

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87862; File No. SR-CboeBYX-2019-025)

December 27, 2019

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Interpretation and Policy .01 of Rule 2.4 to Allow the Exchange to Provide Annual Notification to Individual Members that are Subject to Paragraph (b) of Rule 2.4

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 December 20, 2019, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend Interpretation and Policy .01 of Rule 2.4 to allow the Exchange to provide annual notification to individual Members⁵ that are subject to paragraph (b) of Rule 2.4. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The term “Member” is defined as “any registered broker or dealer that has been admitted

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/byx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend Interpretation and Policy .01 of Rule 2.4 to allow the Exchange to provide annual notification to individual Members that are subject to paragraph (b) of Rule 2.4, which requires certain Members to connect to the Exchange’s backup systems and participate in functional and performance testing based on the prior calendar quarter’s volume on the Exchange.

As background, Regulation Systems Compliance and Integrity (“Regulation SCI”)⁶ applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (“ATs”), plan processors, and exempt clearing agencies (collectively, “SCI entities”). Specifically, Rule 1004 of Regulation SCI states that each SCI entity shall establish standards for

to membership in the Exchange.” See Exchange Rule 1.5(n).

⁶ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (“SCI Adopting Release”).

the designation of Members that are necessary for the maintenance of fair and orderly markets in the event of the activation of the business continuity and disaster recovery plans, designate such Members in scheduled functional and performance testing of the operation of such plans no less than once every 12 months, and coordinate the testing of such plans on an industry- or sector-wide basis with other SCI entities.

In order to comply with the coordination requirement among SCI entities, the Exchange has conducted the required operational testing in parallel with the industry-led testing program coordinated by the Securities Industry and Financial Markets Association (“SIFMA”), which occurs on an annual basis. Currently, Interpretation and Policy .01 to Rule 2.4 requires the Exchange to identify and provide notice to designated Members under paragraph (b) on a quarterly basis based on trade activity during the previous quarter on the Exchange. Any Member that receives such notice is required to participate in the next annual functional and performance testing, which generally occurs in October. As such, a Member that receives notice in the third and/or fourth quarter of the preceding year or the first and/or second quarters of the current year will be required to participate in the annual functional and performance testing. As a result, Members would be notified in October, January, April, and/or July of their requirement to connect to the Exchange’s backup systems and participate in functional and performance testing scheduled for October, which means that certain Members receive notification of their designation and requirement to connect and participate in functional and performance testing only three months prior to the scheduled operational and functional testing. Further, a Member that had been designated in any of the four preceding quarters would be required to participate in the functional and performance testing even if that Member did not meet the designation requirements of subparagraphs (b)(1) in the most recent quarter (i.e., the second quarter).

As proposed, the amendment would allow the Exchange to identify designated Members based on trade activity during a single quarter for a given year, and to issue one annual notification to the designated Members in preparation for the anticipated functional and performance testing, which generally occurs in October. As such, the proposal would: (i) simplify the Member designation and notice process; (ii) allow the Exchange to require only those Members that meet the volume requirements under Rule 2.4(b)(1) in the designated quarter to participate in such testing; (iii) provide the Exchange with greater flexibility as to the timing that it would provide Members with notice of their designation pursuant to paragraph (b), but still require the Exchange to provide such notice at least three months prior to the anticipated functional and performance testing; and (iv) strengthen the Exchange's coordination with other SCI entities by harmonizing the frequency of such notifications with other self-regulatory organizations, which do not provide quarterly notifications of Member designations.⁷ As the proposed amendment provides the Exchange with greater flexibility in selecting the relevant quarter's trade data for which the designated Members will be identified, the designated Members may be identified based on more recent trading activity, rather than trade activity that potentially occurred more than one year prior to such testing and thus would more accurately represent the Members who met the requirements set forth in paragraph (b)(1) of Rule 2.4.

⁷ See Cboe Exchange, Inc. ("Cboe") Rule 5.24, which states "[Cboe] provides [] Trading Permit Holders with reasonable advance notice that they must participate in the testing described in paragraph (b) of this Rule 5.24." See also New York Stock Exchange ("NYSE") Rule 49(b)(4), which states "[a]t least three (3) months prior to a scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans, the Exchange will...notify those member organizations that are required to participate based on such criteria."

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

In particular, the Exchange believes the proposal is consistent with the Act because, as noted above, the proposal would allow the Exchange to identify designated Members based on activity during a single quarter for a given year and to issue one annual notification to the designated Members in preparation for the anticipated functional and performance testing, which generally occurs in October, which the Exchange believes would: (i) simplify the Member designation and notice process; (ii) allow the Exchange to require only those Members that meet the requirements under Rule 2.4(b)(1) in the designated quarter to participate in such testing; (iii) provide the Exchange with greater flexibility as to the timing that it would provide Members with notice of their designation pursuant to paragraph (b), but still require the Exchange to provide such notice at least three months prior to the anticipated functional and performance testing; and (iv) strengthen the Exchange’s coordination with other SCI entities by harmonizing the frequency of such notifications with other self-regulatory organizations, which do not provide quarterly notifications of Member designations. The proposed amendment will

harmonize Exchange rules with those of other self-regulatory organizations in furtherance of the coordination of testing among SCI entities required by Rule 1004(c) of Regulation SCI. As set forth in Regulation SCI, “SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI’s requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, 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.”⁸ The Exchange believes that the proposal is consistent with such authority and legal responsibility.

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. The proposed rule change is not a competitive proposal as it is intended to coordinate notification of Member participation requirements in the Exchange’s testing of business continuity and disaster recovery plans with the annual industry-wide testing program.

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 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

⁸ See supra note 6.

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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange states that a waiver of the operative delay is consistent with the protection of investors and the public interest because it would eliminate potential confusion across self-regulatory organizations and simplify and clarify the process of notification to designated Members pursuant to paragraph (b) of Rule 2.4. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹³

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2019-025 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-2019-025. 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. 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-2019-025 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).