



January 13, 2022

Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: File No. SR-CboeBYX-2021-024, Amendment No. 1

Dear Secretary:

On January 12, 2022, Cboe BYX Exchange, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) Amendment No. 1 to SR-CboeBYX-2021-024 in order to clarify certain points and add additional details. This Amendment No. 1 to SR-CboeBYX-2021-024 amends and replaces in its entirety the proposal as originally submitted on October 14, 2021. The Exchange submitted proposal SR-CboeBYX-2021-024 in order to make certain clarifying changes to its rule related to periodic auctions for the trading of U.S. equity securities. In order to provide notice for public review of this Amendment No. 1, in addition to posting on the Exchange’s public website, the Exchange is filing this comment letter with the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kyle Murray', with a stylized flourish at the end.

Kyle Murray  
Vice President, Associate General Counsel

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 55

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2021 - \* 024

Amendment No. (req. for Amendments \*) 1

Filing by Cboe BYX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*  Last Name \*

Title \*

E-mail \*

Telephone \*  Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, Cboe BYX Exchange, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date

(Title \*)

By

(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.



Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

Add Remove View

BYX-21-024 (Periodic Auctions Clarify)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

BYX-21-024 (Periodic Auctions Clarify)

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

BYX-21-024 (Periodic Auctions Clarify)

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to make certain clarifying changes to its rule related to periodic auctions for the trading of U.S. equity securities.

The text of the proposed rule change is enclosed as Exhibit 5. The text of the proposed rule change is available on the Exchange’s website at <http://markets.cboe.com/>, at the Exchange’s principal office and at the Public Reference Room of the Commission.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on October 5, 2021.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, [REDACTED], or Kyle Murray, Vice President, Associate General Counsel, [REDACTED].

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

This Amendment No. 1 to SR-CboeBYX-2021-024 amends and replaces in its entirety the proposal as originally submitted on October 14, 2021. The Exchange submits

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The purpose of this proposed rule change is to make certain clarifying changes to Exchange Rule 11.25 related to periodic auctions for the trading of U.S. equity securities (“Periodic Auctions”).<sup>3</sup> The Commission approved the Exchange’s proposal to introduce Periodic Auctions on March 26, 2021.<sup>4</sup> The Exchange has not yet implemented Periodic Auctions. The Exchange is submitting this proposal in order to simplify certain portions of the Periodic Auction process and to add clarity to the rule text prior to implementation.

Specifically, the Exchange is proposing that: (i) Periodic Auction Eligible Orders<sup>5</sup> will be ranked as non-displayed limit orders consistent with the priority of orders outlined in Rule 11.12(a); (ii) incoming Periodic Auction Eligible Orders that are eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book, and other incoming Periodic Auction Eligible Orders will upon entry interact with Continuous

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<sup>3</sup> The term “Periodic Auction” shall mean an auction conducted pursuant to Rule 11.25. See Rule 11.25(a)(4).

<sup>4</sup> See Securities Exchange Act Release No. 91423 (March 26, 2021), 86 FR 17230 (April 1, 2021) (SR-BYX-2020-021, Amendments No. 3 and 4) (the “Approved Proposal”). The Exchange also notes that the original proposal to adopt Periodic Auctions (the “Original Proposal”) was submitted on July 17, 2020. See Securities Exchange Act Release No. 89424 (July 29, 2020), 85 FR 47262 (August 4, 2020).

<sup>5</sup> The term “Periodic Auction Order” shall mean a “Periodic Auction Only Order” or “Periodic Auction Eligible Order” as those terms are defined in Rules 11.25(b)(1)-(2), and the term “Periodic Auction Book” shall mean the System’s electronic file of such Periodic Auction Orders. See Rule 11.25(a)(6).

Book Orders<sup>6</sup> and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a); and (iii) Periodic Auction Eligible Orders that are also Minimum Quantity Orders<sup>7</sup> will only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size. The Exchange is also proposing to make a simplifying change to reject Periodic Auction Orders that are immediate-or-cancel (“IOC”). Finally, the Exchange is proposing to make certain clean-up changes to Rule 11.25(b)(1), (2), and (3) to eliminate certain typos from the rule text.

#### Ranking Periodic Auction Eligible Orders

Rule 11.25(b)(2) currently reads as follows:

*Periodic Auction Eligible Orders.* A “Periodic Auction Eligible Order” is a Non-Displayed Limit Order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to this Rule 11.25. An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will trade immediately with the Continuous Book.

The first sentence makes clear that Periodic Auction Eligible Orders are eligible to trade on the Continuous Book and suggests that Periodic Auction Eligible Orders would be ranked as non-displayed limit orders by referring to such as orders as types of non-displayed limit orders. However, reading this sentence together with the second sentence could make it unclear as to how Periodic Auction Eligible Orders are ranked and how an

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<sup>6</sup> The term “Continuous Book Order” shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term “Continuous Book” shall mean System’s electronic file of such Continuous Book Orders. See Rule 11.25(a)(2).

<sup>7</sup> See BYX Rule 11.9(c)(5).

incoming Periodic Auction Eligible Order would interact with other Periodic Auction Orders and resting orders on the Continuous Book.<sup>8</sup>

As such, the Exchange is proposing to add a new sentence in between the two sentences that reads “Periodic Auction Eligible Orders will be ranked as non-displayed limit orders consistent with the priority of orders outlined in Rule 11.12(a).”<sup>9</sup> This will make explicit that Periodic Auction Eligible Orders will be ranked in price-time priority among Continuous Book Orders and will also help to make clear how incoming orders (both Periodic Auction Eligible Orders and Continuous Book Orders) will interact with resting orders, as further discussed below. Practically, the Exchange believes this clarifying change is reasonably inferred from the definition of Periodic Auction Eligible Orders, which defines a Periodic Auction Eligible Order as (emphases added) “*a Non-*

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<sup>8</sup> The Exchange notes that in the Original Proposal the second sentence of Rule 11.25(b)(2) originally said “An incoming PAE Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will initiate a Periodic Auction.” In Amendment 1, the Exchange instead proposed the current language which remained in the Approved Proposal. The intent of this change in the rule text was to make clear that the Exchange would not prioritize a Periodic Auction Order over every other resting order, which is made clear in the examples and in the Approved Proposal. The proposed new language further clarifies this intent from Amendment 1 in the rule text.

<sup>9</sup> Rule 11.12(a)(1) and (2) relate to the priority and ranking of orders and specifically state: “(a) Ranking. Orders of Users shall be ranked and maintained in the BYX Book based on the following priority: (1) Price. The highest-priced order to buy (or lowest-priced order to sell) shall have priority over all other orders to buy (or orders to sell) in all cases. (2) Time. Subject to the execution process described in Rule 11.13(a) below, where orders to buy (or sell) are made at the same price, the order clearly established as the first entered into the System at such particular price shall have precedence at that price, up to the number of shares of stock specified in the order. The System shall rank equally priced trading interest within the System in time priority in the following order: (A) Displayed size of limit orders; (B) Non-Displayed limit orders; (C) Non-Displayed Pegged Orders; (D) Mid-Point Peg Orders; (E) Reserve size of orders; (F) Discretionary portion of Discretionary Orders as set forth in Rule 11.9(c)(9); (G) Supplemental Peg Orders.”

*Displayed Limit Order* eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to this Rule 11.25.” If such orders are eligible to trade on the Continuous Book, they would need to be prioritized by the System and it would only make sense for them to be prioritized in accordance with the Exchange’s existing priority rules. Rather than rely on this implication, the Exchange is proposing to explicitly state this in the Rules by adding the language proposed above.

Example 1:

NBBO: \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 2: Buy 100 shares @ \$10.02 Displayed – Continuous Book Order

Order 3: Sell 100 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 2 is ranked ahead of Order 1 because it is a displayed limit order in accordance with Rule 11.12(a)(1), meaning that Order 3 would execute 100 shares against Order 2.

Incoming Periodic Auction Eligible Orders

As described above, Rule 11.25(b)(2) currently states that “An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will trade immediately with the Continuous Book.” This language was originally introduced to make clear that an incoming Periodic Auction Eligible Order would interact with other Periodic Auction Eligible Orders and Continuous Book Orders



before interacting with Periodic Auction Only Orders, as made clear in Example 3 in the Approved Proposal (“AP Example 3”).<sup>10</sup> While part of the rule is made clear by the surrounding rule text and the clarifying context from the Approved Proposal, on its own it could be read to imply that all resting Periodic Auction Eligible Orders would either be prioritized behind any executable Continuous Book Order or that such resting orders should immediately execute against an incoming Periodic Auction Eligible Order instead of initiating a Periodic Auction, which is not the case. Additionally, another example from the Approved Proposal laid out circumstances under which an incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order will trade immediately with the Continuous Book, even where the Periodic Auction Only Order is more aggressively priced than the Continuous Book Order.<sup>11</sup> The Exchange is proposing to add language to

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<sup>10</sup> AP Example 3 specifically provides the following example:

NBBO: \$10.00 x \$10.10

Order 1: Buy 100 shares @ 10.05 Midpoint Peg – Periodic Auction Only

Order 2: Buy 100 shares @ 10.05 Midpoint Peg – Continuous Book Order

Order 3: Sell 100 shares @ 10.05 Midpoint Peg – Periodic Auction Eligible

A Periodic Auction is not initiated. Instead, Order 3, which is a Periodic Auction Eligible Order, would trade immediately with the Continuous Book and execute 100 shares against Order 2 at \$10.05. Although Order 1 is available to initiate a Periodic Auction, a Periodic Auction Eligible Order would trade immediately with Continuous Book Orders on entry if it can do so instead of initiating a Periodic Auction.

<sup>11</sup> The Exchange notes that the functionality captured in Example 6 as laid out in Amendment No. 3 to the Approved Proposal as corrected in Amendment No. 4 to the Approved Proposal (“Corrected Example 6 from Amendment No. 3”) provided that even where a Periodic Auction Only Order was priced more aggressively than a Continuous Book Order, the incoming Periodic Auction Eligible Order would trade immediately with the Continuous Book. While this example was technically replaced as part of Amendment No. 4, it was laid out in

Rule 11.25(b)(2) in order to change the outcome of that example such that an incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a more aggressively priced Periodic Auction Only Order will initiate a Periodic Auction (the “Aggressive PAO Change”).

Specifically, the Exchange is proposing to add language to Rule 11.25(b)(2) such that it will instead read (additions in *italics*): “An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction *against a Periodic Auction Only Order at the same price* will trade immediately with the Continuous Book. *Incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a).*”<sup>12</sup> This language will: (i) make explicit in the rule text the outcome described in AP Example 3; and (ii) change the functionality

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Amendment No. 3 with an incorrect outcome and Amendment No. 4 provided some explanation about what should have happened before laying out a new replacement Example 6. What follows is the example as laid out in Amendment No. 3 and followed by the explanation from Amendment No. 4.

NBBO: \$10.00 x \$10.10

Order 1: Buy 500 shares @ \$10.05 Non-Displayed – Periodic Auction Only

Order 2: Buy 300 shares @ \$10.04 Non-Displayed – Continuous Book Order

Order 3: Sell 100 shares @ \$10.04 Non-Displayed – Periodic Auction Eligible

Order 4: Sell 200 shares @ \$10.04 Non-Displayed – Periodic Auction Eligible

Specifically, Amendment No. 4 stated “the amended functionality would require that Order 3 and Order 4, which are Periodic Auction Eligible Orders, each trade immediately with Order 2, which is a Non-Displayed Continuous Book Order.”

As such, current functionality provides that an order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will trade immediately with the Continuous Book, even where the Periodic Auction Only Order is more aggressively priced than the Continuous Book Order, which is consistent with Corrected Example 6 from Amendment No. 3.

<sup>12</sup>

See supra note 9.

from how it was described in the Approved Proposal such that an incoming Periodic Auction Eligible Order will now initiate a Periodic Auction where there is a Periodic Auction Only Order that is priced more aggressively than any other Continuous Book Orders instead of executing immediately with the most aggressively priced Continuous Book Order. Further, this proposed change will provide additional clarity to the language in Rule 11.25(c) describing when a Periodic Auction will be initiated. Specifically, Rule 11.25(c) provides that a Periodic Auction will be initiated in a security when “one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell.” The proposed amendment to Rule 11.25(b)(2) to specifically describe how incoming Periodic Auction Eligible Orders will interact with resting orders will add clarity regarding what it means when Periodic Auction Orders become “executable” against one another in this context.

Example 2:

NBBO:           \$10.00 x \$10.05

Order 1:        Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 2:        Buy 100 shares @ \$10.02 Displayed – Continuous Book Order

Order 3:        Sell 400 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 3 would execute 100 shares against Order 2 (consistent with Example 1).

Order 3 and Order 1 would then be executable against one another and are both Periodic

Auction Eligible Orders, so the remaining 300 shares from Order 3 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.<sup>13</sup>

Example 3:

NBBO: \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction Eligible

Order 2: Buy 100 shares @ \$10.02 Non-Displayed – Continuous Book Order

Order 3: Sell 400 shares @ \$10.02 Non-Displayed – Periodic Auction Eligible

This example is identical to Example 2 except that Order 2 is Non-Displayed rather than Displayed. Upon entry, Order 3 would be executable against Order 1 and both are Periodic Auction Eligible Orders, so the 400 shares from Order 3 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.<sup>14</sup>

Example 4:

NBBO: \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction Only

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<sup>13</sup> As noted in the Approved Proposal, Periodic Auctions would operate alongside trading on the Continuous Book. The Exchange has therefore developed its system for processing Periodic Auctions with the goal of minimizing interference with trading in the continuous market. Thus, in rare circumstances where a number of Periodic Auctions could potentially be triggered at or around the same time, the Exchange may throttle the initiation of such Periodic Auctions if needed to maintain appropriate system performance and latency. In the event that the System was throttling Periodic Auctions during this example, it would delay the Periodic Auction initiation process. See Approved Proposal at 17234.

<sup>14</sup> See supra note 12.

Order 2: Buy 100 shares @ \$10.02 Non-Displayed – Continuous Book  
Order

Order 3: Sell 100 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Because an incoming Periodic Auction Eligible Order that “is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book,” Order 3 would execute 100 shares against Order 2 and a Periodic Auction would not be initiated.

Example 5:

NBBO: \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.03 Non-Displayed – Periodic Auction Only

Order 2: Buy 100 shares @ \$10.02 Non-Displayed – Continuous Book  
Order

Order 3: Sell 100 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Because an incoming Periodic Auction Eligible Order that “is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book,” and Order 1 is priced more aggressively than Order 2 (i.e., not against a Periodic Auction Only Order at the same price), the 100 shares from Order 3 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.<sup>15</sup>

Example 6:

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<sup>15</sup> See supra note 12.

NBBO: \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.03 Non-Displayed – Periodic Auction Only

Order 2: Buy 100 shares @ \$10.02 Non-Displayed – Continuous Book  
Order

Order 3: Sell 100 shares @ \$10.03 Non-Displayed – Periodic Auction  
Eligible

This example is identical to Example 5 except that Order 3 has a limit of \$10.03 instead of \$10.02. Because the only orders that are able to execute against one another are Order 3 and Order 1, Order 3 would post and the System would check to see whether a Periodic Auction could be initiated (which it could because Order 3 and Order 1 are executable against one another), and the Periodic Auction initiation process would begin.

#### Periodic Auction Eligible Orders with a Minimum Quantity

Rule 11.25(b)(2)(C) describes how Minimum Quantity Orders will participate in Periodic Auctions and the use of such orders with Periodic Auction Eligible Orders, but does not address how such orders will be handled in initiating Periodic Auctions. It states that “Minimum Quantity Orders, as defined in Rule 11.9(c)(5),<sup>16</sup> will be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders. Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order cannot be entered as Periodic Auction Eligible Orders.”

The current rule and the Approved Proposal are clear in describing how Minimum Quantity Orders will be handled in a Periodic Auction (they “will be executed in a

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<sup>16</sup> See Rule 11.9(c)(5).

Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders”), but as noted above they do not describe how incoming Periodic Auction Eligible Orders with minimum size requirements will be handled in initiating Periodic Auctions. Because Periodic Auction Eligible Orders are eligible to both execute against orders on the book or to initiate a Periodic Auction where they would execute against a Periodic Auction Order, an incoming order with a minimum size requirement creates unique issues related to how to calculate executable quantity and determining whether an order should be executed or initiate a Periodic Auction, especially where resting orders also have minimum size requirements. As such, the Exchange is proposing to explain how it intends to handle such orders by adding a sentence that states “A Periodic Auction Eligible Order entered with a minimum execution quantity will only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size.” This provides a straightforward approach to managing minimum execution quantity that makes the interaction of minimum execution quantity more easily understandable and predictable while ensuring that the minimum execution quantity will be satisfied if the incoming order initiates a Periodic Auction. This proposed change is consistent with the protection of investors and the public interest as it would help to simplify the minimum execution quantity functionality. The following examples represent basic illustrations of the unique issues and explanation of how the Exchange will manage incoming Periodic Auction Eligible Orders with minimum size requirements.

Example 7:

NBBO:           \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction

Eligible

Order 2: Buy 100 shares @ \$10.02 Displayed – Continuous Book

Order

Order 3: Buy 400 shares @ \$10.02 Non-Displayed – Periodic Auction

Eligible

Order 4: Sell 1000 shares @ \$10.02 Non-Displayed – Periodic Auction

Eligible; Minimum Quantity = 500

Order 4 would execute 700 shares upon entry against Orders 2, 1, and 3, and would post 300 shares. Even though there are a collective 600 shares of Periodic Auction Orders between Orders 1 and 3 (enough to satisfy the minimum size requirement for Order 4), the Periodic Auction initiation process would not occur because no single Periodic Auction Order satisfies the Minimum Quantity of 500 shares.

Example 8:

NBBO: \$10.00 x \$10.05

Order 1: Buy 300 shares @ \$10.02 Non-Displayed – Periodic Auction

Eligible

Order 2: Buy 500 shares @ \$10.02 Non-Displayed – Continuous Book

Order

Order 3: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction

Eligible

Order 4: Sell 800 shares @ \$10.02 Non-Displayed – Periodic Auction

Eligible; Minimum Quantity = 500



Order 4 would execute 800 shares upon entry against Orders 1 and 2. Even though there are a collective 500 shares of Periodic Auction Orders between Orders 1 and 3 (enough to satisfy the minimum size requirement for Order 4), the Periodic Auction initiation process would not occur because no single Periodic Auction Order would satisfy the Minimum Quantity of 500 shares.

Example 9:

NBBO: \$10.00 x \$10.05

Order 1: Buy 500 shares @ \$10.02 Non-Displayed – Periodic Auction Eligible

Order 2: Buy 500 shares @ \$10.02 Non-Displayed – Continuous Book Order

Order 3: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction Eligible

Order 4: Sell 800 shares @ \$10.02 Non-Displayed – Periodic Auction Eligible; Minimum Quantity = 500

The only difference between this Example 9 and Example 8 above is that Order 1 has 500 shares instead of 300. This change means that Order 1 would on its own satisfy the 500 share minimum size requirement of Order 4 and would thus be “a single contra-side Periodic Auction Order” that “would satisfy the specified minimum size” of the incoming order. As such, Order 4 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.<sup>17</sup> Similarly, where a Periodic Auction Eligible Order with a minimum size requirement is already on the book, incoming orders

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<sup>17</sup> See supra note 12.

that do not individually satisfy the minimum size requirements will not execute immediately. However, consistent with the Exchange's treatment of Minimum Quantity Orders generally, such orders will aggregate after posting.

Example 10:

NBBO: \$10.00 x \$10.05

Order 1: Buy 1000 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible; Minimum Quantity = 500

Order 2: Sell 400 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 3: Sell 400 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Orders 2 and 3 do not satisfy the minimum size requirement of Order 1 and therefore would not execute or initiate a Periodic Auction upon entry. After the orders are resting, however, the System will aggregate the size of Orders 2 and 3, check whether a Periodic Auction can be initiated (which it could because the minimum size requirement for Order 1 is satisfied), and the Periodic Auction initiation process would begin.<sup>18</sup>

IOC Orders

The Exchange is also proposing to amend Rule 11.25(b)(2)(A) in order to reject Periodic Auction Orders that are IOC. Based on industry feedback, the Exchange believes that the majority of participants would use RHO<sup>19</sup> orders to initiate or participate in a Periodic Auction and would not generally enter IOC orders to participate in the

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<sup>18</sup> See supra note 12.

<sup>19</sup> As provided in Rule 11.9(b)(7), an RHO order is an order that is designated for execution only during Regular Trading Hours.

Periodic Auction process.<sup>20</sup> Allowing for IOCs to participate in Periodic Auctions requires additional development work and, because the Exchange believes that there would not at the outset be significant interest in using such functionality, the Exchange believes that rejecting Periodic Auction Orders that are IOCs would simplify the Periodic Auction process without meaningfully impacting its practical functionality. Stated another way, the minimal benefits that would come from including IOCs at this time are outweighed by the cost to implement the functionality and rejecting IOCs would simplify the Periodic Auction process. As such, the Exchange is proposing to reject Periodic Auction Orders that are IOC orders.

#### Clean-Up Changes

The Exchange is also proposing to make non-substantive clean-up changes to make references to “Non-Displayed Limit Order” in Rules 11.25(b)(1) and (2) instead read “non-displayed limit order” and to delete an extra instance of the word “be” from Rule 11.25(b)(3).

#### (b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>21</sup> in general, and Section 6(b)(5) of the Act,<sup>22</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to

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<sup>20</sup> The Exchange notes that it may consider adding IOC functionality in the future in the event that there was meaningful interest from participants.

<sup>21</sup> 15 U.S.C. § 78f(b).

<sup>22</sup> 15 U.S.C. § 78f(b)(5).

permit unfair discrimination between customers, issuers, brokers, or dealers. As further described below, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would help to clarify and simplify the Exchange's Periodic Auction process, which itself is intended to facilitate improved price formation and provide additional execution opportunities for investors, particularly in securities that may suffer from limited liquidity, including thinly-traded securities. Specifically, the Exchange believes that its proposed changes to the rule text that: (i) Periodic Auction Eligible Orders will be ranked as non-displayed limit orders consistent with the priority of orders outlined in Rule 11.12(a); (ii) incoming Periodic Auction Eligible Orders that are eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book, and other incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders<sup>23</sup> and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a); and (iii) Periodic Auction Eligible Orders that are also Minimum Quantity Orders will only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size, are all consistent with the Act because they are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes make the rules of the Exchange more straightforward and easily understandable. The Exchange also believes that its simplifying change to reject Periodic Auction Orders that are IOC is consistent with the

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<sup>23</sup> The term "Continuous Book Order" shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term "Continuous Book" shall mean System's electronic file of such Continuous Book Orders. See Rule 11.25(a)(2).

Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because it will simplify Periodic Auction functionality without meaningfully impacting its utility. Finally, the Exchange believes that its proposed non-substantive clean-up changes to Rule 11.25(b)(1), (2), and (3) are consistent with the Act because they are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more easily understandable.

#### Ranking Periodic Auction Eligible Orders

The Exchange believes that the proposed change to add a new clarifying sentence to Rule 11.25(b)(2) is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more straightforward and easily understandable by making explicit that Periodic Auction Eligible Orders will be ranked in price-time priority among Continuous Book Orders and will also help to make clear how incoming orders (both Periodic Auction Eligible Orders and Continuous Book Orders) will interact with resting orders. As described above, the point that is being clarified could reasonably be inferred from the definition of Periodic Auctions Orders and is consistent with the intent of current Rule 11.25(b)(2). The Exchange believes that adding the clarifying change will promote just and equitable principles of trade and remove impediments to a free and open market by making explicit how Periodic Auction Eligible Orders will be ranked and how incoming orders will interact with resting orders.

#### Incoming Periodic Auction Eligible Orders

The Exchange believes that the proposed change to Rule 11.25(b)(2) is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more straightforward and easily understandable by making more clear how incoming Periodic Auction Eligible Orders will interact with resting orders. The current rule text was originally introduced to make clear that an incoming Periodic Auction Eligible Order would interact with other Periodic Auction Eligible Orders and Continuous Book Orders before interacting with Periodic Auction Only Orders, as made clear in AP Example 3. The Exchange believes that the proposed new language is consistent with the Act in that it will make the rule text more clear and easily understandable. The proposed rule text will also change the existing functionality from how it was described in Corrected Example 6 from Amendment No. 3 such that an incoming Periodic Auction Eligible Order will now initiate a Periodic Auction where there is a Periodic Auction Only Order that is priced more aggressively than any other Continuous Book Orders instead of executing immediately with the most aggressively priced Continuous Book Order. The Exchange believes that this proposed new language will specify how resting Periodic Auction Only Orders will interact with incoming Periodic Auction Eligible Orders by specifying that immediate executions will occur where a Periodic Auction Only Order and Continuous Book Order are at the same price, but a Periodic Auction will be initiated when the Periodic Auction Only Order is priced more aggressively than the Continuous Book Order. The Exchange believes that this proposed change is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest

because the change strikes a middle ground between prioritizing immediate executions and initiating Periodic Auctions as it relates to incoming Periodic Auction Eligible Orders and how they interact with resting Periodic Auction Only Orders and Continuous Book Orders. Further, the Exchange also notes that the proposed change will also clarify what it means when Periodic Auction Orders become “executable” against one another.

Additionally, this proposal specifies that an order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book, but where the Periodic Auction Only Order is more aggressively priced than the Continuous Book Order, the incoming Periodic Auction Eligible Order will be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin. The Exchange believes that such proposed functionality would promote just and equitable principles of trade and remove impediments to a free and open market by incentivizing the entry of aggressively priced Periodic Auction Only Orders, which the Exchange believes will add additional detail already memorialized in the Approved Proposal and making the Exchange’s rules related to Periodic Auctions more explicit.

#### Periodic Auction Eligible Orders with a Minimum Quantity

The Exchange believes that its proposed change to Rule 11.25(b)(2)(C) is also consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more straightforward and easily understandable by making clear how Minimum Quantity Orders will be handled in initiating Periodic Auctions. Specifically, Rule 11.25(b)(2) currently describes how

Minimum Quantity Orders will participate in Periodic Auctions and the use of such orders with Periodic Auction Eligible Orders, but does not explicitly address how such orders will be handled in initiating Periodic Auctions.

The current rule and the Approved Proposal are clear in describing how Minimum Quantity Orders will be handled in a Periodic Auction (they “will be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders”), but they do not describe how incoming Periodic Auction Eligible Orders with minimum size requirements will be handled in initiating Periodic Auctions. Because Periodic Auction Eligible Orders are eligible to both execute against orders on the book or to initiate a Periodic Auction where they would execute against a Periodic Auction Order, an incoming order with a minimum size requirement creates unique issues related to how to calculate executable quantity and determining whether an order should be executed or initiate a Periodic Auction, especially where resting orders also have minimum size requirements. As such, the Exchange believes that it will benefit investors to explain how it intends to handle such Minimum Quantity Orders. The Exchange believes that having a Periodic Auction Eligible Order entered with a minimum execution quantity only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size represents a straightforward approach to managing minimum execution quantity that makes the interaction of minimum execution quantity more easily understandable and predictable while ensuring that the minimum execution quantity will be satisfied if the incoming order initiates a Periodic Auction. This proposed change is consistent with the protection of investors and the public interest as it would help to simplify the minimum execution



quantity functionality. As such, the Exchange believes that the proposed change to Rule 11.25(b)(2)(C) related to Minimum Quantity Orders is consistent with the Act.

#### IOC Orders

The Exchange believes that the proposed change to reject Periodic Auction Orders that are IOC orders will remove impediments to and perfect a national market system by simplifying the Periodic Auction process without meaningfully impacting its functionality. Specifically, based on industry feedback, the Exchange believes that the majority of participants would use RHO orders to initiate or participate in a Periodic Auction and would not generally enter IOC orders to participate in the Periodic Auction process. Allowing for IOCs to participate in Periodic Auctions requires additional development work and, because the Exchange believes that there would not at the outset be significant interest in using such functionality, the Exchange believes that rejecting Periodic Auction Orders that are IOCs would simplify the Periodic Auction process without meaningfully impacting its practical functionality. Stated another way, the minimal benefits that would come from including IOCs at this time are outweighed by the cost to implement the functionality and rejecting IOCs would simplify the Periodic Auction process. The Exchange also believes that eliminating this order instruction is consistent with the public interest and the protection of investors given the expected limited demand for use of this order instruction upon implementation. As such, the Exchange believes that this proposed change is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because it will simplify Periodic Auction functionality without meaningfully impacting its utility.

### Clean-Up Changes

Finally, the Exchange believes that making the non-substantive clean up changes including changing references to “Non-Displayed Limit Order” in Rules 11.25(b)(1) and (2) instead read “non-displayed limit order” and to delete an extra instance of the word “be” from Rule 11.25(b)(3) are consistent with the Act because they are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more easily understandable.

#### 4. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change would allow the Exchange to make certain clarifying and simplifying changes to the Exchange’s rules and functionality related to Periodic Auctions in a manner consistent with the current Rules (and the Approved Proposal), making the Periodic Auction functionality more straightforward and transparent prior to implementation. The Exchange’s Periodic Auction functionality is designed to introduce innovative functionality to allow competition and to improve market quality in thinly-traded and other securities. The equities industry is fiercely competitive as the Exchange must compete with other equities exchanges and off-exchange venues for order flow and this proposal will allow the Exchange to implement certain simplifying and clarifying changes to its Periodic Auction rules and functionality that will allow it to better compete in this market.

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

No written comments were solicited or received on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is filed for accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as practicable. The Exchange believes that approval of the proposed rule change on an accelerated basis will permit the Exchange to implement Periodic Auctions as soon as possible.

In particular, the Exchange does not believe that the proposed rule change will significantly affect the protection of investors. Rather, the proposed changes are designed to clarify or simplify implementation details related to the Exchange's functionality and rules for Periodic Auctions. As described above, the proposed Aggressive PAO Change provides that an incoming Periodic Auction Eligible Order would initiate a Periodic Auction against a Periodic Auction Only Order that is priced more aggressively than an executable Continuous Book Order instead of immediately executing against the Continuous Book Order at a less aggressive price. Specifically, the Exchange believes that the proposed rule change will not significantly affect the protection of investors and the public interest because the Aggressive PAO Change: (i) represents a relatively minor change that only applies under a limited set of

circumstances; and (ii) simplifies Periodic Auction functionality to better align with the Exchange's general priority rules. As such, the Exchange does not believe that the proposed rule change will significantly affect the protection of investors and the public interest and further believes that it is appropriate for the Commission to approve the proposed rule changes on an accelerated basis.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security Based-Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register.

Exhibit 5 – Text of the Proposed Rule Change

EXHIBIT 1

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBYX-2021-024]

[Insert date]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Make Certain Clarifying Changes to its Rule Related to Periodic Auctions for the Trading of U.S. Equity Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], 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, II, and III below, which Items have been prepared by the Exchange. 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. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to make certain clarifying changes to its rule related to periodic auctions for the trading of U.S. equity securities. The text of the proposed rule change is provided in Exhibit 5.

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/](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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

## 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

This Amendment No. 1 to SR-CboeBYX-2021-024 amends and replaces in its entirety the proposal as originally submitted on October 14, 2021. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The purpose of this proposed rule change is to make certain clarifying changes to Exchange Rule 11.25 related to periodic auctions for the trading of U.S. equity securities (“Periodic Auctions”).<sup>3</sup> The Commission approved the Exchange’s proposal to introduce Periodic Auctions on March 26, 2021.<sup>4</sup> The Exchange has not yet implemented Periodic Auctions. The Exchange is submitting this proposal in order to simplify certain portions of the Periodic Auction process and to add clarity to the rule text prior to implementation.

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<sup>3</sup> The term “Periodic Auction” shall mean an auction conducted pursuant to Rule 11.25. See Rule 11.25(a)(4).

<sup>4</sup> See Securities Exchange Act Release No. 91423 (March 26, 2021), 86 FR 17230 (April 1, 2021) (SR-BYX-2020-021, Amendments No. 3 and 4) (the “Approved Proposal”). The Exchange also notes that the original proposal to adopt Periodic Auctions (the “Original Proposal”) was submitted on July 17, 2020. See Securities Exchange Act Release No. 89424 (July 29, 2020), 85 FR 47262 (August 4, 2020).

Specifically, the Exchange is proposing that: (i) Periodic Auction Eligible Orders<sup>5</sup> will be ranked as non-displayed limit orders consistent with the priority of orders outlined in Rule 11.12(a); (ii) incoming Periodic Auction Eligible Orders that are eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book, and other incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders<sup>6</sup> and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a); and (iii) Periodic Auction Eligible Orders that are also Minimum Quantity Orders<sup>7</sup> will only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size. The Exchange is also proposing to make a simplifying change to reject Periodic Auction Orders that are immediate-or-cancel (“IOC”). Finally, the Exchange is proposing to make certain clean-up changes to Rule 11.25(b)(1), (2), and (3) to eliminate certain typos from the rule text.

#### Ranking Periodic Auction Eligible Orders

Rule 11.25(b)(2) currently reads as follows:

*Periodic Auction Eligible Orders.* A “Periodic Auction Eligible Order” is a Non-Displayed Limit Order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to this Rule 11.25. An

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<sup>5</sup> The term “Periodic Auction Order” shall mean a “Periodic Auction Only Order” or “Periodic Auction Eligible Order” as those terms are defined in Rules 11.25(b)(1)-(2), and the term “Periodic Auction Book” shall mean the System’s electronic file of such Periodic Auction Orders. See Rule 11.25(a)(6).

<sup>6</sup> The term “Continuous Book Order” shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term “Continuous Book” shall mean System’s electronic file of such Continuous Book Orders. See Rule 11.25(a)(2).

<sup>7</sup> See BYX Rule 11.9(c)(5).

incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will trade immediately with the Continuous Book.

The first sentence makes clear that Periodic Auction Eligible Orders are eligible to trade on the Continuous Book and suggests that Periodic Auction Eligible Orders would be ranked as non-displayed limit orders by referring to such as orders as types of non-displayed limit orders. However, reading this sentence together with the second sentence could make it unclear as to how Periodic Auction Eligible Orders are ranked and how an incoming Periodic Auction Eligible Order would interact with other Periodic Auction Orders and resting orders on the Continuous Book.<sup>8</sup>

As such, the Exchange is proposing to add a new sentence in between the two sentences that reads “Periodic Auction Eligible Orders will be ranked as non-displayed limit orders consistent with the priority of orders outlined in Rule 11.12(a).”<sup>9</sup> This will

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<sup>8</sup> The Exchange notes that in the Original Proposal the second sentence of Rule 11.25(b)(2) originally said “An incoming PAE Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will initiate a Periodic Auction.” In Amendment 1, the Exchange instead proposed the current language which remained in the Approved Proposal. The intent of this change in the rule text was to make clear that the Exchange would not prioritize a Periodic Auction Order over every other resting order, which is made clear in the examples and in the Approved Proposal. The proposed new language further clarifies this intent from Amendment 1 in the rule text.

<sup>9</sup> Rule 11.12(a)(1) and (2) relate to the priority and ranking of orders and specifically state: “(a) Ranking. Orders of Users shall be ranked and maintained in the BYX Book based on the following priority: (1) Price. The highest-priced order to buy (or lowest-priced order to sell) shall have priority over all other orders to buy (or orders to sell) in all cases. (2) Time. Subject to the execution process described in Rule 11.13(a) below, where orders to buy (or sell) are made at the same price, the order clearly established as the first entered into the System at such particular price shall have precedence at that price, up to the number of shares of stock specified in the order. The System shall rank equally priced trading interest within the System in time priority in the following order: (A) Displayed size of limit orders; (B) Non-Displayed limit orders; (C) Non-Displayed Pegged Orders; (D) Mid-Point Peg Orders; (E) Reserve size of orders;



make explicit that Periodic Auction Eligible Orders will be ranked in price-time priority among Continuous Book Orders and will also help to make clear how incoming orders (both Periodic Auction Eligible Orders and Continuous Book Orders) will interact with resting orders, as further discussed below. Practically, the Exchange believes this clarifying change is reasonably inferred from the definition of Periodic Auction Eligible Orders, which defines a Periodic Auction Eligible Order as (emphases added) “*a Non-Displayed Limit Order* eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to this Rule 11.25.” If such orders are eligible to trade on the Continuous Book, they would need to be prioritized by the System and it would only make sense for them to be prioritized in accordance with the Exchange’s existing priority rules. Rather than rely on this implication, the Exchange is proposing to explicitly state this in the Rules by adding the language proposed above.

Example 1:

NBBO:           \$10.00 x \$10.05

Order 1:        Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 2:        Buy 100 shares @ \$10.02 Displayed – Continuous Book Order

Order 3:        Sell 100 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

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(F) Discretionary portion of Discretionary Orders as set forth in Rule 11.9(c)(9);  
(G) Supplemental Peg Orders.”

Order 2 is ranked ahead of Order 1 because it is a displayed limit order in accordance with Rule 11.12(a)(1), meaning that Order 3 would execute 100 shares against Order 2.

#### Incoming Periodic Auction Eligible Orders

As described above, Rule 11.25(b)(2) currently states that “An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will trade immediately with the Continuous Book.” This language was originally introduced to make clear that an incoming Periodic Auction Eligible Order would interact with other Periodic Auction Eligible Orders and Continuous Book Orders before interacting with Periodic Auction Only Orders, as made clear in Example 3 in the Approved Proposal (“AP Example 3”).<sup>10</sup> While part of the rule is made clear by the surrounding rule text and the clarifying context from the Approved Proposal, on its own it could be read to imply that all resting Periodic Auction Eligible Orders would either be prioritized behind any executable Continuous Book Order or that such resting orders should immediately execute against an incoming Periodic Auction Eligible Order instead of initiating a Periodic Auction, which is not the case. Additionally, another example

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<sup>10</sup> AP Example 3 specifically provides the following example:

NBBO: \$10.00 x \$10.10

Order 1: Buy 100 shares @ 10.05 Midpoint Peg – Periodic Auction Only

Order 2: Buy 100 shares @ 10.05 Midpoint Peg – Continuous Book Order

Order 3: Sell 100 shares @ 10.05 Midpoint Peg – Periodic Auction Eligible

A Periodic Auction is not initiated. Instead, Order 3, which is a Periodic Auction Eligible Order, would trade immediately with the Continuous Book and execute 100 shares against Order 2 at \$10.05. Although Order 1 is available to initiate a Periodic Auction, a Periodic Auction Eligible Order would trade immediately with Continuous Book Orders on entry if it can do so instead of initiating a Periodic Auction.

from the Approved Proposal laid out circumstances under which an incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order will trade immediately with the Continuous Book, even where the Periodic Auction Only Order is more aggressively priced than the Continuous Book Order.<sup>11</sup> The Exchange is proposing to add language to Rule 11.25(b)(2) in order to change the outcome of that example such that an incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a more aggressively priced Periodic Auction Only Order will initiate a Periodic Auction (the “Aggressive PAO Change”).

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<sup>11</sup> The Exchange notes that the functionality captured in Example 6 as laid out in Amendment No. 3 to the Approved Proposal as corrected in Amendment No. 4 to the Approved Proposal (“Corrected Example 6 from Amendment No. 3”) provided that even where a Periodic Auction Only Order was priced more aggressively than a Continuous Book Order, the incoming Periodic Auction Eligible Order would trade immediately with the Continuous Book. While this example was technically replaced as part of Amendment No. 4, it was laid out in Amendment No. 3 with an incorrect outcome and Amendment No. 4 provided some explanation about what should have happened before laying out a new replacement Example 6. What follows is the example as laid out in Amendment No. 3 and followed by the explanation from Amendment No. 4.

NBBO: \$10.00 x \$10.10

Order 1: Buy 500 shares @ \$10.05 Non-Displayed – Periodic Auction Only

Order 2: Buy 300 shares @ \$10.04 Non-Displayed – Continuous Book Order

Order 3: Sell 100 shares @ \$10.04 Non-Displayed – Periodic Auction Eligible

Order 4: Sell 200 shares @ \$10.04 Non-Displayed – Periodic Auction Eligible

Specifically, Amendment No. 4 stated “the amended functionality would require that Order 3 and Order 4, which are Periodic Auction Eligible Orders, each trade immediately with Order 2, which is a Non-Displayed Continuous Book Order.”

As such, current functionality provides that an order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will trade immediately with the Continuous Book, even where the Periodic Auction Only Order is more aggressively priced than the Continuous Book Order, which is consistent with Corrected Example 6 from Amendment No. 3.

Specifically, the Exchange is proposing to add language to Rule 11.25(b)(2) such that it will instead read (additions in *italics*): “An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction *against a Periodic Auction Only Order at the same price* will trade immediately with the Continuous Book. *Incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a).*”<sup>12</sup> This language will: (i) make explicit in the rule text the outcome described in AP Example 3; and (ii) change the functionality from how it was described in the Approved Proposal such that an incoming Periodic Auction Eligible Order will now initiate a Periodic Auction where there is a Periodic Auction Only Order that is priced more aggressively than any other Continuous Book Orders instead of executing immediately with the most aggressively priced Continuous Book Order. Further, this proposed change will provide additional clarity to the language in Rule 11.25(c) describing when a Periodic Auction will be initiated. Specifically, Rule 11.25(c) provides that a Periodic Auction will be initiated in a security when “one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell.” The proposed amendment to Rule 11.25(b)(2) to specifically describe how incoming Periodic Auction Eligible Orders will interact with resting orders will add clarity regarding what it means when Periodic Auction Orders become “executable” against one another in this context.

Example 2:

NBBO:           \$10.00 x \$10.05

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<sup>12</sup> See supra note 9.

Order 1: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 2: Buy 100 shares @ \$10.02 Displayed – Continuous Book Order

Order 3: Sell 400 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 3 would execute 100 shares against Order 2 (consistent with Example 1).

Order 3 and Order 1 would then be executable against one another and are both Periodic Auction Eligible Orders, so the remaining 300 shares from Order 3 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.<sup>13</sup>

Example 3:

NBBO: \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 2: Buy 100 shares @ \$10.02 Non-Displayed – Continuous Book  
Order

Order 3: Sell 400 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

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<sup>13</sup> As noted in the Approved Proposal, Periodic Auctions would operate alongside trading on the Continuous Book. The Exchange has therefore developed its system for processing Periodic Auctions with the goal of minimizing interference with trading in the continuous market. Thus, in rare circumstances where a number of Periodic Auctions could potentially be triggered at or around the same time, the Exchange may throttle the initiation of such Periodic Auctions if needed to maintain appropriate system performance and latency. In the event that the System was throttling Periodic Auctions during this example, it would delay the Periodic Auction initiation process. See Approved Proposal at 17234.

This example is identical to Example 2 except that Order 2 is Non-Displayed rather than Displayed. Upon entry, Order 3 would be executable against Order 1 and both are Periodic Auction Eligible Orders, so the 400 shares from Order 3 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.<sup>14</sup>

Example 4:

NBBO: \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction Only

Order 2: Buy 100 shares @ \$10.02 Non-Displayed – Continuous Book  
Order

Order 3: Sell 100 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Because an incoming Periodic Auction Eligible Order that “is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book,” Order 3 would execute 100 shares against Order 2 and a Periodic Auction would not be initiated.

Example 5:

NBBO: \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.03 Non-Displayed – Periodic Auction Only

Order 2: Buy 100 shares @ \$10.02 Non-Displayed – Continuous Book  
Order

Order 3: Sell 100 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

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<sup>14</sup> See supra note 12.

Because an incoming Periodic Auction Eligible Order that “is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book,” and Order 1 is priced more aggressively than Order 2 (i.e., not against a Periodic Auction Only Order at the same price), the 100 shares from Order 3 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.<sup>15</sup>

Example 6:

NBBO: \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.03 Non-Displayed – Periodic Auction Only

Order 2: Buy 100 shares @ \$10.02 Non-Displayed – Continuous Book  
Order

Order 3: Sell 100 shares @ \$10.03 Non-Displayed – Periodic Auction  
Eligible

This example is identical to Example 5 except that Order 3 has a limit of \$10.03 instead of \$10.02. Because the only orders that are able to execute against one another are Order 3 and Order 1, Order 3 would post and the System would check to see whether a Periodic Auction could be initiated (which it could because Order 3 and Order 1 are executable against one another), and the Periodic Auction initiation process would begin.

Periodic Auction Eligible Orders with a Minimum Quantity

Rule 11.25(b)(2)(C) describes how Minimum Quantity Orders will participate in Periodic Auctions and the use of such orders with Periodic Auction Eligible Orders, but does not address how such orders will be handled in initiating Periodic Auctions. It states

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<sup>15</sup> See supra note 12.

that “Minimum Quantity Orders, as defined in Rule 11.9(c)(5),<sup>16</sup> will be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders. Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order cannot be entered as Periodic Auction Eligible Orders.”

The current rule and the Approved Proposal are clear in describing how Minimum Quantity Orders will be handled in a Periodic Auction (they “will be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders”), but as noted above they do not describe how incoming Periodic Auction Eligible Orders with minimum size requirements will be handled in initiating Periodic Auctions. Because Periodic Auction Eligible Orders are eligible to both execute against orders on the book or to initiate a Periodic Auction where they would execute against a Periodic Auction Order, an incoming order with a minimum size requirement creates unique issues related to how to calculate executable quantity and determining whether an order should be executed or initiate a Periodic Auction, especially where resting orders also have minimum size requirements. As such, the Exchange is proposing to explain how it intends to handle such orders by adding a sentence that states “A Periodic Auction Eligible Order entered with a minimum execution quantity will only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size.” This provides a straightforward approach to managing minimum execution quantity that makes the interaction of minimum execution quantity more easily understandable and predictable while ensuring that the minimum

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<sup>16</sup> See Rule 11.9(c)(5).



execution quantity will be satisfied if the incoming order initiates a Periodic Auction. This proposed change is consistent with the protection of investors and the public interest as it would help to simplify the minimum execution quantity functionality. The following examples represent basic illustrations of the unique issues and explanation of how the Exchange will manage incoming Periodic Auction Eligible Orders with minimum size requirements.

Example 7:

NBBO: \$10.00 x \$10.05

Order 1: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 2: Buy 100 shares @ \$10.02 Displayed – Continuous Book  
Order

Order 3: Buy 400 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 4: Sell 1000 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible; Minimum Quantity = 500

Order 4 would execute 700 shares upon entry against Orders 2, 1, and 3, and would post 300 shares. Even though there are a collective 600 shares of Periodic Auction Orders between Orders 1 and 3 (enough to satisfy the minimum size requirement for Order 4), the Periodic Auction initiation process would not occur because no single Periodic Auction Order satisfies the Minimum Quantity of 500 shares.

Example 8:

NBBO: \$10.00 x \$10.05

Order 1: Buy 300 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 2: Buy 500 shares @ \$10.02 Non-Displayed – Continuous Book  
Order

Order 3: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 4: Sell 800 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible; Minimum Quantity = 500

Order 4 would execute 800 shares upon entry against Orders 1 and 2. Even though there are a collective 500 shares of Periodic Auction Orders between Orders 1 and 3 (enough to satisfy the minimum size requirement for Order 4), the Periodic Auction initiation process would not occur because no single Periodic Auction Order would satisfy the Minimum Quantity of 500 shares.

Example 9:

NBBO: \$10.00 x \$10.05

Order 1: Buy 500 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 2: Buy 500 shares @ \$10.02 Non-Displayed – Continuous Book  
Order

Order 3: Buy 200 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 4: Sell 800 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible; Minimum Quantity = 500

The only difference between this Example 9 and Example 8 above is that Order 1 has 500 shares instead of 300. This change means that Order 1 would on its own satisfy the 500 share minimum size requirement of Order 4 and would thus be “a single contra-side Periodic Auction Order” that “would satisfy the specified minimum size” of the incoming order. As such, Order 4 would be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin.<sup>17</sup> Similarly, where a Periodic Auction Eligible Order with a minimum size requirement is already on the book, incoming orders that do not individually satisfy the minimum size requirements will not execute immediately. However, consistent with the Exchange’s treatment of Minimum Quantity Orders generally, such orders will aggregate after posting.

Example 10:

NBBO: \$10.00 x \$10.05

Order 1: Buy 1000 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible; Minimum Quantity = 500

Order 2: Sell 400 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Order 3: Sell 400 shares @ \$10.02 Non-Displayed – Periodic Auction  
Eligible

Orders 2 and 3 do not satisfy the minimum size requirement of Order 1 and therefore would not execute or initiate a Periodic Auction upon entry. After the orders are resting, however, the System will aggregate the size of Orders 2 and 3, check whether a

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<sup>17</sup> See supra note 12.

Periodic Auction can be initiated (which it could because the minimum size requirement for Order 1 is satisfied), and the Periodic Auction initiation process would begin.<sup>18</sup>

### IOC Orders

The Exchange is also proposing to amend Rule 11.25(b)(2)(A) in order to reject Periodic Auction Orders that are IOC. Based on industry feedback, the Exchange believes that the majority of participants would use RHO<sup>19</sup> orders to initiate or participate in a Periodic Auction and would not generally enter IOC orders to participate in the Periodic Auction process.<sup>20</sup> Allowing for IOCs to participate in Periodic Auctions requires additional development work and, because the Exchange believes that there would not at the outset be significant interest in using such functionality, the Exchange believes that rejecting Periodic Auction Orders that are IOCs would simplify the Periodic Auction process without meaningfully impacting its practical functionality. Stated another way, the minimal benefits that would come from including IOCs at this time are outweighed by the cost to implement the functionality and rejecting IOCs would simplify the Periodic Auction process. As such, the Exchange is proposing to reject Periodic Auction Orders that are IOC orders.

### Clean-Up Changes

The Exchange is also proposing to make non-substantive clean-up changes to make references to “Non-Displayed Limit Order” in Rules 11.25(b)(1) and (2) instead

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<sup>18</sup> See supra note 12.

<sup>19</sup> As provided in Rule 11.9(b)(7), an RHO order is an order that is designated for execution only during Regular Trading Hours.

<sup>20</sup> The Exchange notes that it may consider adding IOC functionality in the future in the event that there was meaningful interest from participants.

read “non-displayed limit order” and to delete an extra instance of the word “be” from Rule 11.25(b)(3).

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>21</sup> in general, and Section 6(b)(5) of the Act,<sup>22</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. As further described below, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would help to clarify and simplify the Exchange’s Periodic Auction process, which itself is intended to facilitate improved price formation and provide additional execution opportunities for investors, particularly in securities that may suffer from limited liquidity, including thinly-traded securities. Specifically, the Exchange believes that its proposed changes to the rule text that: (i) Periodic Auction Eligible Orders will be ranked as non-displayed limit orders consistent with the priority of orders outlined in Rule 11.12(a); (ii) incoming Periodic Auction Eligible Orders that are eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book, and other incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders<sup>23</sup> and other Periodic

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<sup>21</sup> 15 U.S.C. § 78f(b).

<sup>22</sup> 15 U.S.C. § 78f(b)(5).

<sup>23</sup> The term “Continuous Book Order” shall mean an order on the BYX Book that is

Auction Eligible Orders according to their rank under Rule 11.12(a); and (iii) Periodic Auction Eligible Orders that are also Minimum Quantity Orders will only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size, are all consistent with the Act because they are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes make the rules of the Exchange more straightforward and easily understandable. The Exchange also believes that its simplifying change to reject Periodic Auction Orders that are IOC is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because it will simplify Periodic Auction functionality without meaningfully impacting its utility. Finally, the Exchange believes that its proposed non-substantive clean-up changes to Rule 11.25(b)(1), (2), and (3) are consistent with the Act because they are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more easily understandable.

#### Ranking Periodic Auction Eligible Orders

The Exchange believes that the proposed change to add a new clarifying sentence to Rule 11.25(b)(2) is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more straightforward and easily understandable by making explicit that Periodic Auction Eligible Orders will be ranked in price-time priority among Continuous Book Orders and will also help to

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not a Periodic Auction Order, and the term “Continuous Book” shall mean System’s electronic file of such Continuous Book Orders. See Rule 11.25(a)(2).

make clear how incoming orders (both Periodic Auction Eligible Orders and Continuous Book Orders) will interact with resting orders. As described above, the point that is being clarified could reasonably be inferred from the definition of Periodic Auctions Orders and is consistent with the intent of current Rule 11.25(b)(2). The Exchange believes that adding the clarifying change will promote just and equitable principles of trade and remove impediments to a free and open market by making explicit how Periodic Auction Eligible Orders will be ranked and how incoming orders will interact with resting orders.

#### Incoming Periodic Auction Eligible Orders

The Exchange believes that the proposed change to Rule 11.25(b)(2) is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more straightforward and easily understandable by making more clear how incoming Periodic Auction Eligible Orders will interact with resting orders. The current rule text was originally introduced to make clear that an incoming Periodic Auction Eligible Order would interact with other Periodic Auction Eligible Orders and Continuous Book Orders before interacting with Periodic Auction Only Orders, as made clear in AP Example 3. The Exchange believes that the proposed new language is consistent with the Act in that it will make the rule text more clear and easily understandable. The proposed rule text will also change the existing functionality from how it was described in Corrected Example 6 from Amendment No. 3 such that an incoming Periodic Auction Eligible Order will now initiate a Periodic Auction where there is a Periodic Auction Only Order that is priced more aggressively than any other Continuous Book Orders instead of executing immediately with the most aggressively

priced Continuous Book Order. The Exchange believes that this proposed new language will specify how resting Periodic Auction Only Orders will interact with incoming Periodic Auction Eligible Orders by specifying that immediate executions will occur where a Periodic Auction Only Order and Continuous Book Order are at the same price, but a Periodic Auction will be initiated when the Periodic Auction Only Order is priced more aggressively than the Continuous Book Order. The Exchange believes that this proposed change is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the change strikes a middle ground between prioritizing immediate executions and initiating Periodic Auctions as it relates to incoming Periodic Auction Eligible Orders and how they interact with resting Periodic Auction Only Orders and Continuous Book Orders. Further, the Exchange also notes that the proposed change will also clarify what it means when Periodic Auction Orders become “executable” against one another. Additionally, this proposal specifies that an order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book, but where the Periodic Auction Only Order is more aggressively priced than the Continuous Book Order, the incoming Periodic Auction Eligible Order will be sent to the Periodic Auction Book and the Periodic Auction initiation process would begin. The Exchange believes that such proposed functionality would promote just and equitable principles of trade and remove impediments to a free and open market by incentivizing the entry of aggressively priced Periodic Auction Only Orders, which the Exchange believes will add additional



detail already memorialized in the Approved Proposal and making the Exchange's rules related to Periodic Auctions more explicit.

Periodic Auction Eligible Orders with a Minimum Quantity

The Exchange believes that its proposed change to Rule 11.25(b)(2)(C) is also consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more straightforward and easily understandable by making clear how Minimum Quantity Orders will be handled in initiating Periodic Auctions. Specifically, Rule 11.25(b)(2) currently describes how Minimum Quantity Orders will participate in Periodic Auctions and the use of such orders with Periodic Auction Eligible Orders, but does not explicitly address how such orders will be handled in initiating Periodic Auctions.

The current rule and the Approved Proposal are clear in describing how Minimum Quantity Orders will be handled in a Periodic Auction (they "will be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders"), but they do not describe how incoming Periodic Auction Eligible Orders with minimum size requirements will be handled in initiating Periodic Auctions. Because Periodic Auction Eligible Orders are eligible to both execute against orders on the book or to initiate a Periodic Auction where they would execute against a Periodic Auction Order, an incoming order with a minimum size requirement creates unique issues related to how to calculate executable quantity and determining whether an order should be executed or initiate a Periodic Auction, especially where resting orders also have minimum size requirements. As such, the Exchange believes that it will benefit

investors to explain how it intends to handle such Minimum Quantity Orders. The Exchange believes that having a Periodic Auction Eligible Order entered with a minimum execution quantity only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size represents a straightforward approach to managing minimum execution quantity that makes the interaction of minimum execution quantity more easily understandable and predictable while ensuring that the minimum execution quantity will be satisfied if the incoming order initiates a Periodic Auction. This proposed change is consistent with the protection of investors and the public interest as it would help to simplify the minimum execution quantity functionality. As such, the Exchange believes that the proposed change to Rule 11.25(b)(2)(C) related to Minimum Quantity Orders is consistent with the Act.

#### IOC Orders

The Exchange believes that the proposed change to reject Periodic Auction Orders that are IOC orders will remove impediments to and perfect a national market system by simplifying the Periodic Auction process without meaningfully impacting its functionality. Specifically, based on industry feedback, the Exchange believes that the majority of participants would use RHO orders to initiate or participate in a Periodic Auction and would not generally enter IOC orders to participate in the Periodic Auction process. Allowing for IOCs to participate in Periodic Auctions requires additional development work and, because the Exchange believes that there would not at the outset be significant interest in using such functionality, the Exchange believes that rejecting Periodic Auction Orders that are IOCs would simplify the Periodic Auction process without meaningfully impacting its practical functionality. Stated another way, the

minimal benefits that would come from including IOCs at this time are outweighed by the cost to implement the functionality and rejecting IOCs would simplify the Periodic Auction process. The Exchange also believes that eliminating this order instruction is consistent with the public interest and the protection of investors given the expected limited demand for use of this order instruction upon implementation. As such, the Exchange believes that this proposed change is consistent with the Act because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because it will simplify Periodic Auction functionality without meaningfully impacting its utility.

#### Clean-Up Changes

Finally, the Exchange believes that making the non-substantive clean up changes including changing references to “Non-Displayed Limit Order” in Rules 11.25(b)(1) and (2) instead read “non-displayed limit order” and to delete an extra instance of the word “be” from Rule 11.25(b)(3) are consistent with the Act because they are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest because the changes are designed to make the rules of the Exchange more easily understandable.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change would allow the Exchange to make certain clarifying and simplifying changes to the Exchange’s rules and functionality related to Periodic Auctions in a manner consistent with the current Rules (and the Approved Proposal), making the Periodic Auction functionality more straightforward and

transparent prior to implementation. The Exchange's Periodic Auction functionality is designed to introduce innovative functionality to allow competition and to improve market quality in thinly-traded and other securities. The equities industry is fiercely competitive as the Exchange must compete with other equities exchanges and off-exchange venues for order flow and this proposal will allow the Exchange to implement certain simplifying and clarifying changes to its Periodic Auction rules and functionality that will allow it to better compete in this market.

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

No written comments were solicited or received on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2021-024 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-2021-024. 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-CboeBYX-2021-024 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.<sup>24</sup>

Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined; proposed deletions are in [brackets].

**Rules of Cboe BYX Exchange, Inc.**

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## Rule 11.25. Periodic Auctions

(a) (No changes.)

(b) *Order Entry and Cancellation.* Users may enter Periodic Auction Orders that are eligible to initiate Periodic Auctions pursuant to Rule 11.25(c), and Continuous Book Orders that may participate in such Periodic Auctions if present on the Continuous Book at the time a Periodic Auction is executed. Periodic Auction Orders and Continuous Book Orders may be modified and/or cancelled at any time; provided that a User entering a Periodic Auction Order may optionally include an instruction not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price. Periodic Auction Orders must be for a size of 100 shares or more in securities priced below \$500 based on the consolidated last sale price, or if no consolidated last sale price is available, the previous day's closing price.

(1) A "Periodic Auction Only Order" is a [Non-Displayed Limit Order]non-displayed limit order entered with an instruction to participate solely in Periodic Auctions pursuant to this Rule 11.25. Periodic Auction Only Orders are not eligible for execution on the Continuous Book.

(A) Periodic Auction Only Orders entered either during or outside of Regular Trading Hours must include a time-in-force of Regular Hours Only ("RHO"). [Periodic Auction Only Orders entered during Regular Trading Hours may be either RHO or immediate-or-cancel ("IOC"). If entered with a time-in-force of IOC, the order must include an instruction pursuant to Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price.]

(B)-(C) (No changes.)

(2) *Periodic Auction Eligible Orders.* A "Periodic Auction Eligible Order" is a [Non-Displayed Limit Order]non-displayed limit order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to this Rule 11.25. Periodic Auction Eligible Orders will be ranked as Non-Displayed Limit Orders consistent with the priority of orders outlined in Rule 11.12(a). An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book. Incoming Periodic Auction Eligible Orders will upon entry interact with Continuous Book Orders and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a).

Periodic Auction Eligible Orders will not trade on the Continuous Book during a Periodic Auction Period in the security.

(A) [Periodic Auction Eligible Orders entered with a time-in-force of IOC must include an instruction pursuant to Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price. ]Periodic Auction Eligible Orders cannot be entered with a time-in-force of IOC or fill-or-kill (“FOK”).

(B) (No changes.)

(C) Minimum Quantity Orders, as defined in Rule 11.9(c)(5), will be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders. A Periodic Auction Eligible Order entered with a minimum execution quantity will only initiate a Periodic Auction upon entry where a single contra-side Periodic Auction Order would satisfy the specified minimum size. Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order cannot be entered as Periodic Auction Eligible Orders.

(D)-(E) (No changes.)

(3) Continuous Book Orders are handled in the same manner as Periodic Auction Eligible Orders pursuant to Rule 11.25(b)(2)(C)-(E); provided that the order handling described in Rule 11.25(b)(2)(C) only applies to Continuous Book Orders entered with the default instruction that permits the execution of such orders against one or more contra-side orders. Continuous Book Orders can be entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order, but such orders are not [be ]eligible to participate in Periodic Auctions. Continuous Book Orders entered as Reserve Orders, as defined in Rule 11.9(c)(1), may participate to the full extent of their displayed size and Reserve Quantity.

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