

## OMB APPROVAL

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Page 1 of \* 20

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2019 - \* 022

Amendment No. (req. for Amendments \*)

Filing by Cboe BYX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) \*  
☐

Section 806(e)(2) \*  
☐

Security-Based Swap Submission pursuant  
 to the Securities Exchange Act of 1934  
 Section 3C(b)(2) \*  
☐

Exhibit 2 Sent As Paper Document  
☐

Exhibit 3 Sent As Paper Document  
☐

### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

The Exchange proposes 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.

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Sarah Last Name \* Tadtman  
 Title \* Counsel  
 E-mail \* stadtman@cboe.com  
 Telephone \* (913) 815-7203 Fax

### Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 11/19/2019

By Sarah Tadtman

(Name \*)

Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

agriffiths@cboe.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>3</sup>

The text of the proposed rule change is attached as Exhibit 5. The text of the proposed rule change is available on the Exchange’s website at <http://markets.cboe.com/>, at the Exchange’s principal office and at the Public Reference Room of the Commission.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on November 19, 2019.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Sarah Tadtman, Counsel, (913) 815-7203.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

(a) Purpose

The Exchange proposes to amend paragraph (a) of Rule 11.1 to allow the Exchange to accept Stop Orders<sup>4</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>5</sup> Pre-Opening Session<sup>6</sup> or Regular Trading Hours,<sup>7</sup> depending on the Time in Force selected by the User.<sup>8</sup> Paragraph (a) also provides that the Exchange will not accept certain orders<sup>9</sup> entered prior to 7:00 a.m. Eastern Time including BYX Market Orders<sup>10</sup> with a Time in

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<sup>4</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>5</sup> See Exchange Rule 1.5(ee).

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

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

<sup>8</sup> See Exchange Rule 1.5(cc).

<sup>9</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 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>10</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).

Force other than Regular Hours Only (“RHO”).<sup>11</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>12</sup> including Stop Limit Orders,<sup>13</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 Opening Auction and are cancelled if not executed in the Opening Auction.<sup>14</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

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<sup>11</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>12</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>13</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)

<sup>14</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).

trade.<sup>15</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>16</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.

(b) 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>17</sup>

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>18</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

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<sup>15</sup> See supra note 13.

<sup>16</sup> See supra note 4.

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

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act<sup>19</sup> and Rule 19b-4(f)(6)<sup>20</sup> thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).



interest. Additionally, the Exchange has given 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 believes the proposed rule change is appropriate for filing on an immediately effective basis under paragraph (f)(6) of Rule 19b-4. As discussed above, like Stop Limit Orders that are currently accepted by the Exchange between 6:00 and 7:00 a.m. Eastern Time, Stop Orders have an order type and modifier designed to queue. Therefore, the Exchange believes the proposal does not present any unique issues not previously considered by the Commission. Stop Limit behave similarly prior to regular trading hours as Stop Orders would behave during that time under the proposed amendment, but are currently treated differently under Exchange Rules. Therefore, the proposed change would not significantly affect investors as Stop Orders would function similarly to Stop Limit Orders prior to Regular Trading Hours. Further, the proposed rule change does not significantly affect the protection of investors or the public interest because it provides all Users with the additional option to enter Stop Orders between 6:00 and 7:00 a.m. Eastern Time. The Exchange does not believe the proposed rule change will have any direct impact on competition because similar order types that are designed to queue are currently accepted for entry by the Exchange between 6:00 and 7:00 a.m. Eastern Time.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection

of investors and the public interest. At any time within 60 days of the filing of this 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.

(c) Not applicable.

(d) Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1: Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBYX-2019-022]

[Insert date]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating 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 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

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

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

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

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

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.

## **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>5</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>6</sup> Pre-Opening Session<sup>7</sup> or Regular Trading Hours,<sup>8</sup> depending on the Time in Force selected

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<sup>5</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>6</sup> See Exchange Rule 1.5(ee).

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

by the User.<sup>9</sup> Paragraph (a) also provides that the Exchange will not accept certain orders<sup>10</sup> entered prior to 7:00 a.m. Eastern Time including BYX Market Orders<sup>11</sup> with a Time in Force other than Regular Hours Only (“RHO”).<sup>12</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>13</sup> including Stop Limit Orders,<sup>14</sup> are allowed for entry on

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<sup>8</sup> See Exchange Rule 1.5(w).

<sup>9</sup> See Exchange Rule 1.5(cc).

<sup>10</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 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>11</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>12</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>13</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>14</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 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 Opening Auction and are cancelled if not executed in the Opening Auction.<sup>15</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>16</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>17</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.

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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)

<sup>15</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>16</sup> See supra note 14.

<sup>17</sup> See supra note 5.

## 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>18</sup>

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>19</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.

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

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.

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:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. 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>20</sup> and Rule 19b-4(f)(6)<sup>21</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.

### **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

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

- 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, 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; the Commission does not edit personal identifying information from 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>22</sup>

Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe BYX Exchange, Inc.

\* \* \* \* \*

Rule 11.1. Hours of Trading and Trading Days

(a) Orders may be entered into the System from 6:00 a.m. until 8:00 p.m. Eastern Time. 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, Pre-Opening Session or Regular Trading Hours, depending on the Time in Force selected by the User. The Exchange will not accept the following orders prior to 7:00 a.m. Eastern Time: BYX Post Only Orders, Partial Post Only at Limit Orders, ISOs, BYX Market Orders other than those with a Time in Force [other than] of Regular Hours Only or Stop Orders, Minimum Quantity Orders that also include a Time in Force of Regular Hours Only, RPI Orders and all orders with a Time in Force of IOC or FOK. At the commencement of the Early Trading Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BYX Book, routed, cancelled, or executed in accordance with the terms of the order. Orders may be executed on the Exchange or routed away from the Exchange during Regular Trading Hours and during the Early Trading, Pre-Opening and After Hours Trading Sessions.

(b)-(c) No change.

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