

Required fields are shown with yellow backgrounds and asterisks.

Filing by Cboe BYX Exchange, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

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

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.

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 12/20/2019	Assistant General Counsel
By Adrian Griffiths	
(Name *)	



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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 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

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

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

Add Remove View

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”)¹ and Rule 19b-4 thereunder,² 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 Members³ 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. 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.⁴

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 December 2, 2019.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

(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.

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 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")⁵ 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 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.

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

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.⁶ 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.

(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

⁶ 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."

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.”⁷ The Exchange believes that the proposal is consistent with such authority and legal responsibility.

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. 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.

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.

⁷ See supra note 5.

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)

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act⁸ and Rule 19b-4(f)(6)⁹ 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 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 that the proposed rule change would not significantly affect the protection of investors or the public interest, and would not impose a burden on competition, as it would simply amend Interpretation and Policy .01 of Rule 2.4 to provide for annual notification to designated Members pursuant to paragraph (b) rather than quarterly notification and would allow the Exchange to rely on more recent and relevant trade data when identifying designated Members pursuant to paragraph (b)(1).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

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. The Exchange respectfully requests that the Commission waive the operative delay. Waiver of the operative delay is consistent with the protection of investors and the public interest as 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.

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.

(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 based on Cboe Exchange, Inc. Rule 5.5 (System Access and Connectivity) and New York Stock Exchange Rule 49 (Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing).

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 5. Text of the Proposed Rule Change.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBYX-2019-025]

[Insert date]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating 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 [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 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

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).

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.

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),

⁵ The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

⁶ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR

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 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

72252 (December 5, 2014) (“SCI Adopting Release”).

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

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."

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.

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

⁸ See supra note 6.

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 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 Act⁹ and Rule 19b-4(f)(6)¹⁰ 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.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

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; 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-2019-025 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.¹¹

Secretary

¹¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Rules of Cboe BYX Exchange, Inc.

* * * * *

Rule 2.4. Mandatory Participation in Testing of Backup Systems

- (a) No change.
- (b) No change.

Interpretations and Policies

.01 For purposes of identifying Members that account for a meaningful percentage of the Exchange's overall volume, the Exchange will measure volume executed on the Exchange [on a quarterly basis]during a single designated quarter for a given year. The percentage of volume that the Exchange considers to be meaningful for purposes of this Interpretation and Policy .01 will be determined by the Exchange and will be published in a circular distributed to Members. The Exchange will also individually notify all Members [quarterly]annually, and at least three (3) months prior to the scheduled functional and performance testing, that are subject to paragraph (b) based on the [prior] designated calendar quarter's volume. [If a Member has not previously been subject to the requirements of paragraph (b), such Member will have until the next calendar quarter before such requirements are applicable.]

* * * * *