

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84293; File No. SR-CboeBYX-2018-021)

September 26, 2018

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 20, 2018, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Exchange’s fee schedule applicable to its equities trading platform.

The text of the proposed rule change is available at the Exchange’s website at www.markets.cboe.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange’s fee schedule applicable to its equities trading platform (“BYX Equities”) to add a new ADAV⁵ requirement to qualify for Remove Volume Tier 8 associated with fee codes W,⁶ BB,⁷ and N^{8,9}.

⁵ “ADAV” means average daily added volume calculated as the number of shares added per day. See BYX Fee Schedule, Definitions. ADAV is calculated on a monthly basis. The Exchange excludes from its calculation of ADAV shares added or removed on any day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours (“Exchange System Disruption”), on any day with a scheduled early market close and on the last Friday in June (the “Russell Reconstitution Day”). Routed shares are not included in ADAV calculation. With prior notice to the Exchange, a Member may aggregate ADAV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member’s Form BD).

⁶ W is associated with orders that remove liquidity from BYX in Tape A securities.

⁷ BB is associated with orders that remove liquidity from BYX in Tape B securities.

⁸ N is associated with orders that remove liquidity from BYX in Tape C securities.

⁹ The Exchange initially filed the proposed fee change on September 4, 2018 (SR-CboeBYX-2018-018) for September 4, 2018 effectiveness. On business date September 13, 2018, the Exchange withdrew SR-CboeBYX-2018-018 and submitted SR-CboeBYX-2018-020. On September 20, 2018, the Exchange withdrew SR-CboeBYX-2018-020 and submitted this filing.

By way of background, the Exchange provides a standard rebate of \$0.0005 per share for orders that remove liquidity from BYX in securities priced at or above \$1.00. Members may also qualify for a higher rebate based on the Exchange’s Remove Volume Tiers, which are designed to encourage Members to bring order flow to BYX by providing higher rebates for removing liquidity to firms based on their activity on the Exchange.¹⁰ Currently, Members can qualify for a higher rebate of \$0.0017 per share pursuant to Remove Volume Tier 8 if the Member has a Step-Up Remove TCV¹¹ from December 2017 equal or greater than 0.10%. The Exchange proposes to add a second prong to Remove Volume Tier 8 which will also require a Member to meet an “adding liquidity” threshold, in addition to the current “removing liquidity” threshold. Particularly, the Exchange proposes to add the requirement that a Member have an ADAV that is greater than or equal to 0.30% of the TCV. The proposed change applies to fee codes W, BB, and N, which relate to orders that remove liquidity from BYX in Tapes A, B, and C, respectively. The Exchange believes the proposed change makes the threshold requirements commensurate with the level of the incentive provided in Remove Volume Tier 8. The Exchange also notes that another exchange has adopted a similar rebate that requires Members to meet thresholds relating to both removing and adding liquidity.¹²

2. Statutory Basis

¹⁰ See BYX Fee Schedule, footnote 1, Add/Remove Volume Tiers.

¹¹ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day.

¹² See Nasdaq BX, Inc. (“BX”) Rule 7018, Nasdaq BX Equities System Order Execution and Routing, which provides a \$0.0016 per share executed credit for orders that meet thresholds relating to accessing liquidity and adding liquidity.

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6 of the Act¹³ and, in particular, the requirements of Section 6(b)(4) and 6(b)(5),¹⁴ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the amount of the rebate under Remove Volume Tier 8 is reasonable because it remains unchanged. The Exchange also believes that it is reasonable to require an additional threshold in order to receive the rebate because the Exchange believes the updated requirements are commensurate with the level of the rebate offered and ensures Members are providing adequate market participation in return for this rebate.

The Exchange believes the proposal to add a requirement to Remove Volume Tier 8 is an equitable allocation and is not unfairly discriminatory because the proposed rule change applies to all similarly situated Members. Particularly, volume-based rebates such as those currently maintained on the Exchange have been widely adopted by exchanges and are equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value of an exchange's market quality; (ii) associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

volume discovery processes. The Exchange believe it's reasonable, equitable and not unfairly discriminatory to require that Members meet an adding liquidity threshold in addition to the existing liquidity removing threshold because the proposed ADAV requirement is intended to ensure Members achieving this rebate will meaningfully support trading on the exchange by also providing liquidity that supports the displayed market and, therefore, market quality. The Exchange believes the enhanced rebated under Remove Volume Tier 8, together with the other existing rebates and reduced fees under Add/Remove Volume Tiers 1-9 provide members with choice and flexibility. Particularly, the Exchange notes that Members have other opportunities to receive enhanced rebates or reduced fees should a member be unable to satisfy the qualification criteria required to receive the rebate under Remove Volume Tier 8. As noted above, the Exchange also notes that another exchange has adopted a similar rebate that requires Members to meet thresholds relating to both adding and removing liquidity.¹⁵ In sum, the Exchange believes that the proposed change is an equitable allocation and is not unfairly discriminatory.

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

The Exchange believes the proposed amendment to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing programs offered by the Exchange or pricing offered by the Exchange's competitors. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their

¹⁵ See Nasdaq BX, Inc., Rule 7018, Nasdaq BX Equities System Order Execution and Routing, which provides a \$0.0016 per share executed credit for orders that meet thresholds relating to accessing liquidity and adding liquidity.

competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and paragraph (f) of Rule 19b-4 thereunder.¹⁷ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-CboeBYX-2018-021 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 No. SR-CboeBYX-2018-021. This file number should

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File No. SR-CboeBYX-2018-021 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.¹⁸

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Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).