



SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-97842; File No. SR-CboeBYX-2023-009)

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

July 6, 2023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 22, 2023, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) filed with the Securities and Exchange Commission (“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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 applicable to its equities trading platform (“BYX Equities”) by amending the definition of the Russell Reconstitution Day. The Exchange proposes to implement these changes effective June 22, 2023.

The “definitions” section of the Exchange’s Fee Schedule defines various terms used throughout the Fee Schedule. As explained under the definitions of ADAV, ADV, and TCV,³ the Exchange currently excludes the Russell Reconstitution Day from the calculation of ADAV, ADV, and TCV, each of which are calculated on a monthly basis.⁴ The Russell Reconstitution Day is defined in the Fee Schedule as “the last Friday in June.”⁵ While generally the Russell Reconstitution Day does occur on the last Friday in June, in months where there are five Fridays in June the Russell Reconstitution Day instead falls on the fourth Friday in June. The Exchange proposes to amend the definition of Russell Reconstitution Day to “the fourth Friday in June”⁶ in order to provide a more accurate description of the date which will not be included in the calculation of ADAV, ADV, and TCV to its Members.⁷ The Exchange is not proposing to make

³ “ADAV” means average daily added volume calculated as the number of shares added per day and “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. “TCV” means total consolidated volume 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.

⁴ The Russell Reconstitution Day is generally characterized by high trading volumes, much of which are derived from market participants who are not generally as active entering the market to rebalance their holdings in-line with the annual rebalancing of the Russell indices. The Exchange, along with other competing exchanges, excludes the Russell Reconstitution Day from certain volume calculations as the high trading volumes can significantly impact trading and quoting calculations.

⁵ See BYX Equities Fee Schedule, Definitions.

⁶ See Russell U.S. Equity Indices Construction and Methodology, available at <https://research.ftserussell.com/products/downloads/Russell-US-indexes.pdf> (last accessed June 21, 2023).

⁷ See Rule 1.5(n) (“Member”). The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

any other changes to the Definitions in its Fee Schedule and will announce the change via a Trade Desk notice to Members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)¹¹ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes its proposal to amend the definition of the “Russell Reconstitution Day” is not designed to permit unfair discrimination between customer, issuers, brokers, or dealers and is designed to provide for the equitable allocation of fees. Specifically, the proposal is intended only to add clarity to the Exchange’s Fee Schedule by providing Members with additional certainty as to their level of rebates and costs for trading during the month of June and involves no substantive change. Additionally, the proposed change promotes

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Id.

¹¹ 15 U.S.C. 78f(b)(4)

just and equitable principles of trade and is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system as it provides transparency to Members regarding which date in the month of June will not be included in the calculation of ADAV, ADV, and TCV.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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 changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to revise the definition of "Russell Reconstitution Day" will have any impact on competition as the change is only intended to add clarity to the Exchange's Fee Schedule and involves no substantive change.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. By providing Members with a greater level of certainty as to which date in the month of June will be excluded

from the calculation of ADAV, ADV, and TCV, the Exchange is providing additional certainty as to the level of rebates and costs for trading during the month of the Russell reconstitution, which could promote competition between the Exchange and other execution venues.

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

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

The Exchange 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 Act¹² and paragraph (f) of Rule 19b-4¹³ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

SR-CboeBYX-2023-009 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-CboeBYX-2023-009. This file number should be included on the subject line if email 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 (<https://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, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBYX-2023-009 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

¹⁴ 17 CFR 200.30-3(a)(12).

Sherry R. Haywood,

Assistant Secretary.

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