

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2020 - * 008

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 checked="" type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input 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 its Fee Schedule.

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 * Rebecca Last Name * Tenuta
 Title * Counsel
 E-mail * rtenuta@cboe.com
 Telephone * (312) 786-7068 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 03/02/2020

By Laura G. Dickman

(Name *)

Vice President, Associate General 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.

ldickman@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 *

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, 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

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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

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 Sent As Paper Document

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Exhibit 4 - Marked Copies

Add Remove View

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

Add Remove View

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 Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² Cboe BYX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members³ of the Exchange pursuant to BYX Rules 15.1(a) and (c).

The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on March 2, 2020.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Rebecca Tenuta, (312) 786-7068, Cboe BYX Exchange, Inc., 400 South LaSalle, Chicago, Illinois 60605.

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

(a) Purpose

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to amend its fee schedule in connection with its Remove Volume Tiers, effective March 2, 2020.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,⁴ no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Taker-Maker” model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange’s Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.0005 per share for orders that remove liquidity and assesses a fee of \$0.0019 per share for orders that add liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (February 25, 2020), available at https://markets.cboe.com/us/equities/market_statistics/.

forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria.

Pursuant to footnote 1 of the Fees Schedule, the Exchange currently offers Remove Volume Tiers (tiers 6 through 9) that provide Members an opportunity to receive an enhanced rebate from the standard fee assessment for liquidity removing orders that yield fee codes "BB"⁵, "N"⁶ and "W"⁷. The Remove Volume Tiers currently offer four different tiers that vary in levels of criteria difficulty and incentive opportunities in which Members may qualify for enhanced rebates for such orders. For example, Tier 6 currently provides an enhanced rebate of \$0.0015 for Members who have an ADV⁸ of greater than

⁵ Appended to displayed orders that removes liquidity from BYX (Tape B), and offered a rebate of \$0.00050.

⁶ Appended to displayed orders that remove liquidity from BYX (Tape C), and offered a rebate of \$0.00050.

⁷ Appended to displayed orders that remove liquidity from BYX (Tape A), and assessed a fee of \$0.00050.

⁸ "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

or equal to 0.08% of the TCV⁹, and an ADAV¹⁰ of greater than or equal to 500,000 shares. The Exchange notes that these tiers are designed to encourage Members to increase their order flow, adding and/or removing orders, in order to receive an enhanced rebate on their liquidity removing orders.

Specifically, the Exchange proposes to amend Remove Volume Tier 8. Pursuant to current Tier 8, a Member may receive an enhanced rebate of \$0.0017 for qualifying, liquidity removing orders (i.e. yielding fee code BB, N, or W) if that Member has a Step-Up Remove TCV¹¹ from December 2017 \geq 0.10%, and has an ADAV \geq 0.30% of the TCV. The Exchange proposes to amend Tier 8 so that a Member may receive an enhanced rebate of \$0.0018 for qualifying, liquidity removing orders if that Member has a Step-Up Remove TCV from February 2020 that is greater than or equal to 0.05%. The proposed criteria change is designed to incentivize Members to increase their relative liquidity taking order flow each month over a predetermined baseline (as proposed, from February 2020) in order to receive an enhanced rebate on their liquidity removing orders, by making Tier 8 criteria easier to achieve and increasing the enhanced rebate provided under such tier. Instead of meeting two unique criteria to receive the enhanced rebate, the proposed change narrows Tier 8 to just one criterion with a lower Step-Up Remove TCV threshold (as well as updates the month from which this criterion is measured). As a

⁹ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹⁰ “ADAV” means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹¹ “Step-Up Remove TCV” means remove ADV as a percentage of TCV in the relevant baseline month subtracted from current remove ADV as a percentage of TCV.

result of the proposed ease in criteria coupled with the increased enhanced rebate, Members will have an additional opportunity to receive an enhanced rebate by submitting liquidity removing order and will be further incentivized to submit liquidity removing order flow. An increase in liquidity executing orders would, in turn, incentivize liquidity adding order flow to take advantage of the increase in execution opportunities, thereby contributing to deeper, more liquid markets and price discovery. The Exchange believes that this would overall benefit all Members by contributing towards a robust and well-balanced market ecosystem. The Exchange notes that Tier 8, as amended, will continue to be available to all Members and is competitively achievable for all Members that submit liquidity removing order flow, in that, all firms that submit the requisite order flow could compete to meet the tier.

The Exchange also proposes to eliminate Remove Volume Tier 9, which currently provides that a Member may receive an enhanced rebate of \$0.0017 for qualifying, liquidity removing orders if that Member has a Step-Up Remove TCV from January 2018 $\geq 0.30\%$, and has a remove ADV $\geq 0.70\%$ of the TCV. The Exchange proposes to eliminate Tier 9 because no Members have achieved this tier in some months.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹² in general, and furthers the objectives of Section 6(b)(4),¹³ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4).

using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹⁴ 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tier is reasonable because it restructures an opportunity for Members to receive an enhanced rebate by making it easier to reach the proposed threshold by means of liquidity removing orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges¹⁵, including the Exchange¹⁶, and are reasonable, equitable and

¹⁴ 15 U.S.C. 78f.(b)(5).

¹⁵ See e.g., The Nasdaq BX, Inc. Rules, Equity 7 Pricing Schedule, Sec. 118(a), which generally provides credits to members for adding and/or removing liquidity that reaches certain thresholds of Consolidated Volume; and Cboe EDGA U.S.

non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.¹⁷

Moreover, the Exchange believes the proposed modification to increase the enhanced rebate and ease the criteria under Remove Volume Tier 8, by removing the ADAV as a percentage of TCV threshold component and decreasing the Step-Up Remove TCV threshold (the proposed change also updates the month by which the Step-Up component is measured), is a reasonable means to further incentivize Members to increase their remove volume order flow to the Exchange by encouraging those Members

Equities Exchange Fee Schedule, Footnote 7, Add/Remove Volume Tiers, which provides similar incentives for liquidity removing orders.

¹⁶ See generally, Cboe BYX U.S. Equities Exchange Fee Schedule, Footnotes 1 and 2, Add/Remove Volume and Step-Up tiers provide incentives for volume adding and/or removing orders and for criteria based on Step-Up Add TCV, respectively.

¹⁷ See supra note 15. BX offers credits between \$0.0029 and \$0.0014 per share for liquidity removing orders (substantially similar to those rebates which the Exchange proposes) depending on different criteria levels achieved.

who could not achieve the tier previously to increase their remove volume by a modest amount since February 2020 to receive the tier's increased rebate. As such, adopting criteria based on a Member's removing orders will encourage Members executing on the Exchange to increase transactions and provide increased execution opportunities, in turn, incentivizing liquidity providing Members to take such increase execution opportunities and provide increased liquidity and price transparency on the Exchange. The Exchange believes that these increases benefit all Members by enhancing market quality and contributing towards a robust and well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The proposed increased enhanced rebate amount also does not represent a significant departure from the enhanced rebates currently offered under the Exchange's existing Remove Volume Tiers (tier 6 offers an enhanced rebate of \$0.0015 and tier 7 an enhanced rebate of \$0.0018). The proposed amended tier merely provides an additional opportunity for Members submitting liquidity taking orders to achieve an enhanced rebate. In addition to this, the Exchange believes it is reasonable to remove Tier 9 from the Fee Schedule as no Members have achieved such tier in recent months. If the Exchange wishes to implement additional opportunities to meet different tier criteria within the Remove Volume Tiers it may seek to do so by submitting a rule filing at a later date.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members will continue to be eligible for Remove Volume Tier 8 as amended, and will have the opportunity to meet the tier's criteria and would receive the proposed increased enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for this tier. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at least four Members will be able to compete for and reach the proposed tier. Accordingly, the Exchange believes the proposed criteria modification is reasonably designed as an incentive to any and all Members interested in meeting the tier criteria to submit additional displayed order flow to achieve the proposed discount. The Exchange anticipates that these will include multiple Member types, including wholesale firms (i.e. broker-dealers that function to primarily make markets for retail orders) as well as proprietary firms, each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, increased wholesale firm order flow provides more trading opportunities for retail customers, which in turn attracts Market Makers. Increased Market Maker activity facilitates tighter spreads which potentially increases order flow from other market participants.

Further, the proposed elimination of Tier 9 represents an equitable allocation of fees and is not unfairly discriminatory because it will equally remove the enhanced rebate opportunity in Tier 9 for all Members. The Exchange also notes that the proposed elimination of Tier 9 will not adversely impact any Member's pricing or their ability to

qualify for existing enhanced rebates (note that, the proposed enhanced rebate in Tier 8 will be higher than the rebate offered by Tier 9) or reduced fee tiers. Likewise, should a Member not meet the proposed criteria in Tier 8, the Member will merely not receive the enhanced rebate proposed in Tier 8 and still would have the opportunity to meet other criteria for enhanced rebates and reduced fees. Furthermore, the proposed rate in Tier 8 would uniformly apply to all Members that meet the required criteria under the modified tier.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁸

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tier, have a reasonable opportunity to meet

¹⁸ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

the tier's criteria and will all receive the proposed fee rate if such criteria is met.

Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to direct liquidity removing order flow to the Exchange and, as a result, increase execution opportunities, which would further incentivize the provision of liquidity and continued order flow and improve price transparency on the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by generally providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.¹⁹ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory

¹⁹ See supra note 4.

intervention in determining prices, products, and services in the securities markets.

Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²¹ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²¹ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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) This proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Act.

(b) This proposed rule change establishes dues, fees or other charges among its members and, as such, may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act²² and paragraph (f)(2) of Rule 19b-4 thereunder.²³

(c) Inapplicable.

(d) Inapplicable.

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

The proposed rule change is not based on the rules 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 – Form of Notice of Proposed Rule Change for Publication in the Federal Register.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBYX-2020-008]

[Insert date]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Fee Schedule

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 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 “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 its fee schedule in connection with its Remove Volume Tiers, effective March 2, 2020.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,³ no single registered equities exchange has more than 17% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (February 25, 2020), available at https://markets.cboe.com/us/equities/market_statistics/.

operates a “Taker-Maker” model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange’s Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.0005 per share for orders that remove liquidity and assesses a fee of \$0.0019 per share for orders that add liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria.

Pursuant to footnote 1 of the Fees Schedule, the Exchange currently offers Remove Volume Tiers (tiers 6 through 9) that provide Members an opportunity to receive an enhanced rebate from the standard fee assessment for liquidity removing orders that yield fee codes “BB”⁴, “N”⁵ and “W”⁶. The Remove Volume Tiers currently offer four

⁴ Appended to displayed orders that removes liquidity from BYX (Tape B), and offered a rebate of \$0.00050.

⁵ Appended to displayed orders that remove liquidity from BYX (Tape C), and

different tiers that vary in levels of criteria difficulty and incentive opportunities in which Members may qualify for enhanced rebates for such orders. For example, Tier 6 currently provides an enhanced rebate of \$0.0015 for Members who have an ADV⁷ of greater than or equal to 0.08% of the TCV⁸, and an ADAV⁹ of greater than or equal to 500,000 shares. The Exchange notes that these tiers are designed to encourage Members to increase their order flow, adding and/or removing orders, in order to receive an enhanced rebate on their liquidity removing orders.

Specifically, the Exchange proposes to amend Remove Volume Tier 8. Pursuant to current Tier 8, a Member may receive an enhanced rebate of \$0.0017 for qualifying, liquidity removing orders (i.e. yielding fee code BB, N, or W) if that Member has a Step-Up Remove TCV¹⁰ from December 2017 $\geq 0.10\%$, and has an ADAV $\geq 0.30\%$ of the TCV. The Exchange proposes to amend Tier 8 so that a Member may receive an enhanced rebate of \$0.0018 for qualifying, liquidity removing orders if that Member has a Step-Up Remove TCV from February 2020 that is greater than or equal to 0.05%. The proposed criteria change is designed to incentivize Members to increase their relative

offered a rebate of \$0.00050.

⁶ Appended to displayed orders that remove liquidity from BYX (Tape A), and assessed a fee of \$0.00050.

⁷ “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

⁸ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

⁹ “ADAV” means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹⁰ “Step-Up Remove TCV” means remove ADV as a percentage of TCV in the relevant baseline month subtracted from current remove ADV as a percentage of TCV.

liquidity taking order flow each month over a predetermined baseline (as proposed, from February 2020) in order to receive an enhanced rebate on their liquidity removing orders, by making Tier 8 criteria easier to achieve and increasing the enhanced rebate provided under such tier. Instead of meeting two unique criteria to receive the enhanced rebate, the proposed change narrows Tier 8 to just one criterion with a lower Step-Up Remove TCV threshold (as well as updates the month from which this criterion is measured). As a result of the proposed ease in criteria coupled with the increased enhanced rebate, Members will have an additional opportunity to receive an enhanced rebate by submitting liquidity removing order and will be further incentivized to submit liquidity removing order flow. An increase in liquidity executing orders would, in turn, incentivize liquidity adding order flow to take advantage of the increase in execution opportunities, thereby contributing to deeper, more liquid markets and price discovery. The Exchange believes that this would overall benefit all Members by contributing towards a robust and well-balanced market ecosystem. The Exchange notes that Tier 8, as amended, will continue to be available to all Members and is competitively achievable for all Members that submit liquidity removing order flow, in that, all firms that submit the requisite order flow could compete to meet the tier.

The Exchange also proposes to eliminate Remove Volume Tier 9, which currently provides that a Member may receive an enhanced rebate of \$0.0017 for qualifying, liquidity removing orders if that Member has a Step-Up Remove TCV from January 2018 $\geq 0.30\%$, and has a remove ADV $\geq 0.70\%$ of the TCV. The Exchange proposes to eliminate Tier 9 because no Members have achieved this tier in some months.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4),¹² in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tier is reasonable because it

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

restructures an opportunity for Members to receive an enhanced rebate by making it easier to reach the proposed threshold by means of liquidity removing orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges¹⁴, including the Exchange¹⁵, and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several taker-maker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.¹⁶

Moreover, the Exchange believes the proposed modification to increase the

¹⁴ See e.g., The Nasdaq BX, Inc. Rules, Equity 7 Pricing Schedule, Sec. 118(a), which generally provides credits to members for adding and/or removing liquidity that reaches certain thresholds of Consolidated Volume; and Cboe EDGA U.S. Equities Exchange Fee Schedule, Footnote 7, Add/Remove Volume Tiers, which provides similar incentives for liquidity removing orders.

¹⁵ See generally, Cboe BYX U.S. Equities Exchange Fee Schedule, Footnotes 1 and 2, Add/Remove Volume and Step-Up tiers provide incentives for volume adding and/or removing orders and for criteria based on Step-Up Add TCV, respectively.

¹⁶ See supra note 14. BX offers credits between \$0.0029 and \$0.0014 per share for liquidity removing orders (substantially similar to those rebates which the Exchange proposes) depending on different criteria levels achieved.

enhanced rebate and ease the criteria under Remove Volume Tier 8, by removing the ADAV as a percentage of TCV threshold component and decreasing the Step-Up Remove TCV threshold (the proposed change also updates the month by which the Step-Up component is measured), is a reasonable means to further incentivize Members to increase their remove volume order flow to the Exchange by encouraging those Members who could not achieve the tier previously to increase their remove volume by a modest amount since February 2020 to receive the tier's increased rebate. As such, adopting criteria based on a Member's removing orders will encourage Members executing on the Exchange to increase transactions and provide increased execution opportunities, in turn, incentivizing liquidity providing Members to take such increase execution opportunities and provide increased liquidity and price transparency on the Exchange. The Exchange believes that these increases benefit all Members by enhancing market quality and contributing towards a robust and well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The proposed increased enhanced rebate amount also does not represent a significant departure from the enhanced rebates currently offered under the Exchange's existing Remove Volume Tiers (tier 6 offers an enhanced rebate of \$0.0015 and tier 7 an enhanced rebate of \$0.0018). The proposed amended tier merely provides an additional opportunity for Members submitting liquidity taking orders to achieve an enhanced rebate. In addition to this, the Exchange believes it is reasonable to remove Tier 9 from

the Fee Schedule as no Members have achieved such tier in recent months. If the Exchange wishes to implement additional opportunities to meet different tier criteria within the Remove Volume Tiers it may seek to do so by submitting a rule filing at a later date.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members will continue to be eligible for Remove Volume Tier 8 as amended, and will have the opportunity to meet the tier's criteria and would receive the proposed increased enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for this tier. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at least four Members will be able to compete for and reach the proposed tier. Accordingly, the Exchange believes the proposed criteria modification is reasonably designed as an incentive to any and all Members interested in meeting the tier criteria to submit additional displayed order flow to achieve the proposed discount. The Exchange anticipates that these will include multiple Member types, including wholesale firms (i.e. broker-dealers that function to primarily make markets for retail orders) as well as proprietary firms, each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, increased wholesale firm order flow provides more trading opportunities for retail customers, which in turn attracts Market Makers. Increased Market Maker activity facilitates tighter spreads which potentially increases order flow from other market participants.

Further, the proposed elimination of Tier 9 represents an equitable allocation of fees and is not unfairly discriminatory because it will equally remove the enhanced rebate opportunity in Tier 9 for all Members. The Exchange also notes that the proposed elimination of Tier 9 will not adversely impact any Member's pricing or their ability to qualify for existing enhanced rebates (note that, the proposed enhanced rebate in Tier 8 will be higher than the rebate offered by Tier 9) or reduced fee tiers. Likewise, should a Member not meet the proposed criteria in Tier 8, the Member will merely not receive the enhanced rebate proposed in Tier 8 and still would have the opportunity to meet other criteria for enhanced rebates and reduced fees. Furthermore, the proposed rate in Tier 8 would uniformly apply to all Members that meet the required criteria under the modified tier.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁷

¹⁷ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tier, have a reasonable opportunity to meet the tier's criteria and will all receive the proposed fee rate if such criteria is met.

Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to direct liquidity removing order flow to the Exchange and, as a result, increase execution opportunities, which would further incentivize the provision of liquidity and continued order flow and improve price transparency on the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by generally providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 17% of the market share.¹⁸ Therefore, no

¹⁸ See supra note 3.

exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁰ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁰ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

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

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and paragraph (f) of Rule 19b-4²² 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

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2020-008 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBYX-2020-008. 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-2020-008 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.²³

Secretary

²³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Cboe BYX U.S. Equities Exchange Fee ScheduleEffective [February 3]March 2, 2020

* * * * *

Footnotes:**¹ Add/Remove Volume Tiers**

Applicable to the following fee codes: B, V and Y.

| Tier | Fee Per Share to Add | Required Criteria |
|-------------|-----------------------------|--------------------------------------------|
| Tier 1 | \$0.0017 | Member has an ADAV \geq 0.25% of the TCV |
| Tier 2 | \$0.0014 | Member has an ADAV \geq 0.30% of the TCV |
| Tier 3 | \$0.0013 | Member has an ADAV \geq 0.45% of the TCV |
| Tier 4 | \$0.0012 | Member has an ADAV \geq 1.00% of the TCV |
| Tier 5 | \$0.0012 | MPID has an ADAV \geq 0.55% of the TCV |

Applicable to the following fee codes: BB, N, and W.

| Tier | Rebate Per Share to Remove | Required Criteria |
|-------------|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Tier 6 | (\$0.0015) | 1. Member has an ADV \geq 0.08% of the TCV; and 2. Member has an ADAV \geq 500,000 shares |
| Tier 7 | (\$0.0016) | 1. Member has a Step-Up Remove TCV from July 2017 \geq 0.05%; and 2. Member has a remove ADV \geq 0.25% of the TCV |

| | | |
|----------|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Tier 8 | (\$0.001[7]8) | [1. Member has a Step-Up Remove TCV from December 2017 \geq 0.10%; and 2. Member has an ADAV \geq 0.30% of the TCV] <u>Member has a Step-Up Remove TCV from February 2020 \geq 0.05%</u> |
| [Tier 9] | [(\$0.0017)] | [1. Member has a Step-Up Remove TCV from January 2018 \geq 0.30%; and 2. Member has a remove ADV \geq 0.70% of the TCV] |
