

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 27

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

File No. * SR 2021 - * 018

Amendment No. (req. for Amendments *)

Filing by Cboe BYX Exchange, Inc.

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

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

The Exchange proposes to amend its Fee Schedule.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Corinne Last Name * Klott

Title * Assistant General Counsel

E-mail * cklott@cboe.com

Telephone * (312) 786-7793 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Cboe BYX Exchange, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 09/01/2021

(Title *)

By Kyle Murray

VP, Associate General Counsel

(Name *)

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

Kyle Murray Date: 2021.09.01 09:55:27 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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21-018 (BYX Fees - Sept) 19b-4.doc

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

Exhibit 1 - Notice of Proposed Rule Change *

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21-018 (BYX Fees - Sept) Exhibit 1.doc

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 Advanced 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 being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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

Add Remove View

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

21-018 (BYX Fees - Sept) Exhibit 5.doc

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.

Item 1. Text of the Proposed Rule Change

(a) Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) proposes to amend its Fee Schedule. 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 August 31, 2021.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Corinne Klott, (312) 786-7793, Cboe 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 its Fee Schedule to amend the criteria for Add Volume Tiers 1 through 4, effective September 1, 2021.

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 16 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, no

single registered equities exchange has more than 16% of the market share.¹ 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 \$0.00020 per share for orders that remove liquidity and assesses a fee of \$0.00200 per share for orders that add liquidity. For orders priced below \$1.00, the Exchange does not assess a fee or provide a rebate for orders that add liquidity and assesses a fee of 0.10% of total dollar value for orders that remove 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.

Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which

¹ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (August 30, 2021), available at https://markets.cboe.com/us/equities/market_statistics/.

provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For example, the Exchange currently offers various Add/Remove Volume Tiers under footnote 1 of the Fee Schedule, which offer various enhanced rebates and reduced fees for reaching certain, incrementally more challenging volume-based thresholds.

The Exchange proposes to amend the criteria for Add Volume Tiers 1 through 4 under footnote 1 of the Fee Schedule, which tiers currently provide Members an opportunity to qualify for reduced fees for orders yielding fee codes B², V³, and Y⁴ where a Member meets certain required volume-based criteria. Specifically, Add Volume Tiers 1 through 4 are as follows:

- Tier 1 provides a reduced fee of \$0.0017 per share to a Member that has an ADAV⁵ as a percentage of TCV⁶ greater than or equal to 0.25%.
- Tier 2 provides a reduced fee of \$0.0014 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.30%.
- Tier 3 provides a reduced fee of \$0.0013 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.45%.

² Orders yielding Fee Code B are displayed orders that add liquidity to BYX (Tape B) and are assessed a standard fee of \$0.00200.

³ Orders yielding Fee Code V are displayed orders that add liquidity to BYX (Tape A) and are assessed a standard fee of \$0.00200.

⁴ Orders and orders yielding Fee Code Y are displayed orders that add liquidity to BYX (Tape C) and are assessed a standard fee of \$0.00200.

⁵ “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

⁶ “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.

- Tier 4 provides a reduced fee of \$0.0012 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 1.00%.

Now, the Exchange proposes to modify these tiers to reduce the ADAV as a percentage of TCV thresholds. The proposed Add Volume Tiers are as follows:

- To meet the proposed criteria in Tier 1, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.20% (instead of 25%).
- To meet the proposed criteria in Tier 2, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.25% (instead of 30%).
- To meet the proposed criteria in Tier 3, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.30% (instead of 45%).
- To meet the proposed criteria in Tier 4, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.60% (instead of 1.00%).

The proposed changes to these tiers are designed to make each tier's criteria easier to reach by lowering the volume-based criteria (i.e., the ADAV as a percentage of TCV thresholds). The Exchange believes that by easing the tiers' criteria difficulty it will encourage those Members who could not previously achieve these Tiers to increase their order flow as a means to receive the Tiers' proffered fee reductions. The Exchange does not propose any changes to the corresponding reduced fee under each tier and notes that it believes the current rates remain commensurate with each tier's criteria, even as amended. The Exchange also believes the Add Volume Tiers, as amended, continue to provide liquidity providing Members on the Exchange additional opportunities to receive discounted rates. The Add Volume Tiers are designed to provide Members that submit displayed liquidity on the Exchange incentives to contribute to a deeper, more liquid

market, in turn, providing additional execution opportunities at transparent prices as a result of such increased, displayed liquidity. The Exchange believes that this benefits all Members by enhancing overall market quality and contributing towards a robust and well-balanced market ecosystem. The Exchange notes the modified tiers are available to all Members.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f.(b)(5).

fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect 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. Also, as described above, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹⁰ including the Exchange,¹¹ and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes the proposed changes to ease the volume-based criteria under Add Volume Tiers 1 through 4 is a reasonable means to encourage Members to increase their add liquidity on the Exchange. Further, the Exchange believes that the proposed changes are reasonable as the proposed criteria does not represent a significant departure from the criteria currently required of each tier. Additionally, the Exchange believes Add Volume Tiers 1 through 4 will continue to provide Members additional opportunities to meet criteria to receive a reduced fee, even as modified. The Exchange also believes that the proposed reduced fees under Add Volume Tiers 1

¹⁰ See e.g., Nasdaq BX, Equity 7 Pricing Schedule, Section 118.

¹¹ See BYX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

through 4, which are not being changed, continue to be commensurate with the new criteria.

As noted above, the Exchange believes the proposed changes incentivize Members to increase their overall add volume order flow, which may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes signals an increase in activity from other market participants. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

The Exchange believes that the proposed rule change represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members are eligible for the Add Volume Tiers and have the opportunity to meet the tiers' criteria and receive the corresponding reduced fees if such criteria, even as amended, is met. The Exchange notes that currently one Member is satisfying the current criteria under Add Volume Tier 2 and no Members are satisfying the current criteria under Add Volume Tiers 1, 3 or 4. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity. However, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under Add Volume Tier 3 and does not anticipate any firms immediately satisfying Add Volume Tiers 1, 2 or 4. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebate offered under other tiers. Should a

Member not meet the proposed new criteria, the Member will merely not receive the corresponding reduced fees.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further 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."

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 changes to Add Volume Tiers 1 through 4 applies to all Members equally in that all Members are eligible for these tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the reduced fee on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BYX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing

market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

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. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, 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.¹² Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹³ The fact that this market is competitive has also

¹² See supra note 1.

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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’”¹⁴ Accordingly, the Exchange does not believe its proposed fee changes imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 the Act¹⁵ and Rule 19b-4(f)(2)¹⁶ thereunder.

¹⁴ *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)).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (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 not based on a rule either of another self-regulatory organization or of the Commission.

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 2-4. Not applicable.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBYX-2021-018]

[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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) proposes 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/), 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 criteria for Add Volume Tiers 1 through 4, effective September 1, 2021.

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 16 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, no single registered equities exchange has more than 16% of the market share.³ 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

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (August 30, 2021), available at https://markets.cboe.com/us/equities/market_statistics/.

Exchange provides a standard rebate of \$0.00020 per share for orders that remove liquidity and assesses a fee of \$0.00200 per share for orders that add liquidity. For orders priced below \$1.00, the Exchange does not assess a fee or provide a rebate for orders that add liquidity and assesses a fee of 0.10% of total dollar value for orders that remove 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.

Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For example, the Exchange currently offers various Add/Remove Volume Tiers under footnote 1 of the Fee Schedule, which offer various enhanced rebates and reduced fees for reaching certain, incrementally more challenging volume-based thresholds.

The Exchange proposes to amend the criteria for Add Volume Tiers 1 through 4 under footnote 1 of the Fee Schedule, which tiers currently provide Members an opportunity to qualify for reduced fees for orders yielding fee codes B⁴, V⁵, and Y⁶

⁴ Orders yielding Fee Code B are displayed orders that add liquidity to BYX (Tape

where a Member meets certain required volume-based criteria. Specifically, Add Volume Tiers 1 through 4 are as follows:

- Tier 1 provides a reduced fee of \$0.0017 per share to a Member that has an ADAV⁷ as a percentage of TCV⁸ greater than or equal to 0.25%.
- Tier 2 provides a reduced fee of \$0.0014 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.30%.
- Tier 3 provides a reduced fee of \$0.0013 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.45%.
- Tier 4 provides a reduced fee of \$0.0012 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 1.00%.

Now, the Exchange proposes to modify these tiers to reduce the ADAV as a percentage of TCV thresholds. The proposed Add Volume Tiers are as follows:

- To meet the proposed criteria in Tier 1, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.20% (instead of 25%).
- To meet the proposed criteria in Tier 2, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.25% (instead of 30%).

B) and are assessed a standard fee of \$0.00200.

⁵ Orders yielding Fee Code V are displayed orders that add liquidity to BYX (Tape A) and are assessed a standard fee of \$0.00200.

⁶ Orders and orders yielding Fee Code Y are displayed orders that add liquidity to BYX (Tape C) and are assessed a standard fee of \$0.00200.

⁷ “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

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

- To meet the proposed criteria in Tier 3, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.30% (instead of 45%).
- To meet the proposed criteria in Tier 4, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.60% (instead of 1.00%).

The proposed changes to these tiers are designed to make each tier's criteria easier to reach by lowering the volume-based criteria (i.e., the ADAV as a percentage of TCV thresholds). The Exchange believes that by easing the tiers' criteria difficulty it will encourage those Members who could not previously achieve these Tiers to increase their order flow as a means to receive the Tiers' proffered fee reductions. The Exchange does not propose any changes to the corresponding reduced fee under each tier and notes that it believes the current rates remain commensurate with each tier's criteria, even as amended. The Exchange also believes the Add Volume Tiers, as amended, continue to provide liquidity providing Members on the Exchange additional opportunities to receive discounted rates. The Add Volume Tiers are designed to provide Members that submit displayed liquidity on the Exchange incentives to contribute to a deeper, more liquid market, in turn, providing additional execution opportunities at transparent prices as a result of such increased, displayed liquidity. The Exchange believes that this benefits all Members by enhancing overall market quality and contributing towards a robust and well-balanced market ecosystem. The Exchange notes the modified tiers are available to all Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, 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 changes reflect 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. Also, as described above, the Exchange notes that relative volume-based incentives and discounts have been

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f.(b)(5).

widely adopted by exchanges,¹² including the Exchange,¹³ and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes the proposed changes to ease the volume-based criteria under Add Volume Tiers 1 through 4 is a reasonable means to encourage Members to increase their add liquidity on the Exchange. Further, the Exchange believes that the proposed changes are reasonable as the proposed criteria does not represent a significant departure from the criteria currently required of each tier. Additionally, the Exchange believes Add Volume Tiers 1 through 4 will continue to provide Members additional opportunities to meet criteria to receive a reduced fee, even as modified. The Exchange also believes that the proposed reduced fees under Add Volume Tiers 1 through 4, which are not being changed, continue to be commensurate with the new criteria.

As noted above, the Exchange believes the proposed changes incentivize Members to increase their overall add volume order flow, which may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes signals an increase in activity from other market participants. This overall

¹² See e.g., Nasdaq BX, Equity 7 Pricing Schedule, Section 118.

¹³ See BYX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

The Exchange believes that the proposed rule change represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members are eligible for the Add Volume Tiers and have the opportunity to meet the tiers' criteria and receive the corresponding reduced fees if such criteria, even as amended, is met. The Exchange notes that currently one Member is satisfying the current criteria under Add Volume Tier 2 and no Members are satisfying the current criteria under Add Volume Tiers 1, 3 or 4. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity. However, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under Add Volume Tier 3 and does not anticipate any firms immediately satisfying Add Volume Tiers 1, 2 or 4. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebate offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive the corresponding reduced fees.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as

well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further 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."

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 changes to Add Volume Tiers 1 through 4 applies to all Members equally in that all Members are eligible for these tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the reduced fee on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BYX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

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. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges.

Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, 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.¹⁴ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁵ 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

¹⁴ See supra note 3.

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

from broker dealers'".¹⁶ Accordingly, the Exchange does not believe its proposed fee changes 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 neither solicited nor received comments on the proposed rule change.

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 Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ 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:

¹⁶ 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)).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

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-2021-018 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CboeBYX-2021-018. 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-2021-018 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.¹⁹

Secretary

¹⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Cboe U.S. Equities Fee Schedules

BYX Equities

Effective [August 31]September 1, 2021

* * * * *

Footnotes:

¹ Add/Remove Volume Tiers

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

| Tier | Fee Per Share to Add | Required Criteria |
|-------------|-----------------------------|--|
| Tier 1 | \$0.0017 | Member has an ADAV \geq 0.2[5] <u>0</u> % of the TCV |
| Tier 2 | \$0.0014 | Member has an ADAV \geq 0.[30] <u>25</u> % of the TCV |
| Tier 3 | \$0.0013 | Member has an ADAV \geq 0.[45] <u>30</u> % of the TCV |
| Tier 4 | \$0.0012 | Member has an ADAV \geq [1] <u>0</u> . <u>0</u> <u>60</u> % of the TCV |
| Tier 5 | \$0.0012 | MPID has an ADAV \geq 0.55% of the TCV |

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