

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="31"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="001"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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

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

The Exchange proposes to amend the fee schedule applicable to the BYX equities trading platform to amend the rate for liquidity adding orders that yield fee code "MM" and eliminate and replace the Non-Displayed Liquidity Incentives with Step-Up Tiers.

**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 * <input type="text" value="Sarah"/>	Last Name * <input type="text" value="Tadtman"/>
Title * <input type="text" value="Counsel"/>	
E-mail * <input type="text" value="stadtman@cboe.com"/>	
Telephone * <input type="text" value="(913) 815-7203"/>	Fax <input type="text"/>

**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 <input type="text" value="01/02/2020"/>	Assistant General Counsel
By <input type="text" value="Adrian Griffiths"/>	<input type="text"/>
(Name *)	<input type="text" value="agriffiths@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 EFFF website.

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

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

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

Add Remove View

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

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

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

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

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Exhibit Sent As Paper Document

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend its fee schedule. 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 December 30, 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 Sarah Tadtman, Counsel, (913) 815-7203.

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

(a) Purpose

The Exchange proposes to amend its fee schedule to amend the rate for liquidity adding orders that yield fee code “MM”.<sup>3</sup> Additionally, the Exchange proposes to remove

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

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

<sup>3</sup> “MM” is appended to non-displayed orders that add liquidity using Mid-Point Peg.

Non-Displayed Liquidity Incentives and replace them with Step-Up 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,<sup>4</sup> no single registered equities exchange has more than 16% 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 Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide 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

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<sup>4</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary (December 26, 2019), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Change to Replace Non-Displayed Liquidity Incentives with Step-Up Tiers

In response to the competitive environment, the Exchange 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 2 of the Fee Schedule, the Exchange currently offers a Mid-Point Peg Tier that provides Members with a reduced fee of \$0.0005 for liquidity adding orders that yield fee code “MM”, which generally has a fee of \$0.0010. To qualify for the Mid-Point Peg Tier, a Member must have an ADAV<sup>5</sup> of greater than or equal to 0.30% of the TCV.<sup>6</sup> Also pursuant to footnote 2 of the Fee Schedule, the Exchange offers a Non-Displayed Volume Tier that provides Members with a reduced fee of \$0.0004 for liquidity adding orders that yield fee code “HA”,<sup>7</sup> which generally has a fee of \$0.00240, or “MM”, which as noted above generally has a fee of \$0.0010. To qualify for the Non-Displayed Volume Tier, a Member must have an ADAV of greater than or equal to 0.075% of the TCV as Non-Displayed

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<sup>5</sup> ADAV means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

<sup>6</sup> 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.

<sup>7</sup> “HA” is appended to non-displayed orders that add liquidity.

Orders that yield fee codes “HA”, “HI”,<sup>8</sup> or “MM”. The aforementioned Non-Displayed Liquidity Incentives are designed to encourage Members that provide non-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.

The Exchange now proposes to remove the existing tiers related to Non-Displayed Liquidity Incentives on the Exchange, and to instead offer “Step-Up Tiers”. Specifically, the Exchange proposes to remove the Mid-Point Peg Tier and Non-Displayed Volume Tier described above. In place of the existing Non-Displayed Liquidity Incentives, the Exchange proposes to offer Step-Up Tiers that will provide Members an opportunity to receive a discounted rate from the standard fee assessment for displayed liquidity adding orders that yield fee codes “B”,<sup>9</sup> “V”,<sup>10</sup> or “Y”.<sup>11</sup> The Exchange proposes criteria under Tier 1 of the Step-Up Tiers that would offer a reduced fee of \$0.0016 for liquidity adding orders that yield fee code “B”, “V”, or “Y”, which generally have a fee of \$0.0019. To qualify for proposed Tier 1, the Member must have a “Step-Up Add TCV” from December 2019 of greater than or equal to 0.05%. The Exchange proposes to add a definition of “Step-Up Add TCV” to the Fee Schedule which would mean ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. The Exchange notes that this definition is

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<sup>8</sup> “HI” is appended to non-displayed orders that receive price improvement and add liquidity.

<sup>9</sup> “B” is appended to displayed orders that add liquidity to BYX(Tape B).

<sup>10</sup> “V” is appended to displayed orders that add liquidity to BYX (Tape A).

<sup>11</sup> “Y” is appended to displayed order that add liquidity to BYX (Tape C).

consistent with the definitions in the Fees Schedules of the Exchange's affiliated exchanges.<sup>12</sup>

The proposed Tier 1 under the Step-Up Tiers 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. Further, while the Exchange proposes to eliminate the Non-Displayed Liquidity Incentives, as discussed in further detail below, the Exchange also proposes to reduce the current fee assessed to non-displayed liquidity adding orders yielding fee code "MM". Therefore, the Exchange will offer similarly reduced fees to orders yielding fee code "MM" under the proposed amendment as currently offered to such orders under the Non-Displayed Liquidity Incentives. 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.

#### Proposed Change to Fee Code "MM"

As stated above, the Exchange currently charges fees for liquidity adding orders that yield fee code "MM" of \$0.0010 in securities priced at or above \$1.00. Orders yielding fee code "MM" in securities priced below \$1.00 are not assessed a fee. The Exchange now proposes to reduce the current fee of \$0.0010 per share to \$0.0005 per

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<sup>12</sup> See Cboe BZX U.S. Equities Exchange Fee Schedule, Definitions; Cboe EDGX U.S. Equities Exchange Fee Schedule, Definitions.

share for orders yielding fee code “MM” in securities priced at or above \$1.00. Orders yield fee code “MM” in securities priced below \$1.00 would continue to be free. As the proposed fee for orders yielding fee code “MM” is lower than the current fee for such orders, the Exchange believes the proposed amendment will encourage Members to increase their liquidity on the Exchange. Further, as “MM” orders would no longer be able to receive reduced fees under the Non-Displayed Liquidity Incentives, the proposed fee change to the “MM” fee code would offer another means for such orders to receive a similar fee reduction that would require no minimum ADAV. Therefore, “MM” orders would be eligible to receive a reduced fee of \$0.0005 on a less stringent basis.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>14</sup> 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 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. 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.

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<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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 amendment to replace the Non-Displayed Liquidity Incentives with Step-Up Tiers is reasonable because it provides an additional opportunity for Members to receive a discounted fee by means of liquidity-adding displayed orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by other exchanges,<sup>15</sup> 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 of 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 a 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

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<sup>15</sup> See, e.g., Cboe BZX Equities Exchange Fee Schedule, Footnote 2, Step-Up Tiers, Tier 1, which offers an enhanced rebate for certain volume-adding orders; see also NYSE Arca Equities, Fees and Charges, Step Up Tiers.

schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.<sup>16</sup>

Moreover, the Exchange believes the proposed Step-Up Tier is a reasonable means to encourage 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 adopting a Step-Up Tier based on a Member's displayed adding orders will encourage displayed liquidity providing Members to provide for a deeper, more liquid market, and, as a result, increased execution opportunities at improved price levels and, thus, overall order flow. The Exchange believes that these increases will benefit all Members by 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. The proposed discount (i.e. fee reduction) per share amount also does not represent a significant departure from the rebates currently offered, or required criteria, under the Exchange's existing tiers. For example, the fee assessed under the existing Mid-Point Peg Tier, for which, as stated, a Member must have a daily volume add (ADAV) of 0.30% or greater than the TCV, is \$0.0005 per share. In other words, under this tier, Members receive a \$0.0005 "discount"

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<sup>16</sup> See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers which offers rebates between \$0.0022 - \$0.0034 per share if the corresponding required criteria per tier is met. NYSE Arca Equities' Step Up Tiers similarly require Members to increase their relative liquidity each month over a predetermined baseline.

from the standard \$0.0010 assessed fee for orders yielding fee code “MM”. Orders yielding fee code “B”, “V”, and “Y” generally have a fee of \$0.00190, and therefore the proposed discount offered under Tier 1 (i.e., \$0.0016) is comparable to the discount currently offered under the Mid-Point Peg Tier.

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because all Members are eligible for the proposed Step-Up Tiers, and would have the opportunity to meet the Tier 1 criteria and receive the proposed fee reduction if such criteria is met. The proposed tier is 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. 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 up to ten Members will be able to compete for and reach the proposed tier. The Exchange anticipates that these will include multiple Member types, including liquidity providers and broker-dealers, 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 a reduced fee. Furthermore, the proposed fee would uniformly apply to all Members that meet the required criteria under proposed Step-Up Tiers.

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 displayed 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."<sup>17</sup>

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

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

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 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 16% of the market share.<sup>18</sup> 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

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<sup>18</sup> See supra note 5.

companies.”<sup>19</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>20</sup> 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

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

<sup>20</sup> *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)).

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 Act<sup>21</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>22</sup>

(c) Not applicable.

(d) Not applicable.

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

The proposed rule change is not based on 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.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>22</sup> 17 CFR 240.19b-4(f)(2).

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBYX-2020-001]

[Insert date]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to amend its fee schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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 “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend its 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/](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.

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

<sup>2</sup> 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 to amend the rate for liquidity adding orders that yield fee code "MM".<sup>3</sup> Additionally, the Exchange proposes to remove Non-Displayed Liquidity Incentives and replace them with Step-Up 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,<sup>4</sup> no single registered equities exchange has more than 16% of the market share. Thus, in such

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<sup>3</sup> "MM" is appended to non-displayed orders that add liquidity using Mid-Point Peg.

<sup>4</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary (December 26, 2019), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

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 Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide 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.

#### Proposed Change to Replace Non-Displayed Liquidity Incentives with Step-Up Tiers

In response to the competitive environment, the Exchange 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 2 of the Fee Schedule, the Exchange currently offers a Mid-Point Peg Tier that provides Members with a reduced fee of \$0.0005 for liquidity adding orders that yield fee code “MM”,

which generally has a fee of \$0.0010. To qualify for the Mid-Point Peg Tier, a Member must have an ADAV<sup>5</sup> of greater than or equal to 0.30% of the TCV.<sup>6</sup> Also pursuant to footnote 2 of the Fee Schedule, the Exchange offers a Non-Displayed Volume Tier that provides Members with a reduced fee of \$0.0004 for liquidity adding orders that yield fee code “HA”,<sup>7</sup> which generally has a fee of \$0.00240, or “MM”, which as noted above generally has a fee of \$0.0010. To qualify for the Non-Displayed Volume Tier, a Member must have an ADAV of greater than or equal to 0.075% of the TCV as Non-Displayed Orders that yield fee codes “HA”, “HI”,<sup>8</sup> or “MM”. The aforementioned Non-Displayed Liquidity Incentives are designed to encourage Members that provide non-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.

The Exchange now proposes to remove the existing tiers related to Non-Displayed Liquidity Incentives on the Exchange, and to instead offer “Step-Up Tiers”. Specifically, the Exchange proposes to remove the Mid-Point Peg Tier and Non-Displayed Volume Tier described above. In place of the existing Non-Displayed Liquidity Incentives, the Exchange proposes to offer Step-Up Tiers that will provide Members an opportunity to receive a discounted rate from the standard fee assessment for

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<sup>5</sup> ADAV means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

<sup>6</sup> 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.

<sup>7</sup> “HA” is appended to non-displayed orders that add liquidity.

<sup>8</sup> “HI” is appended to non-displayed orders that receive price improvement and add liquidity.

displayed liquidity adding orders that yield fee codes “B”,<sup>9</sup> “V”,<sup>10</sup> or “Y”.<sup>11</sup> The Exchange proposes criteria under Tier 1 of the Step-Up Tiers that would offer a reduced fee of \$0.0016 for liquidity adding orders that yield fee code “B”, “V”, or “Y”, which generally have a fee of \$0.0019. To qualify for proposed Tier 1, the Member must have a “Step-Up Add TCV” from December 2019 of greater than or equal to 0.05%. The Exchange proposes to add a definition of “Step-Up Add TCV” to the Fee Schedule which would mean ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. The Exchange notes that this definition is consistent with the definitions in the Fees Schedules of the Exchange’s affiliated exchanges.<sup>12</sup>

The proposed Tier 1 under the Step-Up Tiers 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. Further, while the Exchange proposes to eliminate the Non-Displayed Liquidity Incentives, as discussed in further detail below, the Exchange also proposes to reduce the current fee assessed to non-displayed liquidity adding orders yielding fee code “MM”. Therefore, the Exchange will offer similarly reduced fees to orders yielding fee code “MM” under the proposed amendment as currently offered to such orders under the Non-Displayed Liquidity Incentives. The Exchange believes that this benefits all Members by enhancing overall

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<sup>9</sup> “B” is appended to displayed orders that add liquidity to BYX(Tape B).

<sup>10</sup> “V” is appended to displayed orders that add liquidity to BYX (Tape A).

<sup>11</sup> “Y” is appended to displayed order that add liquidity to BYX (Tape C).

<sup>12</sup> See Cboe BZX U.S. Equities Exchange Fee Schedule, Definitions; Cboe EDGX U.S. Equities Exchange Fee Schedule, Definitions.

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.

#### Proposed Change to Fee Code “MM”

As stated above, the Exchange currently charges fees for liquidity adding orders that yield fee code “MM” of \$0.0010 in securities priced at or above \$1.00. Orders yielding fee code “MM” in securities priced below \$1.00 are not assessed a fee. The Exchange now proposes to reduce the current fee of \$0.0010 per share to \$0.0005 per share for orders yielding fee code “MM” in securities priced at or above \$1.00. Orders yield fee code “MM” in securities priced below \$1.00 would continue to be free. As the proposed fee for orders yielding fee code “MM” is lower than the current fee for such orders, the Exchange believes the proposed amendment will encourage Members to increase their liquidity on the Exchange. Further, as “MM” orders would no longer be able to receive reduced fees under the Non-Displayed Liquidity Incentives, the proposed fee change to the “MM” fee code would offer another means for such orders to receive a similar fee reduction that would require no minimum ADAV. Therefore, “MM” orders would be eligible to receive a reduced fee of \$0.0005 on a less stringent basis.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>13</sup> in general, and furthers the objectives of Section

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<sup>13</sup> 15 U.S.C. 78f.

6(b)(4),<sup>14</sup> 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 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. 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.

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 amendment to replace the Non-Displayed Liquidity Incentives with Step-Up Tiers is reasonable because it provides an additional opportunity for Members to receive a discounted fee by means of liquidity-adding displayed orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by other exchanges,<sup>15</sup> 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 of an

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<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> See, e.g., Cboe BZX Equities Exchange Fee Schedule, Footnote 2, Step-Up Tiers, Tier 1, which offers an enhanced rebate for certain volume-adding orders; see also NYSE Arca Equities, Fees and Charges, Step Up Tiers.

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 a 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.<sup>16</sup>

Moreover, the Exchange believes the proposed Step-Up Tier is a reasonable means to encourage 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 adopting a Step-Up Tier based on a Member's displayed adding orders will encourage displayed liquidity providing Members to provide for a deeper, more liquid market, and, as a result, increased execution opportunities at improved price levels and, thus, overall order flow. The Exchange believes that these increases will benefit all Members by 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

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<sup>16</sup> See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers which offers rebates between \$0.0022 - \$0.0034 per share if the corresponding required criteria per tier is met. NYSE Arca Equities' Step Up Tiers similarly require Members to increase their relative liquidity each month over a predetermined baseline.

enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The proposed discount (i.e. fee reduction) per share amount also does not represent a significant departure from the rebates currently offered, or required criteria, under the Exchange's existing tiers. For example, the fee assessed under the existing Mid-Point Peg Tier, for which, as stated, a Member must have a daily volume add (ADAV) of 0.30% or greater than the TCV, is \$0.0005 per share. In other words, under this tier, Members receive a \$0.0005 "discount" from the standard \$0.0010 assessed fee for orders yielding fee code "MM". Orders yielding fee code "B", "V", and "Y" generally have a fee of \$0.00190, and therefore the proposed discount offered under Tier 1 (i.e., \$0.0016) is comparable to the discount currently offered under the Mid-Point Peg Tier.

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because all Members are eligible for the proposed Step-Up Tiers, and would have the opportunity to meet the Tier 1 criteria and receive the proposed fee reduction if such criteria is met. The proposed tier is 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. 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 up to ten Members will be able to compete for and reach the proposed tier. The Exchange anticipates that these will include multiple Member types, including liquidity providers

and broker-dealers, 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 a reduced fee. Furthermore, the proposed fee would uniformly apply to all Members that meet the required criteria under proposed Step-Up Tiers.

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 displayed 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."<sup>17</sup>

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

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

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 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 16% of the market share.<sup>18</sup> 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

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<sup>18</sup> See supra note 5.

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.”<sup>19</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”<sup>20</sup> 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.

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

<sup>20</sup> *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)).

### **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 Act<sup>21</sup> and paragraph (f) of Rule 19b-4<sup>22</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2020-001 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.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CboeBYX-2020-001. 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-2020-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

(additions are underlined; deletions are [bracketed])

\* \* \* \* \*

**Cboe BYX U.S. Equities Exchange Fee Schedule**Effective [~~November~~ January 2][7], 2020[19]

\* \* \* \* \*

**Fee Codes and Associated Fees:**

<b>Fee Code</b>	<b>Description</b>	<b>Fee/(Rebate)</b>
* * * * *		
B <sup>1,2,7</sup>	Displayed order, adds liquidity to BYX (Tape B)	0.00190
* * * * *		
HA <sup>[2,]4,7</sup>	Non-displayed order, adds liquidity	0.00240
* * * * *		
MM <sup>[2,]7</sup>	Non-displayed order, adds liquidity using Mid-Point Peg	0.00[1]0 <u>50</u>
* * * * *		
V <sup>1,2,7</sup>	Displayed order, adds liquidity to BYX (Tape A)	0.00190
* * * * *		
Y <sup>1,2,7</sup>	Displayed order, adds liquidity to BYX (Tape C)	0.00190
* * * * *		

\* \* \* \* \*

**Definitions:**

- All references to “per share” mean “per share executed.”
- “ADAV” means average daily volume calculated as the number of shares added per day and “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis.
  - The Exchange excludes from its calculation of ADAV and ADV shares added on any day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours (“Exchange System Disruption”), on any day with a scheduled early market close and on the last Friday in June (the “Russell Reconstitution Day”).
  - Routed shares are not included in ADAV or ADV calculation.

- With prior notice to the Exchange, a Member may aggregate ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member’s Form BD).
- “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.
- “Step-Up Add TCV” means add ADV as a percentage of TCV in the relevant baseline month subtracted from current add ADV as a percentage of TCV.
- “Step-Up Remove TCV” means remove ADV as a percentage of TCV in the relevant baseline month subtracted from current remove ADV as a percentage of TCV.
- “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.
  - The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day.

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**<sup>2</sup> [Non-Displayed Liquidity Incentives] Step-Up Tiers**

[Applicable to the following fee code: MM]

<b>[Tier]</b>	<b>[Fee Per Share to Add]</b>	<b>[Required Criteria]</b>
[Mid-Point Peg Tier]	[\$0.0005]	[Member has an ADAV $\geq$ 0.30% of the TCV]

[Applicable to the following fee codes: HA and MM.]

<b>[Tier]</b>	<b>[Fee Reduction Per Share to Add]</b>	<b>[Required Criteria]</b>
[Non-Displayed Volume Tier]	[\$0.0004]	[Member has an ADAV $\geq$ 0.075% of the TCV as Non-Displayed orders that yield fee codes HA, HI, or MM.]

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

<b>Tier</b>	<b>Fee Per Share to Add</b>	<b>Required Criteria</b>
<u>Tier 1</u>	<u>\$0.0016</u>	<u>Member has a Step-Up Add TCV from December 2019 <math>\geq</math> 0.05%</u>

\* \* \* \* \*