

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82941; File No. SR-CboeBYX-2018-003)

March 23, 2018

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Paragraph (c)(5) of Exchange Rule 11.9 Describing the Operation of Minimum Quantity Orders

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 March 16, 2018, 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, II, and III 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)(iii) 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)(5) of Exchange Rule 11.9 describing the operation of Minimum Quantity Orders.⁵

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

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)(iii).

⁵ See Exchange Rule 11.9(c)(5) for a complete description of the operation of Minimum Quantity Orders.

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)(5) of Exchange Rule 11.9 describing the operation of Minimum Quantity Orders by removing language that provided for the re-pricing of incoming Minimum Quantity Orders to avoid an internally crossed book. As a result of this change, the Exchange proposes to specify within the rule when a Minimum Quantity Order would not be eligible to trade to prevent executions from occurring that may be inconsistent with intra-market price priority or that would cause a non-displayed order to trade ahead of a displayed order.

In sum, a Minimum Quantity Order is a non-displayed order that enables a User⁶ to specify a minimum share amount at which the order will execute.⁷ A Minimum Quantity Order will not execute unless the volume of contra-side liquidity available to execute against the order

⁶ The term “User” is defined as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” See Exchange Rule 1.5(cc).

⁷ The Exchange will only honor a specified minimum quantity on BYX Only Orders that are non-displayed or Immediate-Or-Cancel and will disregard a minimum quantity on any other order. See Exchange Rule 11.9(c)(5).

meets or exceeds the designated minimum size. By default, a Minimum Quantity Order will execute upon entry against a single order or multiple aggregated orders simultaneously. The Exchange recently amended the operation of Minimum Quantity Orders to permit a User to alternatively specify the order not execute against multiple aggregated orders simultaneously and that the minimum quantity condition be satisfied by each individual order resting on the BYX Book.⁸

The Exchange also recently amended the operation of Minimum Quantity Orders to re-price incoming Minimum Quantity Orders where that order may cross an order posted on the BYX Book.⁹ Specifically, where there is insufficient size to satisfy an incoming order's minimum quantity condition and that incoming order, if posted at its limit price, would cross an order(s), whether displayed or non-displayed, resting on the BYX Book, the order with the minimum quantity condition would be re-priced to and ranked at the locking price. This functionality has not yet been implemented¹⁰ and the Exchange now proposes to amend paragraph (c)(5) of Rule 11.9 to remove this re-pricing requirement.

As a result of the above change, the Exchange proposes to amend paragraph (c)(5) of Rule 11.9 to describe when a Minimum Quantity Order will not be eligible to trade to prevent executions from occurring that may be inconsistent with intra-market price priority or would

⁸ See Securities Exchange Act Release No. 81806 (October 3, 2017), 82 FR 47047 (October 10, 2017) (SR-BatsBYX-2017-24). This functionality is pending deployment and the implementation date will be announced via a trading notice.

⁹ Id.

¹⁰ See supra note 8. Exchange Rule 11.9(c)(5) does not require re-pricing where the Minimum Quantity Order is resting on the BYX Book. As such, an internally crossed book may occur where the incoming order is of insufficient size to satisfy the resting order's minimum quantity condition and that incoming order, if posted at its limit price, would cross that order with a minimum quantity condition resting on the BYX Book.

result in a non-displayed order trading ahead of a same-priced, same-side displayed order.¹¹ The Exchange would not permit a Minimum Quantity Order that crosses other displayed or non-displayed orders on the BYX Book to trade at prices that are worse than the price of such contra-side orders. The Exchange would also not permit a resting Minimum Quantity Order to trade at a price equal to a contra-side displayed order. This proposal is based on recently adopted NYSE Arca, Inc. (“NYSE Arca”) Rule 7.31-E(i)(3)(C).¹²

Paragraph (c)(5) of Rule 11.9 would state that a Minimum Quantity Order to buy (sell) that is ranked in the BYX Book will not be eligible to trade: (i) at a price equal to or above (below) any sell (buy) orders that are displayed and that have a ranked price equal to or below (above) the price of such Minimum Quantity Order; or (ii) at a price above (below) any sell (buy) order that is non-displayed and has a ranked price below (above) the price of such Minimum Quantity Order.¹³ However, a Minimum Quantity Order that crosses an order on BYX Book may execute at a price less aggressive than its ranked price against an incoming order so long as such execution is consistent with the above restrictions.

¹¹ Exchange Rule 11.12(a) states that orders on the BYX Book are ranked and maintained by the Exchange according to price-time priority. Exchange Rule 11.12(a) further prohibits a non-displayed order from trading ahead of a same-side, same-priced displayed order. This proposed rule change adds language to Exchange Rule 11.9(c)(5) to clarify this priority scheme during an internally crossed market.

¹² See Securities Exchange Act Release No. 82504 (January 16, 2018), 83 FR 3038 (January 22, 2018) (SR-NYSEArca-2018-01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31–E Relating to Mid-Point Liquidity Orders and the Minimum Trade Size Modifier and Rule 7.36–E To Add a Definition of “Aggressing Order”).

¹³ A Minimum Quantity Order to buy (sell) may execute at a price above (below) any sell (buy) order that is Non-Displayed and has a ranked price below (above) the price of such Minimum Quantity Order if that Non-Displayed order itself included a minimum quantity condition that prevented it from executing. See infra note 16.

The following examples describe the proposed operation of a Minimum Quantity Order during an internally crossed market. This first example addresses intra-market priority amongst a Minimum Quantity Order and other non-displayed orders in an internally crossed market as well as when an execution may occur at prices less aggressive than the resting order's ranked price. Assume the NBBO is \$10.10 by \$10.16. A non-displayed order to sell 50 shares at \$10.12 is resting on the BYX Book ("Order A"). A non-displayed order to sell 25 shares at \$10.11 is also resting on the BYX Book ("Order B"). The Exchange receives a Mid-Point Peg¹⁴ order to buy at \$10.14 with a minimum quantity condition to execute against a single order of 100 shares ("Order C"). Because Order C's minimum quantity condition cannot be met, Order C will not trade with Orders A or B and will be posted and ranked on the BYX Book at \$10.13, the midpoint of the NBBO. The Exchange now has a non-displayed order crossing both non-displayed orders on the BYX Book. If the Exchange then receives a non-displayed order to sell for 100 shares at \$10.11 ("Order D"),¹⁵ although Order D would be marketable against Order C at \$10.13, it would not trade at \$10.13 because it is above the price of all resting sell orders. Order D will instead execute against Order C at \$10.11, receiving price improvement relative to the midpoint of the NBBO.

This second example addresses intra-market priority amongst displayed orders, Minimum Quantity Orders and other non-displayed orders. The Exchange notes that the below behavior is not unique to an internally crossed market as the Exchange's priority rule, 11.12(a), currently prohibits non-displayed orders, including Minimum Quantity Orders, from trading ahead of same-priced, same-side displayed orders. Assume the NBBO is \$10.00 by \$10.04. A non-

¹⁴ See Exchange Rule 11.9(c)(9).

¹⁵ On NYSE Arca, Order D will be posted to the NYSE Arca book at \$10.11 and not execute against Order C at \$10.13. See supra note 12.

displayed order to buy 500 shares at \$10.00 is resting on the BYX Book (“Order A”). A displayed order to buy 100 shares at \$10.00 is then entered and posted to the BYX Book (“Order B”). The Exchange receives a non-displayed order to sell 600 shares at \$10.00 with a minimum quantity condition to execute against a single order of 500 shares (“Order C”). Although Order A satisfies Order C’s minimum quantity condition and has time priority ahead of Order B, no execution occurs because Order B is a displayed order and has execution priority over Order A, a non-displayed order. Order C does not execute against Order B because Order B does not satisfy Order C’s minimum quantity condition. Order C is then posted to the BYX Book at \$10.00, non-displayed.

The Exchange also proposes two clarifying changes to paragraph (c)(5) of Exchange Rule 11.9. The rule currently states that a Minimum Quantity Order cedes execution priority when it would lock an order against which it would otherwise execute if it were not for the minimum execution size restriction.¹⁶ The Exchange now proposes to add additional language to the rule to clarify when a resting non-displayed order may cede execution priority to a subsequent arriving same-side order. As amended, paragraph (h) of Rule 11.6 would state that if a resting non-displayed sell (buy) order did not meet the minimum quantity condition of a same-priced resting Minimum Quantity Order to buy (sell), a subsequently arriving sell (buy) order that meets the minimum quantity condition will trade ahead of such resting non-displayed sell (buy) order at that price. For example, assume the NBBO is \$10.00 by \$10.10 and no orders are resting on the BYX Book. A non-displayed order to buy 700 shares at \$10.10 with a minimum quantity condition to execute against a single order of 500 shares is resting on the BYX Book (Order A).

¹⁶ The Exchange proposes to amend this provision to clarify that a Minimum Quantity Order would cede execution priority when it would also cross an order against which it would otherwise execute if it were not for the minimum execution size restriction.

A non-displayed order to sell 100 shares at \$10.10 is then entered and posted to the BYX Book (Order B). Order B does not execute against Order A because Order B does not satisfy Order A's single minimum quantity condition of 500 shares. As a result, Order B is posted to the BYX Book at \$10.10, creating an internally locked book. An order to sell 500 shares at \$10.10 is then entered and executes against Order A at \$10.10 for 500 shares because the incoming order is of sufficient size to satisfy Order A's minimum quantity condition of 500 shares. This clarification is also based on recently adopted NYSE Arca Rule 7.31-E(i)(3)(E)(ii).¹⁷

Lastly, the Exchange proposes to clarify that an incoming Minimum Quantity Order would be canceled where, if posted, it would cross the displayed price of an order on the BYX Book.¹⁸ Conversely, an incoming Minimum Quantity Order would be posted to the BYX Book where it would not cross the displayed price of a resting contra-side order. For example, an order to buy at \$11.00 with a minimum quantity condition of 500 shares is entered (Order A) and there is a displayed order resting on the BYX Book to sell 200 shares at \$10.99 (Order B). Order A would be cancelled because it crosses the displayed price of Order B and Order B does not contain sufficient size to satisfy Order A's minimum quantity condition of 500 shares. However, should Order A be priced at \$10.99, it would not be cancelled and would be posted to the BYX Book, resulting in an internally locked market. Order A would not be executable at that price because it is priced equal to a contra-side displayed order. An internally crossed market may subsequently occur should an order to sell priced more aggressively than Order A be entered but not be of sufficient size to satisfy Order A's minimum quantity condition of 500 shares (e.g., an order to sell 100 shares at \$10.98) and posted to the BYX Book.

¹⁷ Supra note 12.

¹⁸ A Minimum Quantity Order will be repriced in accordance with Exchange Rule 11.9(g)(4) where it would cross a protected quote displayed on an away market center.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁰ 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 because it would ensure that Minimum Quantity Orders do not trade through displayed orders or violate intra-market price priority. Specifically, the proposed rule change would protect displayed orders by preventing a Minimum Quantity Order from executing where it is locked by a contra-side Displayed order. The proposed rule change protects intra-market price priority by preventing a resting Minimum Quantity Order from executing where it is crossed by either a displayed or non-displayed order on the BYX Book. The proposed clarifications remove impediments to and perfect the mechanism of a free and open market and a national market system because they provide additional specificity regarding the operation of a Minimum Quantity Order, thereby avoiding potential investor confusion. In particular, the Exchange believes it is reasonable for a resting non-displayed order to cede execution priority to a subsequent arriving same-side order where that order is of sufficient size to satisfy a resting contra-side order's minimum quantity condition because doing so facilitates executions in accordance with the terms and conditions of each order. The proposed rule change is also substantially similar to a proposed rule change recently submitted by NYSE Arca for immediate effectiveness and published by the

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

Commission.²¹ The only differences between the proposed rule change and that of NYSE Arca is that: (i) NYSE Arca does not cancel a minimum quantity order that would cross a displayed order on the NYSE Arca book; and (ii) NYSE Arca will not execute resting orders at prices less aggressive than their limit prices in crossed markets. The Exchange believes that these differences are immaterial because they are designed to reduce the occurrences of internally crossed markets and facilitate executions that may not otherwise occur. These differences will also continue to ensure that executions occur in accordance with intra-market price priority on the Exchange while accounting for the differences in functionality and order types.

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. On the contrary, the proposed rule change is not designed to address any competitive issues because it is intended to provide clarity regarding the operation of Minimum Quantity Orders and when such orders are eligible to trade and not trade through displayed orders or violate intra-market price priority.

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: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) 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 it has become effective pursuant to Section

²¹ See supra notes 12 and 15.

19(b)(3)(A) of the Act²² and paragraph (f)(6) of Rule 19b-4 thereunder,²³ the Exchange has designated this rule filing as non-controversial. The Exchange has given 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.

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: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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-2018-003 on the subject line.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4.

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-2018-003. 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-2018-003, 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.²⁴

Brent J. Fields
Secretary

²⁴ 17 CFR 200.30-3(a)(12).