

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97176; File No. SR-CboeBYX-2023-005)

March 21, 2023

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Sponsored Participant Rules 11.3(a) and 11.3(b)(2)

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 9, 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 Exchange Rule 11.3(a)-(b) to: (1) define the term “Sponsored Access”; and (2) to codify that the agreement required by and between the Sponsoring Member and Sponsored Participant must include a provision that any Sponsored Access relationship must follow the requirements of SEC Rule

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).

15c3-5, the Market Access Rule (“MAR”).⁵ The text of the proposed rule change is provided in Exhibit 5.⁶

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 filing is to amend Exchange Rule 11.3(a)-(b) to: (1) define the term “Sponsored Access”; and (2) to codify that the agreement required by and between the

⁵ 17 CFR 240.15c3-5 – Risk management controls for brokers or dealers with market access.

⁶ The Exchange proposes to implement the proposed changes to Rule 11.3(a)-(b)(1)-(3) on a date that will be announced via Cboe Trade Desk, notifying both existing and prospective Sponsoring Members and Sponsored Participants, of the new rule language and required contractual provisions.

Sponsoring Member and Sponsored Participant must include a provision that any Sponsored Access relationship must follow the requirements of the MAR.

Sponsored Access Definition

Per current Exchange rules a “Sponsored Participant”⁷ may be a Member⁸ or non-Member of the Exchange whose direct electronic access to the Exchange is authorized by a Sponsoring Member⁹ pursuant to the requirements set forth in Exchange Rule 11.3(b)(1)-(3), “Sponsored Participants”. The Exchange proposes to amend Rule 11.3(a) to include the following definition, “Sponsored Access shall mean an arrangement whereby a Member permits its Sponsored Participants to enter orders into the Exchange’s System that bypass the Member’s trading system and are routed directly to the Exchange, including through a service bureau or other third-party technology provider.” The Exchange notes that the proposed definition of Sponsored Access is identical to that adopted¹⁰ by the Nasdaq Stock Market, LLC (“Nasdaq”),

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 Exchange Rule 1.5(x), definition of “Sponsored Participant”.

⁸ The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. See Exchange Rule 1.5(n), definition of “Member”.

⁹ 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 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 Exchange Rule 1.5(y), definition of “Sponsoring Member”.

¹⁰ See Securities and Exchange Act Release No. 34-76449 (November 27, 2015) 80 FR 73011 (November 23, 2015) (SR-NASDAQ-2015-140) (Notice of Filing and Immediate Effectiveness of the Proposed Rule Change Relating to Sponsored Access) (“Sponsored

General 2 in Section 22, Sponsored Participants, of their General Equity and Options Rules.¹¹

The Exchange believes defining Sponsored Access will provide Sponsoring Members with greater clarity in understanding which types of market access relationships are subject to Exchange Rule 11.3(a)-(b),¹² and what obligations Sponsoring Members and Sponsored Participants must satisfy when establishing a Sponsored Access relationship.

Market Access Rule

The Exchange seeks to codify that the agreement currently required under Exchange Rule 11.3(b)(2), by and between the Sponsoring Member and Sponsored Participant, must include a

Access shall mean an arrangement whereby a member permits its customers to enter orders into the Exchange's System that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third party technology provider.")

¹¹ See General Equity and Options Rule, General 2: General Provisions, Section 22(a), available at: <https://listingcenter.nasdaq.com/rulebook/Nasdaq/rules>.

¹² Consistent with the proposed definition, such relationships generally include where a broker-dealer allows its customer – such as a hedge fund, mutual fund, bank or insurance company, an Exchange registered market maker, an individual, or another broker-dealer – to use the broker-dealer's market participant identifier ("MPID") or other mechanism or mnemonic to enter orders into the Exchange's System that bypass the Sponsoring Member's order handling system and are electronically routed directly to the Exchange by the Sponsored Participant, including through a service bureau or other third-party technology provider. For the avoidance of doubt, in a scenario where a Sponsored Participant is also an Exchange Member (e.g., where a Sponsored Member provides market access to an Exchange Member Market Maker), (i) the Sponsored Participant will be subject to all Exchange rules and regulations applicable to Members acting in their own capacity, whether the Sponsored Participant accesses the Exchange via their own Membership or via a Sponsored Access arrangement; and (ii) the Sponsoring Member will be responsible for the Sponsored Participant activity just as it would for any other non-Member Sponsored Participant under Rule 11.3(b), including compliance with the MAR requirements and for compliance with the applicable Member-related activity electronically routed to the Exchange via the Sponsored Access arrangement (e.g., the Sponsoring Member would be required to hold appointments and would be subject to applicable requirements as an Exchange Market Maker in the products for which the Sponsored Participant Market Maker is registered and routes orders/quotes via the Sponsored Access arrangement).

provision that any Sponsored Access relationship must follow the requirements of the MAR. While Sponsoring Members have existing obligations under the MAR because they are providing market access to their Sponsored Participants, the Exchange believes the proposed amendment will help to reinforce such obligations. Sponsored Participants will now be required to contractually agree with their Sponsoring Members to follow the requirements of the MAR.

The Exchange believes that the proposed addition of 11.3(b)(2)(J) will reinforce to Sponsoring Members that Sponsored Access relationships must comply with the SEC's MAR, as well as Exchange rules regarding the provision of market access. As noted above, such relationships generally include where a broker-dealer allows its customer to use the broker-dealer's market participant identifier ("MPID") or other mechanism or mnemonic to enter orders into the Exchange's System that bypass the Sponsoring Member's order handling system and are electronically routed directly to the Exchange by the Sponsored Participant, including through a service bureau or other third-party technology provider.

The Exchange notes further that the proposed addition of 11.3(b)(2)(J) is non-substantive in nature for Sponsoring Members because as broker-dealers providing market access, Sponsoring Members are already required to comply with the MAR, as well as with existing Exchange Rules regarding market access. Indeed, per the Exchange's current Sponsored Participant rules the Sponsoring Member is already responsible for all its Sponsored Participant's activity on the Exchange¹³ and is required to comply with the Exchange's Certificate of Incorporation, By-Laws, Rules, and procedures.¹⁴ This includes compliance with Rule 2.2,

¹³ See Rule 11.3(b)(2)(B)(1) – (2).

¹⁴ See Rule 11.3(b)(2)(C).

which requires, among other things, compliance with the Act and the regulations thereunder, including the MAR.

The proposed addition of Rule 11.3(b)(2)(J) is potentially substantive in nature to Sponsored Participants in that the proposed amendment adds a requirement to the agreement by and between the Sponsoring Member and Sponsored Participant, requiring the Sponsored Participant to contractually agree to follow the requirements of the MAR. Importantly, as part of their obligation to comply with Exchange Rules and procedures, existing Sponsoring Members will be expected to amend any existing contractual arrangements with their Sponsored Participants to include the new contractual provision proposed by the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ 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 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)¹⁷ requirement

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Id.

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

Defining Sponsored Access

As noted above, the Exchange believes that defining Sponsored Access will provide Sponsoring Members with greater clarity as to which types of market access relationships¹⁸ are subject to Exchange Rule 11.3(a)-(b)(1)-(3), and what obligations Sponsoring Members and Sponsored Participants must satisfy when establishing a Sponsored Access relationship. As such, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and serves to promote just and equitable principles of trade.

The proposed change will also help to reduce confusion by codifying a definition for such activity on the Exchange that is consistent with other industry practices currently in place elsewhere. The Exchange further notes that the proposed Sponsored Access definition is reasonable and does not affect investor protection because the proposed change does not present any novel or unique issues, as the proposed Sponsored Access definition has previously been adopted by Nasdaq.¹⁹

Market Access Rule

As noted above, the proposed addition of 11.3(b)(2)(J) will reinforce to Sponsoring Members that Sponsored Access relationships must comply with the SEC's MAR, as well as Exchange Rules regarding the provision of market access. Also, by adding proposed paragraph 11.3(b)(2)(J), Sponsored Participants are now required to contractually agree that their Sponsored Access to the Exchange must follow the requirements of the MAR.

¹⁸ Supra note 12.

¹⁹ Supra note 10.

In this regard, the proposed amendment will help to ensure that by and between the Sponsoring Member and Sponsored Participant that all orders entered onto the Exchange pursuant to a Sponsored Access relationship will follow the requirements of the MAR. As discussed, the Exchange believes the proposed addition of 11.3(b)(2)(J) is non-substantive in nature for Sponsoring Members because as broker-dealers providing market access, Sponsoring Members are already required to comply with the MAR, as well as with existing Exchange Rules regarding market access. The proposed addition of Rule 11.3(b)(2)(J) is potentially substantive in nature to Sponsored Participants in that the proposed amendment adds a new requirement to the relationship by and between the Sponsoring Member and Sponsored Participant, requiring the Sponsored Participant to contractually agree to follow the requirements of the MAR.

Accordingly, the proposed rule change will help to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general to protect investors and the public interest.

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

For the reasons noted below, 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.

Defining Sponsored Access

The proposed Sponsored Access definition does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed definition merely seeks to make clear to Sponsoring Members that Sponsored Access is a relationship subject to Exchange Rule 11.3(a)-(b)(1)-(3). Moreover, Sponsored Access is a voluntary arrangement that a Sponsoring Member voluntarily elects to enter with its Sponsoring

Participant. A Member is not required to become a Sponsoring Member, and in fact, may decline to enter such a relationship with its customers.

Market Access Rule

Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Notably, other exchanges have in place similar rules and documentation requirements applicable to sponsored participants and their sponsoring members.²⁰ Moreover, the proposed Sponsored Access definition is identical to that adopted by Nasdaq²¹ and currently codified in their rulebook.²²

The proposed rule change to explicitly cite the MAR in Rule 11.3(b)(2)(J) does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, this change is non-substantive as Sponsoring Members are currently responsible for complying with the MAR with respect to their provision of Sponsored Access to Sponsored Participants. While the proposed addition of Rule 11.3(b)(2)(J) is potentially substantive in nature to Sponsored Participants because it requires a Sponsored Participant to contractually agree with its Sponsoring Member to follow the requirements of the MAR, the Exchange notes the proposed contractual requirement also exists in the Nasdaq rulebook²³ and as such, should not raise any new or novel issues for consideration by Sponsored Participants.

²⁰ Supra note 11.

²¹ Supra note 10.

²² Supra note 11.

²³ Id.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; and (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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁴ and Rule 19b-4(f)(6)²⁵ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁷ 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 the proposed rule change could immediately benefit market participants by clarifying for Sponsoring Members which relationships are subject to the Exchange's Sponsored Access rules and promoting just and equitable principles of trade. The Exchange also states the proposed addition of 11.3(b)(2)(J) will reinforce to Sponsoring Members their obligation to comply with MAR. Because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ 17 CFR 240.19b-4(f)(6)(iii).

with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²⁸

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.

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-2023-005 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.

²⁸ 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).

All submissions should refer to File Number SR-CboeBYX-2023-005. 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 such 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-2023-005 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.²⁹

Sherry R. Haywood,
Assistant Secretary.

²⁹ 17 CFR 200.30-3(a)(12), (59).