

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83426; File No. SR-CboeBYX-2018-007)

June 13, 2018

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 1, 2018, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) 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 the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change 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 the fee schedule applicable to Members⁵ and non-Members of the Exchange pursuant to BYX Rules 15.1(a) and (c).

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)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

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 its fee schedule applicable to its equities trading platform ("BYX Equities") to (i) eliminate Add Volume Tier 6 and (ii) modify criteria in certain Add and Remove Volume Tiers, effective June 1, 2018.

By way of background, for orders that yield fee codes B, V, and Y, the Exchange assesses a standard transaction fee of \$0.0019 per share for orders that add liquidity for securities at or above \$1.00. The Exchange also currently offers six tiers under footnote 1 that offer reduced fees for orders that add liquidity yielding fee codes B, V, and Y. The Exchange first proposes to eliminate Add Volume Tier 6. Add Volume Tier 6 currently provides Members a reduced fee of \$0.0017 per share where a MPID (i) has an ADAV⁶ of greater than or equal to

⁶ "ADAV" means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis. See BYX Equities Exchange Fee Schedule.

0.10% of the TCV⁷ and (ii) has a Step-Up ADAV⁸ of greater or equal to 0.05% of the TCV from September 2017 baseline. The Exchange no longer wishes to maintain this tier level. As such, the Exchange proposes to eliminate Add Volume Tier 6 from the Fees Schedule and renumber the subsequent Volume Tiers accordingly.

The Exchange next proposes to modify the criteria for Add Volume Tiers 2 and 3. Pursuant to Add Volume Tier 2, a Member will be assessed a reduced fee of \$0.0013 per share where a Member adds an ADAV greater than or equal to 0.40% of the TCV. The Exchange proposes to increase the ADAV requirement to greater than or equal to 0.45% of the TCV. Pursuant to Add Volume Tier 3, a Member will be assessed a reduced fee of \$0.0012 per share where a Member adds an ADAV greater than or equal to 0.80% of the TCV. The Exchange proposes to increase the ADAV requirement to greater than or equal to 1.00% of the TCV.

The Exchange next proposes to modify the criteria for Remove Volume Tiers 8 and 9. Currently, for orders that yield fee codes N, W, and BB, the Exchange provides a rebate of \$0.0005 per share for orders that remove liquidity for securities at or above \$1.00. The Exchange currently offers four tiers under footnote 1 that offer enhanced rebates for orders that remove liquidity yielding fee codes BB, N, and W. Pursuant to Remove Volume Tier 8 (proposed to be renumbered to Remove Volume Tier 7), a Member will receive an enhanced rebate of \$0.0016 per share where a Member (i) has a Step-Up Remove⁹ TCV from July 2017

⁷ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. See BYX Equities Exchange Fee Schedule.

⁸ "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV. See BYX Equities Exchange Fee Schedule.

⁹ “Step-Up Remove TCV” means remove ADV as a percentage of TCV in the relevant baseline month subtracted from current remove ADV as a percentage of TCV. See BYX Equities Exchange Fee Schedule.

greater than or equal to 0.05% and (ii) has a remove ADV¹⁰ greater than or equal to 0.20% of TCV. The Exchange proposes to modify the second prong to increase the ADV requirement to greater than or equal to 0.25% of the TCV.

Pursuant to Remove Volume Tier 9 (proposed to be renumbered Remove Volume Tier 8), a Member will receive an enhanced rebate of \$0.0017 per share where a Member (i) has a Step-Up Remove TCV from December 2017 greater than or equal to 0.075% and (ii) has an ADV greater than or equal to 0.10% of TCV. The Exchange proposes to modify the first prong to increase the Step-Up Remove TCV from 0.075% to 0.10% of TCV. The Exchange notes that the modification to the first prong renders the second prong unnecessary, as the second prong criteria will always be met if the proposed first prong criteria is met. The Exchange therefore proposes to eliminate the second prong of Remove Volume Tier 9.

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.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² 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

¹⁰ “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. See BYX Equities Exchange Fee Schedule.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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 Section 6(b)(4) of the Act,¹³ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes that the proposal to eliminate Add Volume Tier 6 is reasonable, fair, and equitable because the current tier is not providing the desired result of incentivizing Members to increase their participation in BYX Equities. Therefore, eliminating the tier will have a negligible effect on order flow and market behavior. The Exchange believes the proposed change is not unfairly discriminatory because it will apply equally to all Members.

The Exchange next notes that volume-based discounts such as those currently maintained on the Exchange have been widely adopted by exchanges and are equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value of an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. While the proposed modification to Add/Remove Volume Tiers 2, 3, 8 and 9 makes such tiers slightly more difficult to attain, it is intended to incentivize Members to send additional volume to the Exchange in an effort to qualify or continue to qualify for the reduced fees and enhanced rebates, as applicable, made available by the tiers. As such, the Exchange also believes that the proposed changes are reasonable. The Exchange notes that increased volume

¹³ 15 U.S.C. 78f(b)(4).

on the Exchange provides greater trading opportunities for all market participants.

(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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of the proposed change to the Exchange's tiered pricing structure burden competition, but instead, that they enhance competition as they are intended to increase the competitiveness of BYX by modifying pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The Exchange does not believe the proposed amendments would burden intramarket competition as they would be available to all Members uniformly.

(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 proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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 Act¹⁴ and paragraph (f) of Rule 19b-4 thereunder.¹⁵ 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,

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2018-007 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-2018-007. 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-2018-007 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.¹⁶

Eduardo A. Aleman
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).