

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 30

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

File No.* SR - 2019 - * 020

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

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 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 11/01/2019

By Rebecca Tenuta

(Name *)

Counsel

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

rtenuta@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 *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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 November 1, 2019.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, 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 Add Volume Tiers.

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 18% 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 (October 25, 2019), 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.

For example, pursuant to footnote 1 of the Fees Schedule, the Exchange offers Add Volume Tiers that provide Members an opportunity to receive a discounted rate from the standard fee assessment for liquidity adding orders that yield fee codes "B"⁵, "V"⁶ and "Y"⁷. The Add Volume Tiers currently offer five different tiers that vary in levels of criteria difficulty and incentive opportunities in which Members may qualify for discounted rates for such orders. The Exchange notes that these tiers are designed to encourage Members that provide displayed, liquidity adding orders on the Exchange to increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all market participants.

Specifically, the Exchange proposes to amend Add Volume Tier 4, which currently provides Members an opportunity to qualify for a reduced fee of \$0.0016 for

⁵ Appended to displayed orders that add liquidity to BYX (Tape B), and assessed a fee of \$0.0019.

⁶ Appended to displayed orders that add liquidity to BYX (Tape A), and assessed a fee of \$0.0019.

⁷ Appended to displayed orders that add liquidity to BYX (Tape C), and assessed a fee of \$0.0019.

orders yielding fee codes B, V, and Y where a Member has an ADAV⁸ of greater than or equal to 0.25% of the TCV⁹, and a Step-Up ADAV¹⁰ of greater than or equal to 0.05% of the TCV from April 2017 baseline. The Exchange proposes to remove the requirement that a Member have a Step-Up ADAV of greater than or equal to 0.05% of the TCV from April 2017 baseline, and slightly decrease the fee reduction rate from the current \$0.0016 to a proposed rate of \$0.0017. The Exchange notes that the proposed change to this tier's criteria is designed to make it easier to achieve by removing the Step-Up ADAV component. As a result, the proposed criteria would become the least difficult tier to achieve in comparison to current Add Volume Tiers 1 through 3. Therefore, to maintain the Add Volume Tiers in order of incremental difficulty and corresponding rates, the Exchange moves this proposed criteria and fee reduction rate to Tier 1 (and updates the subsequent Tier numbers).

The Exchange notes that the proposed change to this tier is designed to make the tier criteria easier to reach by removing the Step-Up ADAV component of the criteria. The Exchange believes that by easing the tier criteria difficulty it will encourage those Members who could not previously achieve current Tier 4 to increase their order flow as a means to receive the tier's proffered fee reduction. The Exchange also notes that the proposed decrease in the current fee reduction rate is commensurate with the proposed

⁸ "ADAV" means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

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 "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

decrease in the tier's criteria. The Exchange believes the proposed criteria modification for displayed, liquidity adding orders will incentivize increased overall order flow to the Book and gives liquidity providing Members on the Exchange an additional opportunity to receive a discounted rate. It is designed to provide Members that submit displayed liquidity on the Exchange a further incentive to contribute to a deeper, more liquid market, in turn, providing additional execution opportunities at transparent prices as a result of such increased, displayed liquidity. The Exchange believes that this benefits all Members by enhancing overall market quality and contributing towards a robust and well-balanced market ecosystem. The Exchange notes the proposed tier is available to all Members and is competitively achievable for all Members that submit displayed order flow, in that, all firms that submit the requisite displayed order flow could compete to meet the tier.

(b) 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

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

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 a discounted rate by making it easier to reach the proposed threshold by means of liquidity adding displayed 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

¹⁴ See e.g., The Nasdaq Stock Market LLC Rules, Equity 7, Sec. 118(a)(1), which generally provides credits to members for displayed, liquidity providing orders that reach certain thresholds of consolidated volume.

¹⁵ See e.g., Cboe BYX U.S. Equities Exchange Fee Schedule, Footnotes 1 and 2, Remove Volume and Non-Displayed Liquidity Incentive tiers provide similar incentives for volume removing orders and for volume adding, non-displayed orders, respectively.

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 remove the Step-Up component from current Add Volume Tier 4 (proposed Tier 1) is a reasonable means to further incentivize Members to increase their overall displayed order flow to the Exchange based on increasing their daily total added volume (ADAV) above a percentage of the total volume (TCV). Particularly, the Exchange believes that decreasing the tier's criteria will encourage those Members who could not achieve the tier previously to increase their order flow as a means to receive the tier's reduced rate. The Exchange believes that easing the current Tier 4 criteria will encourage displayed liquidity

¹⁶ See supra note 13. For example, Nasdaq offers a rebate of \$0.00305 per share with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 1.25% of Consolidated Volume during the month. The Exchange notes that this rebate of \$0.00305 is substantially similar to the proposed fee reduction of \$0.0017 (which is essentially a 'rebate' of \$0.002 from the \$0.0019 standard fee assessed).

providing Members to provide for a deeper, more liquid market, and, as a result, increased priced transparency, execution opportunities, and overall order flow. 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, providing 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. In line with the proposed ease in criteria difficulty, the Exchange also believes that the proposed lesser fee reduction than offered currently is reasonable as it is commensurate with the proposed decreased criteria. Similarly, moving the proposed criteria and the adjusted corresponding fee reduction to Tier 1 is reasonable because it appropriately reflects the incremental difficulty in achieving the existing Add Volume Tiers and the incrementally higher reduction in fees that correspond to each.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed Add Volume Tier, and would have the opportunity to meet the tier's criteria and would receive the proposed rebate if such criteria is met. Given previous months' data, the Exchange notes that two of its Members reached current Tier 4 in the last month. 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, liquidity providers (e.g. wholesale firms that mainly are market makers for retail orders) and broker-dealers (e.g. bulge bracket firms that conduct trading on behalf of customers), each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, broker-dealer customer order flow provides more trading opportunities, which attracts Market Makers. Increased Market Maker activity facilitates tighter spreads which potentially increases order flow from other market participants. The Exchange also notes that the proposed tier will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive an enhanced rebate. Furthermore, the proposed rate 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."¹⁷

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 displayed liquidity and, as a result, executable order flow and improved price transparency, to the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by 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-

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

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 18% of the market share.¹⁸ 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 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

¹⁸ See supra note 4.

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

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.

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.

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 Act²¹ and paragraph (f)(2) of Rule 19b-4 thereunder.²²

(c) Inapplicable.

(d) Inapplicable.

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

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)).

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²² 17 CFR 240.19b-4(f)(2).

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.

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBYX-2019-020]

[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 Add Volume Tiers.

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 18% 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

³ See Cboe Global Markets, U.S. Equities Market Volume Summary (October 25, 2019), available at https://markets.cboe.com/us/equities/market_statistics/.

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.

For example, pursuant to footnote 1 of the Fees Schedule, the Exchange offers Add Volume Tiers that provide Members an opportunity to receive a discounted rate from the standard fee assessment for liquidity adding orders that yield fee codes "B"⁴, "V"⁵ and "Y"⁶. The Add Volume Tiers currently offer five different tiers that vary in levels of

⁴ Appended to displayed orders that add liquidity to BYX (Tape B), and assessed a fee of \$0.0019.

⁵ Appended to displayed orders that add liquidity to BYX (Tape A), and assessed a fee of \$0.0019.

⁶ Appended to displayed orders that add liquidity to BYX (Tape C), and assessed a

criteria difficulty and incentive opportunities in which Members may qualify for discounted rates for such orders. The Exchange notes that these tiers are designed to encourage Members that provide displayed, liquidity adding orders on the Exchange to increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all market participants.

Specifically, the Exchange proposes to amend Add Volume Tier 4, which currently provides Members an opportunity to qualify for a reduced fee of \$0.0016 for orders yielding fee codes B, V, and Y where a Member has an ADAV⁷ of greater than or equal to 0.25% of the TCV⁸, and a Step-Up ADAV⁹ of greater than or equal to 0.05% of the TCV from April 2017 baseline. The Exchange proposes to remove the requirement that a Member have a Step-Up ADAV of greater than or equal to 0.05% of the TCV from April 2017 baseline, and slightly decrease the fee reduction rate from the current \$0.0016 to a proposed rate of \$0.0017. The Exchange notes that the proposed change to this tier's criteria is designed to make it easier to achieve by removing the Step-Up ADAV component. As a result, the proposed criteria would become the least difficult tier to achieve in comparison to current Add Volume Tiers 1 through 3. Therefore, to maintain the Add Volume Tiers in order of incremental difficulty and corresponding rates, the Exchange moves this proposed criteria and fee reduction rate to Tier 1 (and updates the

fee of \$0.0019.

⁷ “ADAV” means average daily volume calculated as the number of shares added per day. ADAV 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 “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.

subsequent Tier numbers).

The Exchange notes that the proposed change to this tier is designed to make the tier criteria easier to reach by removing the Step-Up ADAV component of the criteria. The Exchange believes that by easing the tier criteria difficulty it will encourage those Members who could not previously achieve current Tier 4 to increase their order flow as a means to receive the tier's proffered fee reduction. The Exchange also notes that the proposed decrease in the current fee reduction rate is commensurate with the proposed decrease in the tier's criteria. The Exchange believes the proposed criteria modification for displayed, liquidity adding orders will incentivize increased overall order flow to the Book and gives liquidity providing Members on the Exchange an additional opportunity to receive a discounted rate. It is designed to provide Members that submit displayed liquidity on the Exchange a further incentive to contribute to a deeper, more liquid market, in turn, providing additional execution opportunities at transparent prices as a result of such increased, displayed liquidity. The Exchange believes that this benefits all Members by enhancing overall market quality and contributing towards a robust and well-balanced market ecosystem. The Exchange notes the proposed tier is available to all Members and is competitively achievable for all Members that submit displayed order flow, in that, all firms that submit the requisite displayed order flow could compete to meet the tier.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁰ in general, and furthers the objectives of Section

¹⁰ 15 U.S.C. 78f.

6(b)(4),¹¹ 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)¹² 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 a discounted rate by making it easier to reach the proposed threshold by means of liquidity adding displayed orders. The Exchange notes that relative volume-based incentives and discounts have been widely

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f.(b)(5).

adopted by exchanges¹³, including the Exchange¹⁴, 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.¹⁵

Moreover, the Exchange believes the proposed modification to remove the Step-Up component from current Add Volume Tier 4 (proposed Tier 1) is a reasonable means to further incentivize Members to increase their overall displayed order flow to the

¹³ See e.g., The Nasdaq Stock Market LLC Rules, Equity 7, Sec. 118(a)(1), which generally provides credits to members for displayed, liquidity providing orders that reach certain thresholds of consolidated volume.

¹⁴ See e.g., Cboe BYX U.S. Equities Exchange Fee Schedule, Footnotes 1 and 2, Remove Volume and Non-Displayed Liquidity Incentive tiers provide similar incentives for volume removing orders and for volume adding, non-displayed orders, respectively.

¹⁵ See supra note 12. For example, Nasdaq offers a rebate of \$0.00305 per share with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 1.25% of Consolidated Volume during the month. The Exchange notes that this rebate of \$0.00305 is substantially similar to the proposed fee reduction of \$0.0017 (which is essentially a 'rebate' of \$0.002 from the \$0.0019 standard fee assessed).

Exchange based on increasing their daily total added volume (ADAV) above a percentage of the total volume (TCV). Particularly, the Exchange believes that decreasing the tier's criteria will encourage those Members who could not achieve the tier previously to increase their order flow as a means to receive the tier's reduced rate. The Exchange believes that easing the current Tier 4 criteria will encourage displayed liquidity providing Members to provide for a deeper, more liquid market, and, as a result, increased priced transparency, execution opportunities, and overall order flow. 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, providing 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. In line with the proposed ease in criteria difficulty, the Exchange also believes that the proposed lesser fee reduction than offered currently is reasonable as it is commensurate with the proposed decreased criteria. Similarly, moving the proposed criteria and the adjusted corresponding fee reduction to Tier 1 is reasonable because it appropriately reflects the incremental difficulty in achieving the existing Add Volume Tiers and the incrementally higher reduction in fees that correspond to each.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed Add Volume Tier, and would have the opportunity to meet the tier's criteria and would receive the proposed rebate if such criteria is met. Given previous months'

data, the Exchange notes that two of its Members reached current Tier 4 in the last month. 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, liquidity providers (e.g. wholesale firms that mainly are market makers for retail orders) and broker-dealers (e.g. bulge bracket firms that conduct trading on behalf of customers), each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, broker-dealer customer order flow provides more trading opportunities, which attracts Market Makers. Increased Market Maker activity facilitates tighter spreads which potentially increases order flow from other market participants. The Exchange also notes that the proposed tier will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive an enhanced rebate. Furthermore, the proposed rate 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."¹⁶

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 displayed liquidity and, as a result, executable order flow and improved price transparency, to the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by 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

¹⁶ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

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 18% of the market share.¹⁷ 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 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.”¹⁸ 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

¹⁷ See supra note 3.

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'....".¹⁹ 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.

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 Act²⁰ and paragraph (f) of Rule 19b-4²¹ 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

¹⁹ 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)).

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f).

concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2019-020 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CboeBYX-2019-020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change;

the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2019-020 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.²²

Secretary

²² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Cboe BYX U.S. Equities Exchange Fee Schedule**Effective [October]November 1, 2019**

* * * * *

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

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

Tier	Fee Per Share to Add	Required Criteria
<u>Tier 1</u>	<u>\$0.0017</u>	<u>Member has an ADAV \geq 0.25% of the TCV</u>
Tier [1] <u>2</u>	\$0.0014	Member has an ADAV \geq 0.30% of the TCV
Tier [2] <u>3</u>	\$0.0013	Member has an ADAV \geq 0.45% of the TCV
Tier [3] <u>4</u>	\$0.0012	Member has an ADAV \geq 1.00% of the TCV
[Tier 4]	[\$0.0016]	[1. Member has an ADAV \geq 0.25% of the TCV; and 2. Member has a Step-Up ADAV \geq 0.05% of the TCV from April 2017 baseline]
Tier 5	\$0.0012	MPID has an ADAV \geq 0.55% of the TCV

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