

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87602; File No. SR-CboeBYX-2019-022)

November 22, 2019

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Paragraph (a) of Rule 11.1 to Allow the Exchange to Accept Stop Orders Entered Between 6:00 and 7:00 a.m. Eastern Time

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 19, 2019, Cboe BYX Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 amend paragraph (a) of Rule 11.1 to allow the Exchange to accept Stop Orders entered between 6:00 and 7:00 a.m. Eastern Time. 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

The Exchange proposes to amend paragraph (a) of Rule 11.1 to allow the Exchange to accept Stop Orders<sup>3</sup> entered between 6:00 and 7:00 a.m. Eastern Time.

Paragraph (a) of Rule 11.1 provides that orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time are not eligible for execution until the start of the Early Trading Session,<sup>4</sup> Pre-Opening Session<sup>5</sup> or Regular Trading Hours,<sup>6</sup> depending on the Time in Force selected by the User.<sup>7</sup> Paragraph (a) also provides that the Exchange will not accept certain orders<sup>8</sup> entered prior to

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<sup>3</sup> A Stop Order is an order that becomes a BYX market order when the stop price is elected. A Stop Order to buy is elected when the consolidated last sale in the security occurs at, or above, the specified stop price. A Stop Order to sell is elected when the consolidated last sale in the security occurs at, or below, the specified stop price. See Exchange Rule 11.9(c)(16).

<sup>4</sup> See Exchange Rule 1.5(ee).

<sup>5</sup> See Exchange Rule 1.5(r).

<sup>6</sup> See Exchange Rule 1.5(w).

<sup>7</sup> See Exchange Rule 1.5(cc).

<sup>8</sup> Specifically, Exchange Rule 11.1(a) provides that BYX Post Only Orders, Partial Post Only at Limit Orders, Intermarket Sweep Orders (“ISOs”), BYX Market Orders with a Time in Force other than Regular Hours Only, Minimum Quantity Orders that also include a Time in Force of Regular Hours Only, RPI Orders and all orders with a Time in

7:00 a.m. Eastern Time including BYX Market Orders<sup>9</sup> with a Time in Force other than Regular Hours Only (“RHO”).<sup>10</sup> BYX Market Orders with a Time in Force other than RHO are rejected by the Exchange prior to 7:00 a.m. Eastern Time because BYX Market Orders are not eligible to trade prior to the start of Regular Trading Hours and such orders are generally not designated to queue for later entry onto the Exchange’s order book. Rather, BYX Market Orders with a Time in Force other than RHO are designed to immediately execute at the NBBO when the order reaches the Exchange, and thus are generally intended for entry during a trading session where continuous trading is occurring. Alternatively, other order types and modifiers, such as BYX Market Orders with a Time in Force of RHO and Limit Orders,<sup>11</sup> including Stop Limit Orders,<sup>12</sup> are allowed for entry on the Exchange between 6:00 and 7:00 a.m. Eastern Time as those order types and modifiers are consistent with an order designated to queue for later entry on to the Exchange’s order book. Specifically, BYX Market Orders with a Time in Force of RHO are effectively for use in the

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Force of Immediate-or-Cancel (“IOC”) or Fill-or-Kill (“FOK”) are not accepted if entered prior to 7:00 a.m. Eastern Time.

<sup>9</sup> A BYX Market Order is an “order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange. BYX market orders shall not trade through Protected Quotations...BYX Market Orders are not eligible for execution during the Early Trading Session, Pre-Opening Session or the After Hours Trading Session.” See Exchange Rule 11.9(a)(2).

<sup>10</sup> RHO refers to a “limit or market order that is designated for execution only during Regular Trading Hours, which includes the Opening Process, as defined in Rule 11.23.” See Exchange Rule 11.9(b)(7).

<sup>11</sup> A Limit Order is an “order to buy or sell a stated amount of a security at a specified price or better.” See Exchange Rule 11.9(a)(1).

<sup>12</sup> A Stop Limit Order is “an order that becomes a limit order when the stop price is elected. A Stop Limit Order to buy is elected when the consolidated last sale in the security occurs at, or above, the specified stop price. A Stop Limit Order to sell becomes a sell limit order when the consolidated last sale in the security occurs at, or below, the specified stop price.” See Exchange Rule 11.9(c)(17)

Opening Auction and are cancelled if not executed in the Opening Auction.<sup>13</sup> Therefore, BYX Market Orders with a Time in Force of RHO would be queued until the start of the regular trading session for participation in the Opening Auction. Similarly, the stop price of a Stop Limit Order can only be triggered by a consolidated last sale eligible trade.<sup>14</sup> Therefore, a Stop Limit Order would be queued until the time the stop price of the order is triggered by a consolidated last sale eligible trade occurring Regular Trading Hours.

As proposed, the amendment would allow the Exchange to accept Stop Orders entered between 6:00 and 7:00 a.m. Eastern Time, which is consistent with an order designated to queue for later entry on to the Exchange's order book. Similar to a Stop Limit Order, the stop price of a Stop Order can only be triggered by a consolidated last sale eligible trade.<sup>15</sup> Therefore, a Stop Order can only become a BYX Market Order after at least the start of Regular Trading Hours. Further, Stop Orders entered on the Exchange between 6:00 and 7:00 a.m. Eastern Time would behave similar to Stop Limit Orders between the time of entry up to at least the start of Regular Trading Hours.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>16</sup> Specifically, the

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<sup>13</sup> An order with a Time in Force of RHO is a limit or market order that is designated for execution only during Regular Trading Hours, which includes the Opening Auction and Closing Auction. See Exchange Rule 11.9(b)(7).

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

<sup>15</sup> See supra note 3.

<sup>16</sup> 15 U.S.C. 78f(b).

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As discussed above, all Stop Orders are designed to queue until at least the start of Regular Trading Hours as such orders are only eligible to be elected based on the consolidated last sale set during Regular Trading Hours. Therefore, the proposed amendment to allow the entry of Stop Orders between 6:00 and 7:00 a.m. Eastern Time would not allow such Stop Orders to be elected and execute prior to the start of Regular Trading Hours. Prior to the start of Regular Trading Hours, Stop Orders entered between 6:00 and 7:00 a.m. Eastern Time would behave similar to Stop Limit Orders entered during that time. Therefore, the Exchange believes the proposed amendment would consistently allow order types and modifiers that are consistent with orders designated to queue to be entered on the Exchange between 6:00 and 7:00 a.m. Eastern Time.

Additionally, the Exchange believes the proposed amendment would allow Members the convenience to enter all Stop Orders and Stop Limit Orders between 6:00 and 7:00 a.m. Eastern Time without those orders being eligible for election, and consequently execution, until at least the start of the Regular Trading Hours. Thus, the proposed amendment would provide Members with both greater convenience and flexibility in managing their Stop Orders and Stop Limit Orders without impacting how those orders trade.

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<sup>17</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change would consistently allow for the entry of order types and modifiers that are designated to queue between 6:00 and 7:00 a.m. Eastern Time. Stop Limit Orders are currently allowed for entry on the Exchange between 6:00 and 7:00 a.m. Eastern Time and behave similar to the manner in which a Stop Order would behave prior to the start of Regular Trading Hours if allowed entry during that time. The Exchange therefore believes that the proposed rule change would increase consistency around the operation of the Exchange to the benefit of Members and investors as well as provide greater flexibility to Members in managing their Stop Orders, without imposing any significant burden on competition.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

- i) significantly affect the protection of investors or the public interest;
- ii) impose any significant burden on competition; and
- iii) become operative for 30 days from the date on which it was filed, or such shorter

time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6)<sup>19</sup> thereunder.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2019-022 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-2019-022. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2019-022, 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>20</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).