

OMB APPROVAL

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

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 35

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

File No.* SR - 2020 - * 015

Amendment No. (req. for Amendments *)

Filing by Cboe BYX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

☐

Section 806(e)(2) *

☐

Security-Based Swap Submission pursuant
to the Securities Exchange Act of 1934

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



Description

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

The Exchange proposes to amend certain rules in connection the Exchange's disciplinary process.

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 05/08/2020

By Laura G. Dickman

(Name *)

VP, Associate General Counsel

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

ldickman@cboe.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

☐

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

☐

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

Exhibit 4 - Marked Copies

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

Item 1. Text of the Proposed Rule Change

(a) Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) proposes to amend certain rules in connection with the Exchange’s disciplinary process. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on January 3, 2020.

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

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

(a) Purpose

The Exchange proposes to amend Rule 8.8 in connection with the timing before which an offer of settlement becomes final, to amend Rule 8.10 in connection with the Board’s review of offers of settlement, and to amend Rule 8.11 to be consistent with the corresponding rules of the Exchange’s affiliated exchanges, Cboe Exchange, Inc. (“Cboe Options”) and Cboe C2 Exchange, Inc. (“C2”).¹

First, the Exchange proposes to amend Rule 8.8 which governs offers of settlement during a disciplinary proceeding pursuant to Chapter 8 (Discipline). Specifically, it proposes

¹ See Cboe Options Rule 13.11. The Exchange notes that C2 incorporates Cboe Options Disciplinary rules by reference.

to amend the timing for which the Chief Regulatory Officer's ("CRO") decision regarding an offer shall become final pursuant to Rule 8.8(a). Rule 8.8(a) currently provides that a Respondent may submit to the CRO a written offer of settlement, and the CRO may accept an offer of settlement, and, in doing so, issues a decision, including findings and conclusions and imposing a penalty, consistent with the terms of such offer. Pursuant to Rule 8.8(a), the CRO may also reject an offer of settlement and the matter then proceeds as if such offer had not been made. According to Rule 8.8(a), a decision of the CRO issued upon acceptance of an offer of settlement as well as the determination of the CRO whether to accept or reject such an offer does not currently become final until 20 business days after such decision is issued, and the Respondent may not seek review thereof.

The Exchange proposes to eliminate the 20-business day timeframe before which the CRO's determination and decision in connection with an offer of settlement becomes final. This is consistent with the corresponding offer of settlement rules of the Exchange's affiliated exchanges, Cboe Options and C2,² which do not have any such waiting period before which the CRO's acceptance (and accompanying decision) or rejection of an offer of settlement becomes final. In addition to providing consistency between the rules of the affiliated exchanges, the proposed rule change also removes a process that unnecessarily prolongs disciplinary proceedings. Where a matter could be either immediately closed or continued to the next steps of the proceedings upon the CRO's acceptance or rejection, respectively, of an offer of settlement, the current process unnecessarily leaves a matter open.

² See Cboe Options Rule 13.8(a). The Exchange notes that C2 incorporates Cboe Options Disciplinary rules by reference.

Second, and in line with the proposed rule change to Rule 8.8, the Exchange also proposes to remove Rule 8.8 offers of settlement from the list of certain procedural decisions in Rule 8.10 that may be reviewed by the Board on its own initiative within 20 business days after the issuance of the decision. This is also consistent with the corresponding disciplinary review rules of Cboe Options and C2, which do not include offers of settlement as decisions that the Board may review on its own initiative.³ The Exchange notes that the Board has not previously initiated a review of an offer of settlement. Therefore, the Exchange believes maintaining a 20-business day waiting period for a review that is not invoked is unnecessary and merely exhausts additional Exchange and Member resources in the time that a matter could have been resolved or have continued through proceedings. Allowing the CRO to accept or reject offers of settlement with finality will significantly expedite the settlement process while ensuring that the independence and integrity of the regulatory process is maintained, as the CRO's regulatory decision-making responsibilities are entirely separate from those responsible for the Exchange's business interests.

Finally, the Exchange proposes to amend Rule 8.11 to incorporate the Principal Considerations in Determining Sanctions ("Principal Considerations") into proposed Rule 8.11(c), which are currently in corresponding Rule 13.11.01 of Cboe Options and C2, and the general provision regarding sanctions into proposed Rule 8.11(a), which are currently in corresponding Rule 13.11(a) of Cboe Options and C2, in order to promote consistency and uniformity across the affiliated exchanges in determining appropriate remedial sanctions.⁴

³ See Cboe Options Rule 13.10(c).

⁴ The Exchange notes that its other affiliated exchanges, Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGX Exchange, Inc. ("EDGX"), and Cboe BYX Exchange, Inc.

Particularly, the proposed rule change incorporates the general authority of the CRO, Hearing Panel, and committee of the Board⁵ to determine and apply sanctions, consistent with Cboe Options and C2 Rule 13.11(a), into proposed Rule 8.11(a), which provides that Members and persons associated with Members shall (subject to any rule or order of the Securities and Exchange Commission) be appropriately disciplined by the CRO, Hearing Panel, or the committee of the Board, as applicable, for violations under these Rules by expulsion, suspension, limitation of activities, functions and operations, fine, censure, being suspended or barred from being associated with a Member, suspension or revocation of membership, or any other fitting sanction. This authority is already enumerated in Rule 8.1, however, the proposed provision provides consistency with the rules of the Exchange's affiliated options exchanges.⁶ As proposed in Rule 8.11(c), the Principal Considerations promote consistency and uniformity in the imposition of penalties, and should be considered in connection with the imposition of sanctions in all cases in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings. The Principal Considerations include the following:

("BYX"), also intend to incorporate these portions of Cboe Options and C2 Rule 13.11 into their Rule 8.11.

⁵ The Exchange notes that it maintains the inclusion of committee of the Board (along with the CRO and Hearing Panel) in connection with the imposition of sanctions throughout proposed Rules 8.11(a) and (c), which is currently a difference in text between Cboe Options and C2 Rule 13.11 and current Rule 8.11 and maintains consistency throughout current Rule 8.11.

⁶ The proposed change also amends the current language under Rule 8.11 to be provided in paragraph (b), with a heading that reads "Effective Date of Judgment", which is consistent with the corresponding heading in Cboe Options and C2 Rule 13.11. No changes are made to the current language. It also adds in the same header language for Rule 8.11 ("Judgment and Sanction") as that of Cboe Options and C2 Rule 13.11.

(1) Disciplinary sanctions are remedial in nature. The CRO, Hearing Panel or committee of the Board⁷, as applicable, should design sanctions to prevent and deter future misconduct by wrongdoers, to discourage others from engaging in similar misconduct, and to improve overall business standards of Exchange Members.

Pursuant to this Rule 8.11, the CRO, Hearing Panel or committee of the Board, as applicable, may impose sanctions including expulsion, suspension, limitation of activities, fine, censure, suspension or revocation of one or more Members, or any other fitting sanction.

(2) An important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on recidivists. The CRO, Hearing Panel or committee of the Board, as applicable, should consider a party's relevant disciplinary history in determining sanctions.

(3) The CRO, Hearing Panel or committee of the Board, as applicable, should consider prior similar disciplinary decisions (relevant precedent) in determining an appropriate sanction and may consider relevant precedent from other self-regulatory organizations.

(4) The CRO, Hearing Panel or committee of the Board, as applicable, should tailor sanctions to address the misconduct at issue. The CRO, Hearing Panel or committee of the Board, as applicable, should impose sanctions tailored to the misconduct at issue. For example, the CRO, Hearing Panel or committee of the Board, as

⁷ See supra note 5. The committee of the Board would, thus, also apply the Principal Considerations to any determinations made during a review related to sanctions.

applicable, may require a Member⁸ to, among other things: retain a qualified independent consultant to improve future compliance with regulatory requirements; disclose disciplinary history to new and/or existing clients; implement heightened supervision of certain employees; or requalify by examination in any or all registered capacities.

(5) Aggregation of violations may be appropriate in certain instances for purposes of determining sanctions. The CRO, Hearing Panel or committee of the Board, as applicable, may aggregate individual violations of particular rules and treat such violations as a single offense for purposes of determining sanctions. Aggregation may be appropriate when the Exchange utilizes a comprehensive surveillance program in the detection of potential rules violations. Aggregation may also be appropriate where the Exchange has reviewed activity over an extensive time period during the course of an investigation of matters disclosed either through a routine examination of the Member or as the result of a complaint. Similarly, where no exceptional circumstances are present, the Exchange may impose a fine based upon a determination that there exists a pattern or practice of violative conduct. The Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected.

⁸ The Exchange notes that, to the extent Cboe Options and C2 Rule 13.11.01 state “TPH and TPH organization”, the Exchange uses the term “Member”, which, pursuant to its definition in Rule 1.5(n), covers the same scope of exchange membership as the aforementioned language in Cboe Options and C2 Rule 13.11.01.

(6) The CRO, Hearing Panel or committee of the Board, as applicable, should evaluate appropriateness of disgorgement and/or restitution. The CRO, Hearing Panel or committee of the Board, as applicable, should evaluate the appropriateness of disgorgement and/or restitution in those cases where the amount of harm is quantifiable and the harmed party is identifiable.

(7) The CRO, Hearing Panel or committee of the Board, as applicable, should consider contributions or settlements by a respondent or any related Member to the harmed party as it relates to the conduct that is the subject of the disciplinary matter.

(8) The CRO, Hearing Panel or committee of the Board, as applicable, may consider a party's inability to pay in connection with the imposition of monetary sanctions.

The Exchange notes that the CRO, Hearing Panel or committee of the Board, as applicable, already consider the above proposed Principal Considerations when determining appropriate remedial sanctions throughout the resolution of disciplinary matters. However, the Exchange now proposes to codify such considerations in order to ensure that the CRO, Hearing Panel or committee of the Board, as applicable, consider aggravating and/or mitigating factors in the same manner across each disciplinary matter which will, in turn, provide for consistency, fairness and that the most appropriate disciplinary measure is implemented during proceedings.

The Exchange intends to announce the operative date of the updates to Rules 8.8, 8.10, and 8.11 at least 30 days in advance via a regulatory notice. To facilitate an orderly transition from the current rules to the proposed rules, the Exchange proposes to apply the current rules to all matters where a subject has received notice pursuant to Rule 8.2(d) prior to the operative date. As a consequence of this transition process, the Exchange will retain

the existing processes during the transition period until such time that there are no longer any matters proceeding under the current rules. To facilitate this transition process, the Exchange will retain a transitional Chapter 8 that will contain the Exchange's rules, as they are at the time this proposal is filed with the Commission. This transitional Chapter 8 will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete and there are no longer any Members or associated persons subject to current Chapter 8, the Exchange will remove the transitional Chapter 8 from its public rules website.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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. Additionally, the Exchange believes the proposed rule change is consistent with

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

the Section 6(b)(5)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule changes are designed to be consistent with the corresponding rules of its affiliated exchanges,¹² which have been previously filed with the Commission. The Exchange believes that by providing consistent disciplinary rules across the affiliated exchanges the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system by increasing the understanding of the Exchange's disciplinary process for Members that participate across the affiliated exchanges, as well as result in greater uniformity, and less burdensome and more efficient regulatory processes. Moreover, the Exchange believes that removing an unnecessary waiting period in the disciplinary process, as well as a review provision that is not used, would serve to expedite the outcome of a matter or the progression of a matter through the next steps in the process, thereby protecting investors and the public interest by conserving Exchange and Member resources. The proposed rule change to remove the waiting period before an offer of settlement becomes final and the Board's initiative to review such will provide for a more efficient, streamlined disciplinary process as a matter would then be either immediately closed or continued to the next steps of the proceedings upon the CRO's acceptance or rejection, respectively, of an offer of settlement. Additionally, and as stated above, the CRO's regulatory decision-making responsibilities are entirely separate from those responsible for the Exchange's business interests, therefore, allowing the CRO to

¹¹ Id.

¹² See supra note 1.

accept or reject offers of settlement with finality will significantly expedite the settlement process while ensuring that the independence and integrity of the regulatory process is maintained. In light of these proposed changes, the Exchange notes that the proposed addition of the Principal Considerations will ensure that the CRO determines each offer of settlement using the same set of fair standards and factors, thereby protecting investors and the public interest throughout the disciplinary process.

In addition to this, the Exchange also believes that the proposed rule is consistent with Section 6(b)(6) of the Act,¹³ which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction, as well as Section 6(b)(7) of the Act,¹⁴ in that it provides fair procedures for the disciplining of Members and persons associated with Members, the denial of Member status to any person seeking Membership therein, the barring of any person from becoming associated with a Member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a Member thereof. Specifically, the proposed rule change to incorporate Principal Considerations that the CRO, Hearing Panel or committee of the Board, as applicable, may take into consideration when determining disciplinary sanctions will ensure that the Exchange implements the most appropriate disciplinary mechanisms for violations and a fair process in determining such.

¹³ 15 U.S.C. 78f(b)(6).

¹⁴ 15 U.S.C. 78f(b)(6).

Finally, the Exchange believes that its proposed transition plan would allow for a more orderly and less burdensome transition for the Exchange's Members. The proposed application of current rules to all matters where a subject has received notice pursuant to Rule 8.2(d) prior to the operative date provides a clear demarcation between matters that would proceed under the new rules and those that would be completed under the current rules.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are not intended to address competitive issues, but rather, are concerned with facilitating less burdensome regulatory compliance and processes and enhancing the quality of the regulatory processes. The Exchange believes the proposed rule changes would reduce the burdens within the disciplinary process, as well as move matters through the process expeditiously by providing for more efficient finality of offers of settlement, to the benefit of all Members. Moreover, the proposed Principal Considerations will apply to all remedial sanctions throughout the disciplinary process in the same manner, thereby equally benefitting all Members by providing for fair and consistent disciplinary determinations. Additionally, the proposed rule changes are consistent with the rules of the Exchange's affiliates, Cboe Options and C2, which have been previously filed with the Commission.¹⁵

¹⁵ See Cboe Options Rules 13.8, 13.10(c), 13.11(a), and 13.11.01.

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

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act¹⁶ and Rule 19b-4(f)(6)¹⁷ thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange does not believe that the proposed rule changes would significantly affect the protection of investors and the public interest because they are consistent with

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

the corresponding rules of its affiliated exchanges,¹⁸ which have been previously filed with the Commission. By providing consistencies across the disciplinary rules of the affiliated exchanges, the Exchange believes the proposed rule changes would benefit investors and the public interest by increasing the understanding of the disciplinary process across the affiliated exchanges and facilitate more uniform, less burdensome and more efficient regulatory processes. The proposed rule changes would also benefit investors and the public interest by removing an unnecessary waiting period and an unused review clause in the disciplinary process, and, as a result, expediting the outcome or procedural progress of disciplinary matters and conserving Exchange and Member resources. In this way, the proposed rule change would also benefit investors and the public interest because a matter could be either immediately closed or continued to the next steps of the proceedings upon the CRO's acceptance or rejection, respectively, of an offer of settlement. Moreover, the proposed change would not significantly affect the protection of investors and the public interest because the CRO's regulatory decision-making responsibilities are entirely separate from those responsible for the Exchange's business interests, therefore, the CRO will be able to accept or reject offers of settlement with finality while ensuring that the independence and integrity of the regulatory process is maintained, and the proposed addition of the Principal Considerations will ensure that the CRO determines each offer of settlement using the same set of fair standards and factors. Overall, the proposed rule change will ensure that the Exchange implements the most appropriate disciplinary mechanisms for violations and a fair process in determining such.

¹⁸See supra note 1.

The Exchange does not believe that the proposed rule changes would impose any significant burden on competition as the proposed rule change is not intended to address competitive issues, but rather, are concerned with facilitating less burdensome regulatory compliance and processes and enhancing the quality of the regulatory processes. As stated, the proposed rule changes are consistent with the rules of the Exchange's affiliated options exchanges, which have been previously filed with the Commission.¹⁹

For the foregoing reasons, this rule filing qualifies as a "non-controversial" rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

(c) Not applicable.

(d) Not applicable.

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

The proposed rule change is substantively the same as Rules 13.8 and 13.11 (a) and 13.11.01 of Cboe Options and C2. The Exchange notes that the proposed removal of Rule 8.8 offers of settlement from the list of certain procedural decisions in Rule 8.10 that may be reviewed by the Board is consistent with the list of disciplinary rules that the Board may review pursuant to Cboe Options and C2 Rules 13.10(c). Additionally, the Exchange

¹⁹ See id.

notes that it retains the inclusion of committee of the Board (along with the CRO and Hearing Panel) in current Rule 8.11, and throughout proposed Rules 8.11(a) and (c), in connection with the imposition of sanctions, which is currently a difference in text between Cboe Options and C2 Rule 13.11,²⁰ and, to the extent that Cboe Options and C2 Rule 13.11.01 uses the term “TPH and TPH organization”, the Exchange uses the term “Member”, which, pursuant to its definition in Rule 1.5(n), covers the same scope of exchange membership as the aforementioned language in Cboe Options and C2 Rule 13.11.01

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

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

Exhibit 5. Proposed rule text.

²⁰ See supra note 5.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBYX-2020-015]

[Insert date]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend Certain Rules in Connection with the Exchange's Disciplinary Process

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") proposes to amend certain rules in connection with the Exchange's disciplinary process. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 8.8 in connection with the timing before which an offer of settlement becomes final, to amend Rule 8.10 in connection with the Board's review of offers of settlement, and to amend Rule 8.11 to be consistent with the corresponding rules of the Exchange's affiliated exchanges, Cboe Exchange, Inc. ("Cboe Options") and Cboe C2 Exchange, Inc. ("C2").⁵

First, the Exchange proposes to amend Rule 8.8 which governs offers of settlement during a disciplinary proceeding pursuant to Chapter 8 (Discipline). Specifically, it proposes to amend the timing for which the Chief Regulatory Officer's ("CRO") decision regarding an offer shall become final pursuant to Rule 8.8(a). Rule 8.8(a) currently provides that a Respondent may submit to the CRO a written offer of settlement, and the CRO may accept

⁵ See Cboe Options Rule 13.11. The Exchange notes that C2 incorporates Cboe Options Disciplinary rules by reference.

an offer of settlement, and, in doing so, issues a decision, including findings and conclusions and imposing a penalty, consistent with the terms of such offer. Pursuant to Rule 8.8(a), the CRO may also reject an offer of settlement and the matter then proceeds as if such offer had not been made. According to Rule 8.8(a), a decision of the CRO issued upon acceptance of an offer of settlement as well as the determination of the CRO whether to accept or reject such an offer does not currently become final until 20 business days after such decision is issued, and the Respondent may not seek review thereof.

The Exchange proposes to eliminate the 20-business day timeframe before which the CRO's determination and decision in connection with an offer of settlement becomes final. This is consistent with the corresponding offer of settlement rules of the Exchange's affiliated exchanges, Cboe Options and C2,⁶ which do not have any such waiting period before which the CRO's acceptance (and accompanying decision) or rejection of an offer of settlement becomes final. In addition to providing consistency between the rules of the affiliated exchanges, the proposed rule change also removes a process that unnecessarily prolongs disciplinary proceedings. Where a matter could be either immediately closed or continued to the next steps of the proceedings upon the CRO's acceptance or rejection, respectively, of an offer of settlement, the current process unnecessarily leaves a matter open.

Second, and in line with the proposed rule change to Rule 8.8, the Exchange also proposes to remove Rule 8.8 offers of settlement from the list of certain procedural decisions in Rule 8.10 that may be reviewed by the Board on its own initiative within 20 business days after the issuance of the decision. This is also consistent with the

⁶ See Cboe Options Rule 13.8(a). The Exchange notes that C2 incorporates Cboe Options Disciplinary rules by reference.

corresponding disciplinary review rules of Cboe Options and C2, which do not include offers of settlement as decisions that the Board may review on its own initiative.⁷ The Exchange notes that the Board has not previously initiated a review of an offer of settlement. Therefore, the Exchange believes maintaining a 20-business day waiting period for a review that is not invoked is unnecessary and merely exhausts additional Exchange and Member resources in the time that a matter could have been resolved or have continued through proceedings. Allowing the CRO to accept or reject offers of settlement with finality will significantly expedite the settlement process while ensuring that the independence and integrity of the regulatory process is maintained, as the CRO's regulatory decision-making responsibilities are entirely separate from those responsible for the Exchange's business interests.

Finally, the Exchange proposes to amend Rule 8.11 to incorporate the Principal Considerations in Determining Sanctions ("Principal Considerations") into proposed Rule 8.11(c), which are currently in corresponding Rule 13.11.01 of Cboe Options and C2, and the general provision regarding sanctions into proposed Rule 8.11(a), which are currently in corresponding Rule 13.11(a) of Cboe Options and C2, in order to promote consistency and uniformity across the affiliated exchanges in determining appropriate remedial sanctions.⁸ Particularly, the proposed rule change incorporates the general authority of the CRO, Hearing Panel, and committee of the Board⁹ to determine and apply sanctions, consistent

⁷ See Cboe Options Rule 13.10(c).

⁸ The Exchange notes that its other affiliated exchanges, Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGX Exchange, Inc. ("EDGX"), and Cboe BYX Exchange, Inc. ("BYX"), also intend to incorporate these portions of Cboe Options and C2 Rule 13.11 into their Rule 8.11.

⁹ The Exchange notes that it maintains the inclusion of committee of the Board (along with the CRO and Hearing Panel) in connection with the imposition of

with Cboe Options and C2 Rule 13.11(a), into proposed Rule 8.11(a), which provides that Members and persons associated with Members shall (subject to any rule or order of the Securities and Exchange Commission) be appropriately disciplined by the CRO, Hearing Panel, or the committee of the Board, as applicable, for violations under these Rules by expulsion, suspension, limitation of activities, functions and operations, fine, censure, being suspended or barred from being associated with a Member, suspension or revocation of membership, or any other fitting sanction. This authority is already enumerated in Rule 8.1, however, the proposed provision provides consistency with the rules of the Exchange's affiliated options exchanges.¹⁰ As proposed in Rule 8.11(c), the Principal Considerations promote consistency and uniformity in the imposition of penalties, and should be considered in connection with the imposition of sanctions in all cases in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings. The Principal Considerations include the following:

(1) Disciplinary sanctions are remedial in nature. The CRO, Hearing Panel or committee of the Board¹¹, as applicable, should design sanctions to prevent and

sanctions throughout proposed Rules 8.11(a) and (c), which is currently a difference in text between Cboe Options and C2 Rule 13.11 and current Rule 8.11 and maintains consistency throughout current Rule 8.11.

¹⁰ The proposed change also amends the current language under Rule 8.11 to be provided in paragraph (b), with a heading that reads "Effective Date of Judgment", which is consistent with the corresponding heading in Cboe Options and C2 Rule 13.11. No changes are made to the current language. It also adds in the same header language for Rule 8.11 ("Judgment and Sanction") as that of Cboe Options and C2 Rule 13.11.

¹¹ See supra note 9. The committee of the Board would, thus, also apply the Principal Considerations to any determinations made during a review related to sanctions.

deter future misconduct by wrongdoers, to discourage others from engaging in similar misconduct, and to improve overall business standards of Exchange Members. Pursuant to this Rule 8.11, the CRO, Hearing Panel or committee of the Board, as applicable, may impose sanctions including expulsion, suspension, limitation of activities, fine, censure, suspension or revocation of one or more Members, or any other fitting sanction.

(2) An important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on recidivists. The CRO, Hearing Panel or committee of the Board, as applicable, should consider a party's relevant disciplinary history in determining sanctions.

(3) The CRO, Hearing Panel or committee of the Board, as applicable, should consider prior similar disciplinary decisions (relevant precedent) in determining an appropriate sanction and may consider relevant precedent from other self-regulatory organizations.

(4) The CRO, Hearing Panel or committee of the Board, as applicable, should tailor sanctions to address the misconduct at issue. The CRO, Hearing Panel or committee of the Board, as applicable, should impose sanctions tailored to the misconduct at issue. For example, the CRO, Hearing Panel or committee of the Board, as applicable, may require a Member¹² to, among other things: retain a qualified independent consultant to improve future compliance with regulatory requirements;

¹² The Exchange notes that, to the extent Cboe Options and C2 Rule 13.11.01 state "TPH and TPH organization", the Exchange uses the term "Member", which, pursuant to its definition in Rule 1.5(n), covers the same scope of exchange membership as the aforementioned language in Cboe Options and C2 Rule 13.11.01.

disclose disciplinary history to new and/or existing clients; implement heightened supervision of certain employees; or requalify by examination in any or all registered capacities.

(5) Aggregation of violations may be appropriate in certain instances for purposes of determining sanctions. The CRO, Hearing Panel or committee of the Board, as applicable, may aggregate individual violations of particular rules and treat such violations as a single offense for purposes of determining sanctions. Aggregation may be appropriate when the Exchange utilizes a comprehensive surveillance program in the detection of potential rules violations. Aggregation may also be appropriate where the Exchange has reviewed activity over an extensive time period during the course of an investigation of matters disclosed either through a routine examination of the Member or as the result of a complaint. Similarly, where no exceptional circumstances are present, the Exchange may impose a fine based upon a determination that there exists a pattern or practice of violative conduct. The Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected.

(6) The CRO, Hearing Panel or committee of the Board, as applicable, should evaluate appropriateness of disgorgement and/or restitution. The CRO, Hearing Panel or committee of the Board, as applicable, should evaluate the appropriateness of disgorgement and/or restitution in those cases where the amount of harm is quantifiable and the harmed party is identifiable.

(7) The CRO, Hearing Panel or committee of the Board, as applicable, should consider contributions or settlements by a respondent or any related Member to the harmed party as it relates to the conduct that is the subject of the disciplinary matter.

(8) The CRO, Hearing Panel or committee of the Board, as applicable, may consider a party's inability to pay in connection with the imposition of monetary sanctions.

The Exchange notes that the CRO, Hearing Panel or committee of the Board, as applicable, already consider the above proposed Principal Considerations when determining appropriate remedial sanctions throughout the resolution of disciplinary matters. However, the Exchange now proposes to codify such considerations in order to ensure that the CRO, Hearing Panel or committee of the Board, as applicable, consider aggravating and/or mitigating factors in the same manner across each disciplinary matter which will, in turn, provide for consistency, fairness and that the most appropriate disciplinary measure is implemented during proceedings.

The Exchange intends to announce the operative date of the updates to Rules 8.8, 8.10, and 8.11 at least 30 days in advance via a regulatory notice. To facilitate an orderly transition from the current rules to the proposed rules, the Exchange proposes to apply the current rules to all matters where a subject has received notice pursuant to Rule 8.2(d) prior to the operative date. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any matters proceeding under the current rules. To facilitate this transition process, the Exchange will retain a transitional Chapter 8 that will contain the Exchange's rules, as they are at the time this proposal is filed with the Commission. This transitional Chapter 8 will apply only to matters initiated prior to the operational date of the changes proposed

herein and it will be posted to the Exchange's public rules website. When the transition is complete and there are no longer any Members or associated persons subject to current Chapter 8, the Exchange will remove the transitional Chapter 8 from its public rules website.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹³

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule changes are designed to be consistent with the corresponding rules of its affiliated exchanges,¹⁶ which have been previously filed with

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ Id.

¹⁶ See supra note 5.

the Commission. The Exchange believes that by providing consistent disciplinary rules across the affiliated exchanges the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system by increasing the understanding of the Exchange's disciplinary process for Members that participate across the affiliated exchanges, as well as result in greater uniformity, and less burdensome and more efficient regulatory processes.

Moreover, the Exchange believes that removing an unnecessary waiting period in the disciplinary process, as well as a review provision that is not used, would serve to expedite the outcome of a matter or the progression of a matter through the next steps in the process, thereby protecting investors and the public interest by conserving Exchange and Member resources. The proposed rule change to remove the waiting period before an offer of settlement becomes final and the Board's initiative to review such will provide for a more efficient, streamlined disciplinary process as a matter would then be either immediately closed or continued to the next steps of the proceedings upon the CRO's acceptance or rejection, respectively, of an offer of settlement. Additionally, and as stated above, the CRO's regulatory decision-making responsibilities are entirely separate from those responsible for the Exchange's business interests, therefore, allowing the CRO to accept or reject offers of settlement with finality will significantly expedite the settlement process while ensuring that the independence and integrity of the regulatory process is maintained. In light of these proposed changes, the Exchange notes that the proposed addition of the Principal Considerations will ensure that the CRO determines each offer

of settlement using the same set of fair standards and factors, thereby protecting investors and the public interest throughout the disciplinary process.

In addition to this, the Exchange also believes that the proposed rule is consistent with Section 6(b)(6) of the Act,¹⁷ which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction, as well as Section 6(b)(7) of the Act,¹⁸ in that it provides fair procedures for the disciplining of Members and persons associated with Members, the denial of Member status to any person seeking Membership therein, the barring of any person from becoming associated with a Member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a Member thereof. Specifically, the proposed rule change to incorporate Principal Considerations that the CRO, Hearing Panel or committee of the Board, as applicable, may take into consideration when determining disciplinary sanctions will ensure that the Exchange implements the most appropriate disciplinary mechanisms for violations and a fair process in determining such.

Finally, the Exchange believes that its proposed transition plan would allow for a more orderly and less burdensome transition for the Exchange's Members. The proposed application of current rules to all matters where a subject has received notice pursuant to Rule 8.2(d) prior to the operative date provides a clear demarcation between matters that

¹⁷ 15 U.S.C. 78f(b)(6).

¹⁸ 15 U.S.C. 78f(b)(6).

would proceed under the new rules and those that would be completed under the current rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are not intended to address competitive issues, but rather, are concerned with facilitating less burdensome regulatory compliance and processes and enhancing the quality of the regulatory processes. The Exchange believes the proposed rule changes would reduce the burdens within the disciplinary process, as well as move matters through the process expeditiously by providing for more efficient finality of offers of settlement, to the benefit of all Members. Moreover, the proposed Principal Considerations will apply to all remedial sanctions throughout the disciplinary process in the same manner, thereby equally benefitting all Members by providing for fair and consistent disciplinary determinations. Additionally, the proposed rule changes are consistent with the rules of the Exchange's affiliates, Cboe Options and C2, which have been previously filed with the Commission.¹⁹

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

¹⁹ See Cboe Options Rules 13.8, 13.10(c), 13.11(a), and 13.11.01.

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6)²¹ 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. Please include File Number SR-CboeBYX-2020-015 on the subject line.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

Paper comments:

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

All submissions should refer to File Number SR-CboeBYX-2020-015. 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-2020-015 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

²² 17 CFR 200.30-3(a)(12).

Secretary

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Rules of Cboe BYX Exchange, Inc.

* * * * *

Rule 8.8. Offers of Settlement

(a) Submission of Offer

At any time during the course of any proceeding under this Chapter, the Respondent may submit to the CRO a written offer of settlement which shall contain a proposed stipulation of facts and shall consent to a specified penalty. Where the CRO accepts an offer of settlement, he or she shall issue a decision, including findings and conclusions and imposing a penalty, consistent with the terms of such offer. Where the CRO rejects an offer of settlement, he or she shall notify the Respondent and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become part of the record. A decision of the CRO issued upon acceptance of an offer of settlement as well as the determination of the CRO whether to accept or reject such an offer shall be[come] final[20 business days after such decision is issued], and the Respondent may not seek review thereof.

* * * * *

Rule 8.10. Review

(a)-(b) No change.

(c) Review on Motion of Board

The Board may on its own initiative order review of a decision made pursuant to Rule 8.7[, 8.8,] or 8.9 of this Chapter within 20 business days after issuance of the decision. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule.

* * * * *

Rule 8.11. [Effective Date of] Judgment and Sanction

(a) Sanctions. Members and persons associated with Members shall (subject to any rule or order of the Securities and Exchange Commission) be appropriately disciplined by the CRO, Hearing Panel or committee of the Board, as applicable, for violations under these Rules by expulsion, suspension, limitation of activities, functions and operations, fine, censure, being suspended or barred from

being associated with a Member, suspension or revocation of membership, or any other fitting sanction.

(b) *Effective Date of Judgment.* Penalties imposed under this Chapter shall not become effective until the review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing a penalty on the Respondent, the CRO, Hearing Panel or committee of the Board, as applicable, may impose such conditions and restrictions on the activities of the Respondent as he, she or it considers reasonably necessary for the protection of investors, creditors and the Exchange.

(c) *Principal Considerations In Determining Sanctions.* To promote consistency and uniformity in the imposition of penalties, the following Principal Considerations in Determining Sanctions should be considered in connection with the imposition of sanctions in all cases in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings.

(1) Disciplinary sanctions are remedial in nature. The CRO, Hearing Panel or committee of the Board, as applicable, should design sanctions to prevent and deter future misconduct by wrongdoers, to discourage others from engaging in similar misconduct, and to improve overall business standards of Exchange Members. Pursuant to Rule 8.11, the CRO, Hearing Panel or committee of the Board, as applicable, may impose sanctions including expulsion, suspension, limitation of activities, fine, censure, suspension or revocation of one or more Members, or any other fitting sanction.

(2) An important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on recidivists. The CRO, Hearing Panel or committee of the Board, as applicable, should consider a party's relevant disciplinary history in determining sanctions.

(3) The CRO, Hearing Panel or committee of the Board, as applicable, should consider prior similar disciplinary decisions (relevant precedent) in determining an appropriate sanction and may consider relevant precedent from other self-regulatory organizations.

(4) The CRO, Hearing Panel or committee of the Board, as applicable, should tailor sanctions to address the misconduct at issue. The CRO, Hearing Panel or committee of the Board, as applicable, should impose sanctions tailored to the misconduct at issue. For example, the CRO, Hearing Panel or committee of the Board, as applicable, may require a Member to, among other things: retain a qualified independent consultant to improve future compliance with regulatory requirements; disclose disciplinary history to new and/or existing clients; implement heightened supervision of certain employees; or requalify by examination in any or all registered capacities.

(5) Aggregation of violations may be appropriate in certain instances for purposes of determining sanctions. The CRO, Hearing Panel or committee of the Board, as applicable, may aggregate individual violations of particular rules and treat such violations as a single offense for purposes of determining sanctions. Aggregation may be appropriate when the

Exchange utilizes a comprehensive surveillance program in the detection of potential rules violations. Aggregation may also be appropriate where the Exchange has reviewed activity over an extensive time period during the course of an investigation of matters disclosed either through a routine examination of the Member or as the result of a complaint. Similarly, where no exceptional circumstances are present, the Exchange may impose a fine based upon a determination that there exists a pattern or practice of violative conduct. The Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected.

(6) The CRO, Hearing Panel or committee of the Board, as applicable, should evaluate appropriateness of disgorgement and/or restitution. The CRO, Hearing Panel or committee of the Board, as applicable, should evaluate the appropriateness of disgorgement and/or restitution in those cases where the amount of harm is quantifiable and the harmed party is identifiable.

(7) The CRO, Hearing Panel or committee of the Board, as applicable, should consider contributions or settlements by a respondent or any related Member to the harmed party as it relates to the conduct that is the subject of the disciplinary matter.

(8) The CRO, Hearing Panel or committee of the Board, as applicable, may consider a party's inability to pay in connection with the imposition of monetary sanctions.

* * * * *