable the Exchange to update its rule without delay to help prevent these types of pegged orders from inadvertently re-pricing to aberrant prices. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁸

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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 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 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.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 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).

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-2017-002 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-2017-002. 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-2017-002 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.¹⁹

Robert W. Errett
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12) and (59).