

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99878; File No. SR-CboeBYX-2024-008)

April 1, 2024

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 2.8 Regarding Voluntary Termination of Rights as an Exchange Member

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 19, 2024, Cboe BYX Exchange, Inc. (“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 filed the proposal 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 Rule 2.8, related to the voluntary termination of rights as an Exchange Member (“Member”).⁵ The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

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Rules of Cboe BYX Exchange, Inc.

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).

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

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Rule 2.8. Voluntary Termination of Rights as a Member

A Member may voluntarily terminate its rights as a Member only by a written resignation addressed to the Exchange's Secretary or another officer designated by the Exchange. [Such resignation shall not take effect until 30 days after all of the following conditions have been satisfied: (i) receipt of such written resignation; (ii) all indebtedness due the Exchange shall have been paid in full; (iii) any Exchange investigation or disciplinary action brought against the Member has reached a final disposition; and (iv) any examination of such Member in process is completed and all exceptions noted have been reasonably resolved; provided, however, that the Board may declare a resignation effective at any time] Each terminating Member must promptly (a) make any outstanding filings required under the Rules, and (b) pay any outstanding fees, assessments, charges, fines, or other amounts due to the Exchange, the Commission, or the Securities Investor Protection Corporation.

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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 Exchange proposes amendments to Rule 2.8 (Voluntary Termination of Rights as a Member). Rule 2.8 sets forth the requirements for a Member's voluntary termination of its rights as a Member. Currently, Rule 2.8 provides that a Member's voluntary termination of its rights as a

Member shall not take effect until 30 days after all of the following conditions have been satisfied:

(i) receipt of such written resignation; (ii) all indebtedness due the Exchange shall have been paid in full; (iii) any Exchange investigation or disciplinary action brought against the Member has reached a final disposition; and (iv) any examination of such Member in process is completed and all exceptions noted have been reasonably resolved. The Rule further provides that the Board may declare a resignation effective at any time.

The Exchange proposes to amend Rule 2.8 to remove conditions set forth in Rule 2.8(iii) and (iv), requiring that any Exchange investigation or disciplinary action brought against the Member has reached a final disposition and that any examination of such Member in process is completed and all exceptions noted have been reasonably resolved. The Exchange further proposes to amend Rule 2.8 to align the voluntary termination rules with that of its affiliates, Cboe Exchange, Inc. (“Cboe Options”) and Cboe C2 Exchange, Inc. (“C2”). Specifically, Cboe Options Rule 3.16 and C2 Rule 3.7 require a terminating Trading Permit Holder to promptly make any outstanding filings required under the respective Rules and pay any outstanding fees, assessments, charges, fines, or other amounts due to each Exchange, the Commission, or the Securities Investor Protection Corporation. The Exchange notes that its affiliates do not maintain a 30-day notice period for terminating members, and now proposes to remove the requirement from the Exchange’s Rules. Under Rule 2.8, as amended, the Exchange would require receipt of written resignation, completion of any outstanding filings required under the Rules, and payment of any outstanding fees, assessments, charges, fines, or other amounts due to the Exchange, the Commission, or the Securities Investor Protection Corporation, in order for a Member’s voluntary termination of its Member rights to take place.

The Exchange notes that, under Rule 8.1(b), any Member or person associated with a Member shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's membership or association with a Member with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Member or former associated person within one year of receipt by the Exchange of the latest written notice of the termination of such person's status as a Member or person associated with a Member.⁶ Thus, notwithstanding the proposed amendments to Rule 2.8, the Exchange continues to, under Rule 8.1, maintain disciplinary jurisdiction for matters relevant to any in-process examinations or investigations or disciplinary actions brought against a Member that voluntarily terminates its membership rights under Rule 2.8, as amended, so long as the Exchange provides written notice to the former Member (or associated person) within one year of receipt of written notice of termination.⁷

As such, the Exchange believes the proposed amendments will not result in any practical changes to the Exchange's disciplinary jurisdiction from an Exchange or Member perspective. Rather, the proposed amendments are designed to facilitate a more efficient voluntary termination process, by allowing Members to terminate their Member status and therefore cease being subject to Member obligations notwithstanding any ongoing disciplinary actions and exams (which may continue for an indeterminate period of time), given the Exchange, via Rule 8.1, maintains jurisdiction over the firm following such termination for disciplinary matters.

⁶ The notice requirement does not apply to a person who at any time after a termination again subjects himself or herself to the disciplinary jurisdiction of the Exchange by becoming a Member or a person associated with a Member.

⁷ For the avoidance of doubt, if a Member voluntarily terminates its membership rights under Rule 2.8, as amended, while an examination or investigation or disciplinary action is in-process, the Exchange will continue to maintain disciplinary jurisdiction over the Member following their termination, subject to the provisions of Rule 8.1.

Further, the Exchange notes there is no provision under the Securities Exchange Act of 1934 (the “Act”) which requires that termination be conditioned on final disposition or exam completion. As noted above, the proposed rule change aligns the Exchange’s voluntary termination requirements with those of its affiliates, Cboe Options and C2. Under Cboe Options Rule 3.16 (Obligations of Terminating TPHs), each terminating Trading Permit Holder is obligated to promptly (i) return to the Exchange all Exchange badges, including trading and access badges, that were issued to the Trading Permit Holder by the Exchange with respect to that Trading Permit Holder’s terminating Trading Permit Holder status, (ii) make any outstanding filings required under Exchange rules, and (iii) pay any outstanding fees, assessments, charges, fines, or other amounts due to the Exchange, the Securities and Exchange Commission, or the Securities Investor Protection Corporation.⁸ The Exchange further notes that at least one other exchange has similar obligations for terminating members, in that it does not require that termination be conditioned on final disposition or exam completion.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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

⁸ Cboe Options Rule 3.1(c)(1) requires a Trading Permit Holder seeking to terminate that holder’s Trading Permit must notify the Exchange, prior to the deadline announced by the Exchange and in a form and manner prescribed by the Exchange, that the holder is terminating that Trading Permit at the end of its term.

⁹ See MIAX Options Exchange Rule 206 (Obligations of Terminating Members).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 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)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,¹³ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed amendments to the conditional requirements for voluntary termination of Membership will make the termination process more efficient by allowing Members to terminate their Member status and therefore cease being subject to Member obligations notwithstanding any ongoing disciplinary actions and exams (which may continue for an indeterminate period of time), given the Exchange maintains jurisdiction over the firm following such termination for disciplinary matters under Exchange Rules. The Exchange believes the proposed amendments result in a termination process that allows for proper disciplinary jurisdiction while also ensuring that termination is not unduly prolonged due to an administrative technicality within the termination requirements, to the benefit of investors and the public interest. Further, the Exchange believes the proposed changes

¹² Id.

¹³ 15 U.S.C. 78f(b)(1).

will serve to avoid wasting Member and Exchange resources on maintaining memberships that are no longer utilized, but unable to be terminated due to ongoing disciplinary action or examination process.

As noted above, the Exchange continues to maintain disciplinary jurisdiction over terminated firms following termination for matters that occurred prior to termination, provided written notice of the commencement of an inquiry into such matters is provided to the terminated Member within one year of the Member's written notice of termination. Therefore, the Exchange believes that the termination requirements set forth in Rule 2.8(iii) and (iv) are unnecessarily duplicative, given the Exchange maintains disciplinary jurisdiction over terminated members via Rule 8.1(b) with respect to matters that occurred prior to such termination, thereby ensuring the Exchange may continue to enforce compliance by the Exchange's Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.

Further, the Exchange believes the proposed rule changes are just, equitable and not unfairly discriminatory because they conform to the process used by its affiliated options exchange, thereby providing consistency across the Cboe family options exchanges in regards to termination requirements. Such consistent requirements may, in turn, simplify the termination process for members of the Exchange that are also participants on Cboe affiliated exchanges. The Exchange believes this consistency will promote a fair and orderly national options market system.

The proposed changes also apply uniformly to all Members that may choose to voluntarily terminate their membership. As noted above, in addition to the Exchange's affiliates, at least one other exchange also has similar termination requirements as those proposed by the

Exchange.¹⁴ As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the proposed change will apply uniformly to all Members that choose to voluntarily terminate their membership. Further, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it merely amends the requirements for voluntary termination of rights as a Member and conforms to the requirements of the Exchange's affiliated options exchanges, Cboe Options and C2, as well as at least one other exchange.¹⁵ Finally, as noted above, the Exchange believes the proposed rule amendments will not result in any practical changes to the Exchange's disciplinary jurisdiction from an Exchange or Member perspective, given the Exchange maintains disciplinary jurisdiction over terminated Members following their termination, subject to the provisions of Rule 8.1.

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.

¹⁴ See supra note 9. See also Cboe Options Rule 3.16 and C2 Rule 3.7.

¹⁵ Id.

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)(iii) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

At any time within 60 days of the filing of such 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.

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-2024-008 on the subject line.

Paper comments:

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange 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.

- 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-2024-008. 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-2024-008 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.¹⁸

J. Matthew DeLesDernier,

Deputy Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).