

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90122; File No. SR-CboeBYX-2020-029)

October 8, 2020

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase Maker Transaction Fees

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 October 6, 2020, 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 the Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule. 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.

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

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

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

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 its fee schedule<sup>3</sup>.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,<sup>4</sup> no single registered equities exchange has more than 19% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a "Taker-Maker" model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above \$1.00, the Exchange provides a standard

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<sup>3</sup> The Exchange initially filed the proposed fee changes on October 1, 2020 (SR-CboeBYX-2020-026). On October 5, 2020, the Exchange withdrew that filing and submitted SR-CboeBYX-2020-027. On October 6, 2020 the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (September 28, 2020), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

rebate of \$0.0005 per share for orders that remove liquidity and assesses a fee of \$0.0019 per share for orders that add liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

As stated above, the Exchange currently provides a standard fee of \$0.0019 per share for liquidity adding orders (i.e., those yielding fee codes B, V, Y) in securities priced at or above \$1.00. The Exchange now proposes to modestly increase the current standard fee of \$0.00190 per share to \$0.00200 per share for orders that add liquidity for securities priced at or above \$1.00. The Exchange notes that although this proposed standard fee for liquidity adding orders is higher than the current standard fee for such orders, the proposed fee is in line with similar fees for liquidity adding orders in place on other exchanges<sup>5</sup>.

The Exchange next proposes to amend the fee for non-displayed orders that add liquidity using the Mid-Point Peg order type<sup>6</sup> and yield fee code "MM", [sic] Currently, orders yielding fee code" MM" are assessed a fee of \$0.00050 in securities priced at or above \$1.00. Orders yielding fee code "MM" in securities priced below \$1.00 are not assessed a fee. The Exchange now proposes to increase the current fee of \$0.00050 per share to \$0.00100 per share for orders

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<sup>5</sup> See Nasdaq BX, Inc. Pricing List, "Charge for providing liquidity through Nasdaq BX Equities System," which assesses a standard fee of \$0.0030 per share for displayed orders that add liquidity. See also, Cboe EDGA Exchange, Inc., Fees Schedule, which also assesses a standard fee of \$0.0030 per share for displayed orders that add liquidity.

<sup>6</sup> See Rule 11.9(c)(9), which states that a Mid-Point Peg order is a limit order that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the NBBO to be pegged to the mid-point of the NBBO, or, alternatively, pegged to the less aggressive of the midpoint of the NBBO or one minimum price variation inside the same side of the NBBO as the order.

yielding fee code “MM” in securities priced at or above \$1.00. Orders yield fee code “MM” in securities priced below \$1.00 would continue to be free. The Exchange notes that the proposed fee is lower than fees assessed on similar liquidity adding orders on other equities exchanges<sup>7</sup>.

The Exchange lastly notes that the Standard Rate Table in the Exchange’s fees schedule currently lists the standard fee and rebates using only four decimals for orders priced at or above \$1.00 that (1) add liquidity, (2) remove liquidity or (3) route and remove liquidity, whereas the Fee Codes and Associated Fees table in the fees schedule lists fees and rebates using five decimals. To add consistency to the fees schedule and alleviate potential confusion, the Exchange proposes to update the fees and rebates in the Standard Rates table to 5 decimals. The Exchange does not believe this update is a substantive change, but rather maintains clarity in the fees schedule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)<sup>10</sup> 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

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<sup>7</sup> See Nasdaq BX, Inc. Pricing List, “Charge for providing liquidity through Nasdaq BX Equities System”, which assesses a standard fee of \$0.0015 per share for non-displayed orders that add liquidity using midpoint pegging.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f.(b)(5).

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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient.

In particular, the Exchange believes that the proposed fee changes are reasonable, equitable and non-discriminatory because the proposed changes both represent a modest fee increase and such fees are equally applicable to all Members of the Exchange. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Moreover, the proposed standard fees for adding liquidity orders and non-displayed orders that add liquidity using the Mid-Point Peg order are still lower than those offered at other Taker-Maker exchanges for similar transactions, respectively.<sup>11</sup>

The Exchange lastly believes the proposed change to update the fees and rebate in the Standard Rates table to use five decimals instead of four decimals to match the fees and rebates listed in the Fee Codes and Associated Fees table provides consistency in the fees schedule and alleviates potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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<sup>11</sup> See supra notes 4 and 5.

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

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes apply to all displayed liquidity adding orders in securities at or above \$1.00 equally and all non-displayed liquidity adding midpoint peg orders in securities at or above \$1.00 equally, and thus applies to all Members equally. Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purpose of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 19% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.” The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C.

Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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 Act<sup>12</sup> and paragraph (f) of Rule 19b-4<sup>13</sup> thereunder. 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.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f).

#### 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-2020-029 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-2020-029. 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-2020-029 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>14</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).