



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-98019; File No. SR-CboeBYX-2023-012]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.9(f) to Allow Match Trade Prevention Between Users that Access the Exchange with Both a Direct Connection and Sponsored Access

July 28, 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 July 26, 2023, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 Exchange Rule 11.9(f) (“Match Trade Prevention (“MTP”) Modifiers”) to permit individual firms with Users that access the Exchange through a direct connection and also access the Exchange through Sponsored Access to enable Match Trade Prevention at the firm level. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 11.9(f) (“Match Trade Prevention (“MTP” Modifiers”)”) to add the term “Multiple Access identifier” to the definition of “Unique Identifier” while also codifying how a User may utilize the Multiple Access identifier. Adding a Multiple Access identifier to MTP functionality on the Exchange would allow Users that electronically access the Exchange via their own Membership and Exchange connection(s), as well as Sponsored Participants⁵ that access the Exchange via a Sponsored Access⁶ arrangement, to enable MTP at the firm level, in addition to the current MTP functionality based on market participant identifier (“MPID”), Exchange Member identifier, trading group identifier, Exchange Sponsored Participant identifier, or affiliate identifier (any such existing identifier, a “Unique Identifier”).⁷

Currently, the Exchange’s MTP functionality prevents certain contra side orders entered by a User⁸ from executing, provided that each order has been marked with the same Unique

⁵ See Exchange Rule 1.5(x). The term “Sponsored Participant” shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3.

⁶ See Exchange Rule 11.3(a). “Sponsored Access” shall mean “an arrangement whereby a Member permits its customer to enter orders into the System that bypass the Member’s trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.”

⁷ See Exchange Rule 11.9(f).

⁸ See Exchange Rule 1.5(cc). “User” is defined as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” The “System” is “the electronic communications and

Identifier.⁹ MTP functionality is currently available only to individual or affiliated Users on the Exchange and cannot be enabled by Users who choose to access the Exchange through both a direct connection as well as through a Sponsored Access arrangement because such Users do not have the same Unique Identifier.

As noted above, there are currently five Unique Identifiers that a User may choose from when submitting an order subject to MTP: (i) MPID¹⁰; (ii) Exchange Member identifier; (iii) trading group identifier; (iv) Exchange Sponsored Participant identifier, and (v) affiliate identifier.¹¹ MTP functionality is optional for Users and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction.

For example, a User who enables MTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables MTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The trading group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm but allows orders from outside such group or desk to interact with other firm orders. Users who enable MTP functionality using the Exchange Sponsored Participant Unique Identifier will prevent matched trades between contra side orders with an identical Sponsored Participant identifier. The affiliate identifier is a Unique Identifier that permits MTP to be enabled by firms with a control relationship. The affiliate identifier is only available to Users

trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.” See Exchange Rule 1.5(aa). The term “Member” means any registered broker or dealer that has been admitted to membership in the Exchange. See Exchange Rule 1.5(n).

⁹ Supra note 7.

¹⁰ An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

¹¹ Supra note 7.

where: (i) greater than 50% ownership is identified in a User's Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.9(f) and enhance its existing MTP functionality by introducing a sixth Unique Identifier, Multiple Access identifier, which will allow a User to prevent orders entered via its direct connection from interacting with the User's orders entered via Sponsored Access. Currently, MTP is only available to individual and affiliated Users. However, there are certain situations (discussed *infra*) in which an individual firm may access the Exchange through different methods (i.e., through a direct connection and through Sponsored Access) and therefore desires to enable MTP in order to prevent orders submitted through its direct connection from interacting with those orders submitted through Sponsored Access.

The Multiple Access identifier is similar to the affiliate identifier that is already in place, as it will enable firms that currently enter orders on the Exchange under two different Unique Identifiers to assign the same Unique Identifier to orders entered via its direct connection and to orders entered via Sponsored Access. This will permit the firm to enable MTP and prevent contra side orders from executing. While the affiliate identifier requires Users to prove that an affiliate relationship exists between the two Users,¹² the proposed Multiple Access identifier will only require a User to demonstrate: (i) it maintains a Membership on the Exchange through which it directly submits orders to the System; and (ii) it also operates as a Sponsored Participant and submits orders to the System through Sponsored Access. The proposed addition of the Multiple Access identifier does not present any new or novel MTP functionality, but rather would extend

¹² See Exchange Rule 11.9(f). See also 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

existing MTP functionality to firms that already access the Exchange through multiple formats and therefore have different Unique Identifiers appended to their orders.

By way of example, there are situations where an individual firm would choose to submit orders to the Exchange through different mechanisms. For instance, a firm may employ different trading strategies across different trading desks and choose to send orders for one strategy to the Exchange through a direct connection while the other strategy is sent through Sponsored Access. The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales¹³ and self-trades.¹⁴ Additionally, the proposed functionality would provide firms an additional solution to manage order flow by preventing undesirable executions where the firm submits orders in multiple formats (i.e., direct connection or Sponsored Access). As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed MTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow firms that submit orders to the Exchange through both a direct connection and through Sponsored Access to utilize MTP by utilizing the Multiple Access identifier.¹⁵ Specifically, the Exchange is proposing to allow individual firms who choose

¹³ A “wash sale” is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, e.g., 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) (“Other Trading Practices”).

¹⁴ Self-trades are “transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.” FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02.

¹⁵ The Exchange will require firms requesting to use the Multiple Access identifier to complete an affidavit stating: (i) it is currently a Member of the Exchange that submits orders directly to the System, and (ii) it also submits orders to the System through a Sponsored Access arrangement.

to access the System through both a direct connection and through Sponsored Access to use MTP functionality in order to prevent executions from occurring between those separate Users that are associated with the direct connection and Sponsored Access. When a firm requests MTP using the Multiple Access identifier and the Exchange confirms that the individual firm is both a Member that accesses the Exchange through a direct connection and maintains a Sponsored Participant relationship on the Exchange, the Exchange will assign an identical Multiple Access identifier to each User. This Multiple Access identifier will be used to prevent executions between contra side orders entered by the Users assigned the same Multiple Access identifier. The purpose of this proposed change is to extend MTP functionality to separate Users originating from the same individual firm in order to prevent transactions between the firm's orders submitted directly to the System and through Sponsored Access.

To demonstrate how MTP will operate with the proposed Multiple Access identifier, the Exchange has included examples of potential scenarios in which MTP may be used by individual Users utilizing the Multiple Access identifier. For all examples below, User A represents Firm 1 accessing the System through a direct connection. User B also represents Firm 1 but where Firm 1 is accessing the System as a Sponsored Participant through a Sponsoring Member.¹⁶ User A and User B will use a Multiple Access identifier of "A" when requesting MTP at the Multiple Access level, as both Users submit Firm 1's orders to the System. User C is not related to Users A and B and uses a Multiple Access identifier of "C".

Multiple Access Level MTP

Scenario 1: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled MTP at the Multiple Access level using a Multiple Access

¹⁶ See Exchange Rule 1.5(y). A "Sponsoring Member" shall mean a broker-dealer that has been issued a membership by the Exchange who has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System. The Sponsoring Member shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm.

identifier of A. User B has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User C has not enabled MTP. User A's buy order is prevented from executing with User B's sell order as each User has enabled MTP at the Multiple Access level using an Multiple Access identifier of A. User A's buy order will be permitted to execute with User C's sell order because User C has not enabled MTP.

Scenario 2: User A submits a buy order. User B submits a sell order. User C also submits a sell order. User A has enabled MTP at the Multiple Access level using an Multiple Access identifier of A. User B has not enabled MTP. User C has enabled MTP at the Multiple Access level using a Multiple Access identifier of C. User A's order will be eligible to trade with both User B and User C. User A's order is eligible to trade with User B because User B did not enable MTP. In order for MTP to prevent the matching of contra side orders, both the buy and sell order must contain an MTP modifier. User A's order is also eligible to trade with User C because even though User A and User C have both enabled MTP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

Scenario 3: User A submits a buy order and a sell order. User B submits a buy order. User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User A's sell order because User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's sell order is not eligible to execute with User B's buy order because both User A and User B have enabled MTP at the Multiple Access level using a Multiple Access identifier of A.

Scenario 4: User A submits a buy order and a sell order. User B submits a sell order. User C submits a sell order. User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User B has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User C has enabled MTP at the Multiple Access level using a Multiple Access identifier of C. User A's buy order is not eligible to execute with User A's sell

order because User A has enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is not eligible to execute with User B's sell order because both User A and User B have enabled MTP at the Multiple Access level using a Multiple Access identifier of A. User A's buy order is eligible to execute with User C's sell order because while User A and User C have enabled MTP at the Multiple Access level, User A and User C have been assigned different Multiple Access identifiers.

The Exchange plans to implement the proposed rule change during the third quarter of 2023 and will announce the implementation date via Trade Desk Notice.

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.¹⁷ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹⁸ 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)¹⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed Multiple Access level MTP functionality promotes just and equitable principles of trade by allowing individual firms to

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ Id.

better manage order flow and prevent undesirable trading activity such as wash sales²⁰ or self-trades²¹ that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed Multiple Access identifier and description of eligibility to utilize the proposed Multiple Access identifier does not introduce any new or novel functionality, as the proposed amendment does not seek to change the underlying MTP functionality, but merely extends the current MTP functionality to another trading relationship. For instance, a User may operate trading desk 1 that accesses the Exchange via the User's direction connection, as well as trading desk 2 that access the Exchange as a Sponsored Participant. While these desks may operate different trading strategies, a User may desire to prevent these desks from trading versus each other in the marketplace because the orders are originating from the same entity. Here, Users may desire MTP functionality on a Multiple Access level that will help them achieve compliance²² with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current MTP functionality applies on the existing Unique Identifier level. In this regard, the proposed Multiple Access level MTP functionality will permit individual firms associated with different Users for purposes of submitting orders to the Exchange in a different manner to prevent the execution of transactions by and between the Users. The Exchange also believes that the proposed rule change is fair and equitable and is not designed to permit unfair discrimination as use of the proposed MTP functionality is optional, and its use is not a prerequisite for trading on the Exchange.

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. MTP is

²⁰ Supra note 13.

²¹ Supra note 14.

²² The Exchange reminds Users that while they may utilize MTP to help prevent potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

an optional functionality offered by the Exchange and Users are free to decide whether to use MTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed Multiple Access identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing MTP functionality to individual firms who choose to access the System through both a direct connection and through Sponsored Access. Additionally, the proposed rule specifies which Users are eligible to use the Multiple Access identifier and will be available to any User who satisfies such criteria. MTP will continue to be an optional functionality offered by the Exchange and the addition of Multiple Access level MTP will not change how the current Unique Identifiers and MTP functionality operate.

The Exchange believes that the proposed Multiple Access identifier does not impose any undue burden on intermarket competition. MTP is an optional functionality offered by the Exchange and Users are not required to use MTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer MTP and is choosing to do so as a benefit for Users who wish to enable MTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

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: (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 Act²³ and Rule 19b-4(f)(6)²⁴ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ the Commission may designate a shorter time if such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the 30-day operative delay will allow the Exchange to immediately offer its Users that access the Exchange's System through a direct connection and through Sponsored Access the ability to better manage order flow and prevent undesirable executions, such as wash sales and self-trades, in the same manner as Users who currently enable MTP at the MPID, Exchange Member identifier, trading group identifier, Exchange Sponsored Participant, or affiliate identifier levels. Because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²⁷

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.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 SR-CboeBYX-2023-012 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-2023-012. 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-2023-012 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.²⁸

Sherry R. Haywood,

Assistant Secretary.

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