

OMB APPROVAL

OMB Number: 3235-0045
 Estimated average burden
 hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27

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

File No.* SR - 2020 - * 009

Amendment No. (req. for Amendments *)

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) *
☒	☐	☐	☐	☒	☐
Pilot ☐ Extension of Time Period for Commission Action * ☐ Date Expires *			Rule ☐ 19b-4(f)(1) ☐ 19b-4(f)(4) ☐ 19b-4(f)(2) ☐ 19b-4(f)(5) ☐ 19b-4(f)(3) ☒ 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) *

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 a rule change to amend Rule 11.18(b)(2) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt and make corresponding changes to Rule 11.23(e).

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 03/16/2020

By Kyle Murray

(Name *)

VP, Associate General Counsel

kmurray@cboe.com

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 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

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

Add Remove View

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

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.

Item 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 proposal to amend Rule 11.18(b)(2) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt and make corresponding changes to Rule 11.23(e).

The Exchange has designated this proposal as non-controversial pursuant to Rule 19b-4(f)(6)(iii) under the Act.³ The text of the proposed rule change is enclosed 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.

(b) Not applicable.

(c) Not applicable.

Item 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 10, 2020.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, Counsel, (913) 815-7203.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

Item 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 Rule 11.18(b)(2) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt and to amend Rule 11.23(e) to make corresponding changes to the re-opening process after a halt. The Exchange is proposing this rule change in conjunction with other national securities exchanges and the Financial Industry Regulatory Authority (“FINRA”).

Rule 11.18 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (i.e., market-wide circuit breakers). The market-wide circuit breaker mechanism (“MWCB”) under Rule 11.18 was approved by the Commission to operate on a pilot basis,⁴ the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the “LULD Plan”),⁵ including any extensions to the pilot period for the LULD Plan.⁶ The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁷ In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.18 to untie the pilot’s effectiveness from

⁴ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BYX-2011-025).

⁵ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

⁶ See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BYX-2011-025) (Approval Order); and 68885 (February 8, 2013), 78 FR 10649 (February 14, 2013) (SR-BYX-2013-006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility).

⁷ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.⁸ The Exchange then filed to extend the pilot for an additional year to the close of business on October 18, 2020.⁹ The market-wide circuit breaker under Rule 11.18 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 ("MWCB Rules"), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.¹⁰ Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index. Pursuant to Rule 11.18, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. Eastern Time and before 3:25 p.m. Eastern Time would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. Eastern Time

⁸ See Securities Exchange Act Release No. 85665 (April 16, 2019), 84 FR 16749 (April 22, 2019) (SR-CboeBYX-2019-004).

⁹ See Securities Exchange Act Release No. 87343 (October 18, 2019), 84 FR 57104 (October 24, 2019) (SR-CboeBYX-2019-017).

¹⁰ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129) ("MWCB Approval Order").

would not halt market-wide trading. A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading until the primary listing market opens the next trading day.

Today, in the event that a Level 3 Market Decline occurs, the Exchange would halt trading for the remainder of the trading day, and would not resume until the primary listing market opens the next trading day, which time may currently vary depending on the primary listing market. For example, if the primary listing market is the New York Stock Exchange (“NYSE”), NYSE would resume trading in its listed securities at 9:30 a.m. Eastern Time on the next trading day, and the Exchange would not be able to resume trading during the Exchange’s Early Trading Session¹¹ or Pre-Opening Session.¹² Alternatively, if the primary listing market is the Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq would resume trading in its listed securities at 4:00 a.m. Eastern Time on the next trading day, and therefore, the Exchange would resume trading at the commencement of the Early Trading Session.

Upon feedback from industry participants, the Exchange has been working with other national securities exchanges and FINRA to establish a standardized approach for resuming trading in all NMS Stocks following a Level 3 halt. The proposed approach would allow for the opening of all securities the next trading day after a Level 3 halt as a regular trading day, and is designed to ensure that Level 3 MWCB events are handled in a more consistent manner that is transparent for market participants.¹³ As proposed, a Level 3 halt

¹¹ See Exchange Rule 1.5(ee).

¹² See Exchange Rule 1.5(r).

¹³ Of note, the U.S. futures markets, which have similar rules for coordinated MWCB halts, normally begin their “next day” trading session at 6:00 p.m. Eastern Time (for CFE and CME) or at 8:00 p.m. Eastern Time (for ICE). If the U.S. futures markets amend their MWCB rules, as needed, to allow for normal course trading following a Level 3 halt, the futures markets would resume trading

would end at the end of the trading day on which it is declared. This proposed change would allow for next-day trading to resume in all NMS Stocks no differently from any other trading day. In other words, an exchange could resume trading in any security when it first begins trading under its rules and would not need to wait for the primary listing market to re-open trading in a security before it could start trading such security.¹⁴ Accordingly, under the proposal, the Exchange could begin trading all securities at the beginning of the Exchange's Early Trading Session.

To effect this change, the Exchange proposes to delete the language in Rule 11.18(b)(2) requiring the Exchange to wait until the primary listing exchange opens the next trading day following a Level 3 Market Decline, and specify that the Exchange will halt trading for the remainder of the trading day.¹⁵ The proposed rule change would therefore allow each exchange to resume trading in all securities the next trading day following a Level 3 halt at whatever time such exchange normally begins trading under its rules, which for the Exchange would be at the beginning of the Early Trading Session at 7:00 a.m. Eastern Time under its current rules. The Exchange also expects that the primary listing exchanges will facilitate this change by sending resume messages to the applicable securities information processor ("SIP") to lift the Level 3 trading halt message in all securities. The resumption messages will be disseminated after the SIP has started on the next trading day

in their normal course at 6:00 p.m. Eastern Time (CFE and CME) or 8:00 p.m. Eastern Time (ICE) the same day as the Level 3 halt.

¹⁴ The Exchange notes that Nasdaq has recently filed a similar proposal to amend its MWCB rules on the resumption of trading following Level 3 halts, and amend their rules, where required, to have their Level 3 next-day openings happen normally. Further, the Exchange anticipates that other national securities exchanges and FINRA will also file similar proposals.

¹⁵ Presently, the Exchange's equities trading day ends at 8:00 p.m. ET. See Exchange Rule 1.5(c).

and before the start of the earliest pre-market trading session of all exchanges. If a security is separately subject to a regulatory halt that has not ended, the primary listing exchange would replace the Level 3 halt message with the applicable regulatory halt message.

As discussed above, the Exchange's proposed rule change to Rule 11.18 would allow each exchange to resume trading in all securities on the day following the Level 3 Market Decline pursuant to its regular process for trading on any other trading day. Currently, the Exchange would re-open trading following a Level 3 Market Decline using a halt re-opening process for securities listed on other national securities exchanges.¹⁶ With the proposed changes to the MWCB mechanism, it would no longer be necessary for the Exchange to have special procedures in place to resume trading after a Level 3 Market Decline, as the proposed changes are designed to allow trading to commence using normal operating procedures. Accordingly, the Exchange proposes to make corresponding changes to Exchange Rule 11.23(e), which sets forth the re-opening process after a halt. Specifically, the Exchange proposes to clarify that no halt re-opening process will be conducted by the Exchange following a Level 3 Market Decline. With these changes, trading would be allowed to commence normally on the trading day following a Level 3 Market Decline, similar to the resumption of trading on certain other national securities exchanges that would currently open with continuous trading.¹⁷

Having a consistent approach for all securities will make the opening process the day after a Level 3 halt more uniform and reduce complexity, which the Exchange believes is important after a significant market event. Based on industry feedback, the Exchange

¹⁶ See Exchange Rule 11.23(e); See also SIP Market-Wide Circuit Breaker Overview, available at http://www.utpplan.com/DOC/MWCB_SIP_Overview.pdf.

¹⁷ See Nasdaq Rule 4121(c)(i). See also Id.

believes that opening in the normal course in all equity securities will be beneficial to the marketplace. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks and balances out potential concerns around volatility. While the Exchange recognizes that the impact of this proposal is to permit all securities to be traded in the Early Trading Session, which does not have certain price protections for volatility such as LULD Bands or MWCB protections, the Exchange nonetheless believes that this outcome is outweighed by the benefits provided by opening in the Early Trading Session in a manner that is more familiar to the marketplace. Moreover, allowing the resumption of trading to occur on the Exchange at the beginning of the Early Trading Session in all NMS Stocks will allow for price formation to occur earlier in the trading day, which in turn allows market participants to react to news that has developed. As such, trading at the beginning of regular hours may be more orderly.

(b) Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade, 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. The market-wide circuit breaker mechanism under Rule 11.18 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

stress when securities markets experience extreme broad-based declines. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility, and how the markets will resume trading following a Level 3 Market Decline. As described above, the Exchange, together with other national securities exchanges and FINRA, is seeking to adopt a standardized approach related to resuming trading in NMS Stocks after a Level 3 MWCB halt. In this regard, the Exchange believes that the proposal to resume trading in all securities following a Level 3 halt in the same manner that securities would open trading on a regular trading day (i.e., with continuous trading on the Exchange at the beginning of the Early Trading Session at 7 a.m. Eastern Time) will benefit investors, the national market system, Exchange members, and the Exchange market by promoting a fair and orderly market and reducing confusion during a significant cross-market event. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule changes would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.18 with the proposed standardized process for resuming trading in all securities following a Level 3 halt will promote fair and orderly markets, and protect investors and the public interest.

Item 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 not necessary or appropriate in furtherance of the purposes of the

Act because the proposed Level 3 rule change described above would standardize the opening process for all securities on the Exchange, which would make the opening process the day after a Level 3 halt more uniform and reduce complexity. Further, the Exchange understands that FINRA and other national securities exchanges will file similar proposals to adopt the proposed Level 3 rule change.²⁰

Item 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.

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act²¹ and Rule 19b-4(f)(6)²² 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.

²⁰ See, e.g., Securities Exchange Act Release No. 88342 March 6, 2020), 85 FR 14513 (March 12, 2020) (SR-NASDAQ-2020-003).

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6).

The MWCB under Rule 11.18 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. The proposed rule changes will not significantly affect the protection of investors or the public interest because the rule is designed to standardize the opening process for all securities on the Exchange, which would make the opening process the day after a Level 3 halt more uniform and reduce complexity. With the proposed changes to the MWCB mechanism, it would no longer be necessary for the Exchange to have special procedures in place to resume trading after a Level 3 Market Decline, as the proposed changes are designed to allow trading to commence using normal operating procedures. The proposed change to Rule 11.18 is substantially similar to a recent rule amendment by Nasdaq,²³ and the proposed change to Rule 11.23(e) is substantially similar to Nasdaq's process under its current rules.²⁴ The proposed rule change will also not impose any significant burden on competition because the Exchange expects other national securities exchanges will file similar proposals to adopt the proposed Level 3 rule change, thereby ensuring consistency across market centers without implicating any competitive issues.

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. 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

²³ See supra note 20.

²⁴ See supra note 17.

Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

The Exchange respectfully requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act²⁵ and paragraph (f)(6) of Rule 19b-4 thereunder.²⁶ Waiver of the 30-day operative delay would allow the Exchange to immediately standardize the opening process for all securities on the Exchange, which would make the opening process the day after a Level 3 halt more uniform and reduce complexity, and is therefore consistent with the protection of investors and the public interest. Further, as the proposed change to Rule 11.18 is substantially similar to Nasdaq Rule 4121(b) and the proposed changes to Rule 11.23 is merely a corresponding change that is also substantially similar to Nasdaq Rules,²⁷ the proposed amendment will not have any meaningful impact on member or investors that would necessitate a delay in effectiveness.

(c) Not applicable.

(d) Not applicable.

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

The proposed rule change is substantially similar to Nasdaq Rule 4121(b).²⁸

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ See supra note 17.

²⁸ See supra note 20.

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

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

Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CboeBYX-2020-009]

[Insert date]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.18(b)(2) Concerning the Resumption of Trading Following a Level 3 Market-Wide Circuit Breaker Halt and Make Corresponding Changes to Rule 11.23(e)

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

The Exchange proposes to amend Rule 11.18(b)(2) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt and make corresponding changes to Rule 11.23(e).

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).

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 Rule 11.18(b)(2) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt and to amend Rule 11.23(e) to make corresponding changes to the re-opening process after a halt. The Exchange is proposing this rule change in conjunction with other national securities exchanges and the Financial Industry Regulatory Authority ("FINRA").

Rule 11.18 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (i.e., market-wide circuit breakers). The market-wide circuit breaker mechanism ("MWCB") under Rule 11.18 was approved by the Commission to operate on a pilot basis,⁵ the term of which was to coincide with the pilot

⁵ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BYX-2011-025).

period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the “LULD Plan”),⁶ including any extensions to the pilot period for the LULD Plan.⁷ The Commission recently approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁸ In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.18 to untie the pilot’s effectiveness from that of the LULD Plan and to extend the pilot’s effectiveness to the close of business on October 18, 2019.⁹ The Exchange then filed to extend the pilot for an additional year to the close of business on October 18, 2020.¹⁰ The market-wide circuit breaker under Rule 11.18 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012 (“MWCB Rules”), which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust

⁶ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

⁷ See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BYX-2011-025) (Approval Order); and 68885 (February 8, 2013), 78 FR 10649 (February 14, 2013) (SR-BYX-2013-006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility).

⁸ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

⁹ See Securities Exchange Act Release No. 85665 (April 16, 2019), 84 FR 16749 (April 22, 2019) (SR-CboeBYX-2019-004).

¹⁰ See Securities Exchange Act Release No. 87343 (October 18, 2019), 84 FR 57104 (October 24, 2019) (SR-CboeBYX-2019-017).

market liquidity.¹¹ Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index. Pursuant to Rule 11.18, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. Eastern Time and before 3:25 p.m. Eastern Time would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. Eastern Time would not halt market-wide trading. A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading until the primary listing market opens the next trading day.

Today, in the event that a Level 3 Market Decline occurs, the Exchange would halt trading for the remainder of the trading day, and would not resume until the primary listing market opens the next trading day, which time may currently vary depending on the primary listing market. For example, if the primary listing market is the New York Stock Exchange ("NYSE"), NYSE would resume trading in its listed securities at 9:30 a.m. Eastern Time on the next trading day, and the Exchange would not be able to resume trading during the Exchange's Early Trading Session¹² or Pre-Opening Session.¹³ Alternatively, if the primary

¹¹ See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129) ("MWCB Approval Order").

¹² See Exchange Rule 1.5(ee).

¹³ See Exchange Rule 1.5(r).

listing market is the Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq would resume trading in its listed securities at 4:00 a.m. Eastern Time on the next trading day, and therefore, the Exchange would resume trading at the commencement of the Early Trading Session.

Upon feedback from industry participants, the Exchange has been working with other national securities exchanges and FINRA to establish a standardized approach for resuming trading in all NMS Stocks following a Level 3 halt. The proposed approach would allow for the opening of all securities the next trading day after a Level 3 halt as a regular trading day, and is designed to ensure that Level 3 MWCB events are handled in a more consistent manner that is transparent for market participants.¹⁴ As proposed, a Level 3 halt would end at the end of the trading day on which it is declared. This proposed change would allow for next-day trading to resume in all NMS Stocks no differently from any other trading day. In other words, an exchange could resume trading in any security when it first begins trading under its rules and would not need to wait for the primary listing market to re-open trading in a security before it could start trading such security.¹⁵ Accordingly, under the proposal, the Exchange could begin trading all securities at the beginning of the Exchange’s Early Trading Session.

¹⁴ Of note, the U.S. futures markets, which have similar rules for coordinated MWCB halts, normally begin their “next day” trading session at 6:00 p.m. Eastern Time (for CFE and CME) or at 8:00 p.m. Eastern Time (for ICE). If the U.S. futures markets amend their MWCB rules, as needed, to allow for normal course trading following a Level 3 halt, the futures markets would resume trading in their normal course at 6:00 p.m. Eastern Time (CFE and CME) or 8:00 p.m. Eastern Time (ICE) the same day as the Level 3 halt.

¹⁵ The Exchange notes that Nasdaq has recently filed a similar proposal to amend its MWCB rules on the resumption of trading following Level 3 halts, and amend their rules, where required, to have their Level 3 next-day openings happen normally. Further, the Exchange anticipates that other national securities exchanges and FINRA will also file similar proposals.

To effect this change, the Exchange proposes to delete the language in Rule 11.18(b)(2) requiring the Exchange to wait until the primary listing exchange opens the next trading day following a Level 3 Market Decline, and specify that the Exchange will halt trading for the remainder of the trading day.¹⁶ The proposed rule change would therefore allow each exchange to resume trading in all securities the next trading day following a Level 3 halt at whatever time such exchange normally begins trading under its rules, which for the Exchange would be at the beginning of the Early Trading Session at 7:00 a.m. Eastern Time under its current rules. The Exchange also expects that the primary listing exchanges will facilitate this change by sending resume messages to the applicable securities information processor (“SIP”) to lift the Level 3 trading halt message in all securities. The resumption messages will be disseminated after the SIP has started on the next trading day and before the start of the earliest pre-market trading session of all exchanges. If a security is separately subject to a regulatory halt that has not ended, the primary listing exchange would replace the Level 3 halt message with the applicable regulatory halt message.

As discussed above, the Exchange’s proposed rule change to Rule 11.18 would allow each exchange to resume trading in all securities on the day following the Level 3 Market Decline pursuant to its regular process for trading on any other trading day. Currently, the Exchange would re-open trading following a Level 3 Market Decline using a halt re-opening process for securities listed on other national securities exchanges.¹⁷ With the proposed changes to the MWCB mechanism, it would no longer be necessary for the

¹⁶ Presently, the Exchange’s equities trading day ends at 8:00 p.m. ET. See Exchange Rule 1.5(c).

¹⁷ See Exchange Rule 11.23(e); See also SIP Market-Wide Circuit Breaker Overview, *available at* http://www.utplan.com/DOC/MWCB_SIP_Overview.pdf.

Exchange to have special procedures in place to resume trading after a Level 3 Market Decline, as the proposed changes are designed to allow trading to commence using normal operating procedures. Accordingly, the Exchange proposes to make corresponding changes to Exchange Rule 11.23(e), which sets forth the re-opening process after a halt. Specifically, the Exchange proposes to clarify that no halt re-opening process will be conducted by the Exchange following a Level 3 Market Decline. With these changes, trading would be allowed to commence normally on the trading day following a Level 3 Market Decline, similar to the resumption of trading on certain other national securities exchanges that would currently open with continuous trading.¹⁸

Having a consistent approach for all securities will make the opening process the day after a Level 3 halt more uniform and reduce complexity, which the Exchange believes is important after a significant market event. Based on industry feedback, the Exchange believes that opening in the normal course in all equity securities will be beneficial to the marketplace. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks and balances out potential concerns around volatility. While the Exchange recognizes that the impact of this proposal is to permit all securities to be traded in the Early Trading Session, which does not have certain price protections for volatility such as LULD Bands or MWCB protections, the Exchange nonetheless believes that this outcome is outweighed by the benefits provided by opening in the Early Trading Session in a manner

¹⁸ See Nasdaq Rule 4121(c)(i). See also Id.

that is more familiar to the marketplace. Moreover, allowing the resumption of trading to occur on the Exchange at the beginning of the Early Trading Session in all NMS Stocks will allow for price formation to occur earlier in the trading day, which in turn allows market participants to react to news that has developed. As such, trading at the beginning of regular hours may be more orderly.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to promote just and equitable principles of trade, 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. The market-wide circuit breaker mechanism under Rule 11.18 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility, and how the markets will resume trading following a Level 3 Market Decline. As described above, the Exchange, together with other national securities exchanges and FINRA, is seeking to adopt a standardized approach related to resuming trading in NMS Stocks after a Level 3 MWCB halt. In this regard, the Exchange believes that the proposal to resume trading in

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

all securities following a Level 3 halt in the same manner that securities would open trading on a regular trading day (i.e., with continuous trading on the Exchange at the beginning of the Early Trading Session at 7 a.m. Eastern Time) will benefit investors, the national market system, Exchange members, and the Exchange market by promoting a fair and orderly market and reducing confusion during a significant cross-market event. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule changes would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.18 with the proposed standardized process for resuming trading in all securities following a Level 3 halt will promote fair and orderly markets, and protect investors and the public interest.

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 not necessary or appropriate in furtherance of the purposes of the Act because the proposed Level 3 rule change described above would standardize the opening process for all securities on the Exchange, which would make the opening process the day after a Level 3 halt more uniform and reduce complexity. Further, the Exchange understands that FINRA and other national securities exchanges will file similar proposals to adopt the proposed Level 3 rule change.²¹

²¹ See, e.g., Securities Exchange Act Release No. 88342 March 6, 2020), 85 FR 14513 (March 12, 2020) (SR-NASDAQ-2020-003).

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 Act²² and Rule 19b-4(f)(6)²³ 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:

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

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-2020-009 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-2020-009. 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-2020-009 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.²⁴

Secretary

²⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Rules of Cboe BYX Exchange, Inc.

* * * * *

Rule 11.18. Trading Halts Due to Extraordinary Market Volatility

The provisions of paragraphs (a) through (d), (f) and (g) of this Rule shall be in effect during a pilot period that expires at the close of business on October 18, 2020. If the pilot is not either extended or approved permanently at the end of the pilot period, the prior version of paragraphs (a) through (d), (f) and (g) shall be in effect.

(a) No change.

(b) Halts in Trading

(1) No change.

(2) If a Level 3 Market Decline occurs at any time during the trading day, the Exchange shall halt trading in all stocks for the remainder of the[until the primary listing market opens the next] trading day.

(c)-(g) No change.

* * * * *

Rule 11.23. Opening Process

(a)-(d) No change.

(e) Re-Opening After a Halt. While a security is subject to a halt, other than a halt initiated pursuant to Rule 11.18(b)(2) following a Level 3 Market Decline, suspension, or pause in trading, the Exchange will accept orders for queuing prior to the resumption of trading in the security for participation in the Re-Opening Process.

(1)-(2) No change.

* * * * *