

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100715; File No. SR-CboeBYX-2024-027)

August 13, 2024

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Replace the Regulatory Transaction Fee with a Sales Value Fee

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 July 30, 2024, Cboe BYX Exchange, Inc. (the “Exchange”) 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. (the “Exchange” or “BYX”) proposes to amend its Fees 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/), 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Fees Schedule to add language concerning the application and collection of the Sales Value Fee, as described below.

By way of background, Section 31 of the Securities Exchange Act of 1934 (the “Act”)³ requires each self-regulatory organization (“SRO”) to pay the Securities and Exchange Commission (“SEC” or “Commission”) twice annually a fee based on the aggregate dollar amount of certain sales of securities (i.e., “covered sales”). A covered sale is a “sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange.”⁴ Assessing a sales fee to defray the cost of these fees is common practice among the national securities exchanges and associations, including the Exchange’s affiliate options exchanges.⁵ In fact, the Exchange currently assesses a fee on its Members⁶ for covered sales on the Exchange to recoup these amounts, which is described in Exchange Rule 15.1(b) (Regulatory Transaction Fee) but is not currently described on the Exchange’s Fee

³ 17 CFR 240.31.

⁴ 17 CFR 240.31(a)(6).

⁵ See, e.g. Cboe C2 Options Fee Schedule, Sales Value Fee; NASDAQ Equities Price List, Sales Fees to Fund Section 31 Obligations; and NYSE Arca Rule 2.18 (Activity Assessment Fees).

⁶ See Rule 1.5(n). The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

Schedule. The Exchange now proposes to amend its Fee Schedule to include information regarding this fee, including an explanation and description of the fee and how it is collected. In conjunction with the proposed addition to the Fee Schedule, the exchange also proposes to delete the applicable rule text found in Exchange Rule 15.1(b) and proposes to rename Rule 15.1(b) as “Reserved.”

Specifically, the Exchange proposes to add a section to the Fee Schedule labeled “Sales Value Fee”. The proposed new section defines the Sales Value Fee (“Fee”) as the fee assessed by the Exchange to each Member for sales in securities when a sale in an equity security occurs with respect to which the Exchange is obligated to pay a fee to the SEC under Section 31 of the Exchange Act or when a sell order in an equity security is routed for execution at a market other than the Exchange, resulting in a covered sale on that market and an obligation of the routing broker providing routing services for the Exchange, as described in Exchange Rules 2.11 and 2.12, to pay the related sales fee of that market. The proposed section provides that to the extent the Exchange may collect more from Members under the section than is due from the Exchange to the Commission under Section 31 of the Act, for example due to rounding differences, the excess monies collected may be used by the Exchange to fund its general operating expenses. The Exchange may reimburse its routing broker for all Section 31-related fees incurred by the routing broker in connection with the routing services it provides.

The proposed section explains that the transactions to which the Fee applies are sales of equities. The Fee is collected indirectly from Members through their clearing firms by the Depository [sic] Trust & Clearing Corporation (“DTCC”) on behalf of the Exchange with respect

to sales in equity securities.⁷ For Members who do not have a DTCC account, the Exchange invoices these Members directly.

The proposed section also sets forth the formula for calculating the Fee. Specifically, the Fee with respect to sales in equity securities is equal to (i) the Section 31 fee rate⁸ multiplied by (ii) the Member's aggregate dollar amount of covered sales resulting from equities [sic] that have a charge date in that month.⁹ The Fee is calculated and invoiced by the Exchange on a monthly basis, but is not paid to the Commission until the end of the applicable billing period.¹⁰ The billing period for Section 31-related fees is separated into two periods: i) January 1 through August 31; and ii) September 1 through December 31.¹¹ The Exchange notes that if the SEC's Section 31 fee rate changes in the middle of a month, the Exchange will perform a separate calculation with respect to covered sales under the new fee rate for the remaining portion of the month.

In addition to the Exchange's proposal to add the Fee to its Fee Schedule, the Exchange simultaneously proposes to delete the rule text found in Exchange Rule 15.1(b). Exchange Rule 15.1(b) currently provides a description of the Fee within the Exchange rulebook, which would be duplicative as the Fee will be set forth and more fully described in the Fee Schedule. The Exchange notes that the Fee, as described in Exchange Rule 15.1(b), is described only at a high-level and does not contain specific details about how the Exchange currently calculates and

⁷ See https://cdn.cboe.com/resources/membership/Direct_Debit_Opt-In_Form.pdf.

⁸ The Section 31 fee rate is the fee rate applicable to covered sales under section 31(b) of the Act. See 15 U.S.C. 78ee(b). The current rate applicable to equities securities transactions is \$27.80 per million dollars. See also https://cdn.cboe.com/resources/fee_schedule/2024/Regulatory-Transaction-Fee-Adjustment-per-SEC-Section-31-Rate-Change-Effective-May-22-2024.pdf.

⁹ 17 CFR 240.31(c).

¹⁰ 17 CFR 240.31(c)(1).

¹¹ 17 CFR 240.31(a)(2).

collects the Fee. Specifically, Exchange Rule 15.1(b) merely states that the Exchange assesses a Regulatory Transaction Fee to its Members in order to help fund the Exchange’s obligations to the Commission under Section 31. While Exchange Rule 15.1(b) does state how the Fee is calculated (which is identical to the proposed calculation described on the Fee Schedule), there is no description of the types of transactions that trigger the Fee or how the fee is collected by the Exchange. The Exchange proposes to more fully describe its current practice of calculating and collecting the Fee by providing additional details on the Fee Schedule. In conjunction with removing the rule text in Exchange Rule 15.1(b), the Exchange proposes to rename Exchange Rule 15.1(b) as “Reserved.”

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.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirement that the rules of an exchange not be designed

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ Id.

to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes that the proposed rule change is consistent with these requirements because the proposed amended Fee Schedule text provides Members with detail regarding the circumstances under which the Exchange assesses a Sales Value Fee, and the current process by which the Fee is collected. The Exchange's current codification of the Fee in Exchange Rule 15.1(b) does not accurately depict the Exchange's current practice of calculating and collecting the Fee. The Exchange believes that amending the description of the Fee and placing this description on its Fee Schedule rather than in the Exchange rulebook will provide additional guidance to its Members about which transactions are subject to the Fee, how the Fee is calculated, and how the Fee is collected. As such, the proposed changes will increase transparency, help avoid Member confusion and foster better understanding of the application of the Fee, which the Exchange believes promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest. Further, the Exchange believes the proposed change is reasonable as the Exchange is proposing to assess the same Fee to its Members that the Exchange must pay to the Commission twice annually.

The Exchange believes the proposed change represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Members in that all Members submitting covered orders to the Exchange are assessed the Fee, which is equal to the fee that the

¹⁵ 15 U.S.C. 78f(b)(4).

Exchange is required to pay to the Commission. Furthermore, by moving the description of the Fee from Exchange Rule 15.1(b) to the Fee Schedule, all Members will have additional information about the types of orders subject to the Fee and how the Exchange collects the Fee from its Members, which do not currently appear in Exchange Rule 15.1(b). While Exchange Rule 15.1(b) describes at a high-level the Exchange's ability to assess a fee in order to help fund the Exchange's obligations under Section 31, it does not accurately depict the Exchange's current practice in regard to calculating and collecting the Fee from its Members. The proposed movement of the description of the Fee from Exchange Rule 15.1(b) to the Fee Schedule will not change how the Exchange calculates or collects the Fee from its Members, but rather will provide a more complete and accurate description of the Fee to all Members. All Members will be able to access a detailed description of the Fee on the Fee Schedule and as such, the description of the Fee found in Exchange Rule 15.1(b) that does not accurately describe the Exchange's current practice in calculating or collecting the Fee is no longer necessary.

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 Exchange does not believe the proposed changes will impose any burden on intramarket competition. Particularly, the proposed change applies uniformly to all Members, in that the Sales Value Fee is applied uniformly to all Members' applicable covered orders. Similarly, the proposal to delete Rule 15.1(b) from the Exchange rulebook will not impose any burden on competition because the change applies to all Members uniformly, in that all Members will instead be able to access the description of the Sales Value Fee and how the Fee is calculated on the Fee Schedule.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, assessing a sales fee to defray the cost of fees assessed under Section 31 of the Act is common practice among the national securities exchanges and associations.¹⁶

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ 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.

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:

¹⁶ Supra note 5.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

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-2024-027 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-2024-027. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-CboeBYX-2024-027 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Sherry R. Haywood,
Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12).