



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103639; File No. SR-CboeBYX-2025-022]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Fees for Cboe Timestamping Service Reports to Allow Sponsored Participants to Purchase These Reports Directly

August 5, 2025.

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 25, 2025, 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, 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 fees for Cboe Timestamping Service reports to allow Sponsored Participants to purchase these reports directly.

The text of the proposed rule change is available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/BYX/) and at the Exchange’s Office of the Secretary.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 fees for Cboe Timestamping Service reports, effective July 25, 2025. The Exchange previously adopted a data product known as the Cboe Timestamping Service³ and subsequently adopted fees for the Cboe Timestamping Service.⁴ The Cboe Timestamping Service provides timestamp information for orders and cancels for market participants. More specifically, the Cboe Timestamping Service reports provide various timestamps relating to the message lifecycle throughout the exchange system. The first report – the Missed Liquidity Report – covers order messages of the subscribing firm only and the second report – Cancels Report – covers cancel messages of the subscribing firm only. The reports are optional products that a participant may opt to choose both reports, one report, or neither report.

The Cancels Report provides response time details for orders that rest on the book where the subscribing firm attempted to cancel that resting order or any other resting order but was unable to do so as the resting order was executed before the system processed the cancel message. The Cancels Report assists the subscribing firm in determining by how much time that order missed being canceled instead of executing.

The Missed Liquidity Report provides time details for executions of orders that rest on the book where the subscribing firm attempted to execute against that resting order within an Exchange-determined amount of time (not to exceed 1 millisecond) after receipt of the first attempt to execute against the resting order and within an Exchange-determined amount of time

³ See Securities Exchange Act Release No. 100803 (August 28, 2024), 89 FR 68948 (August 22, 2024) (SR-CboeEDGA-2024-034).

⁴ See Securities Exchange Act Release No. 101581 (November 18, 2024), 89 FR 90807 (November 12, 2024) (SR-CboeEDGA-2024-046).

(not to exceed 100 microseconds) before receipt of the first attempt to execute against the resting order.

The Exchange notes that the data included in the reports are based only on the data of the market participant that opts to subscribe to the reports (“Recipient Firm”) and do not include information related to any firm other than the Recipient Firm. Additionally, neither report includes real-time market data. Rather, the reports contain historical data from the prior trading day and are available after the end of the trading day, generally on a T+1 basis.

Currently, the Exchange assess the following monthly fees for Members that purchase the Cancels Report and/or the Missed Liquidity Report. The Exchange assess a monthly flat fee of \$1,000 for the Cancels Report for a subscribing Member. The Exchange also proposes a progressive monthly fee structure for the Missed Liquidity Report based on the Member’s subscribing logical (FIX or BOE) order entry ports (the “Ports”)⁵ with the following tiers: \$1,500 for 1-10 Ports, \$2,000 for 11-20 Ports and \$2,500 for 21 and more Ports.⁶ For a mid-month subscription, the monthly fee(s) shall be prorated based on the initial date of the subscription.⁷

Currently, a Member who has Sponsored Participants may choose to purchase one or both of these reports and can provide this data to its Sponsored Participants. A Sponsoring Member may then provide this information to Sponsored Participants, but the Sponsoring Member must first filter the larger data report to provide only the Sponsored Participant’s activity from its report and must do this for each individual Sponsored Participant. This may take

⁵ Based on a firms’ unique needs, firms may choose which Ports (if any) it would like to subscribe to the Missed Liquidity Report. For example, a firm that has 20 Ports, but is only interested in receiving data on 10 of their Ports would then be charged the \$1,500 tier fee for its subscribing Ports.

⁶ The Exchange makes clear in the Fees Schedule that the fees are not progressive (i.e., if a firm requests the Missed Liquidity Report for 20 Ports, it will be assessed \$2,000 per month).

⁷ Fees will be assessed on a look-back basis based on the maximum number of subscribing Ports a firm had in the prior calendar month. For example, if a firm had 10 Ports that were subscribed to the Missed Liquidity Report from September 1st – September 26th and the Member added an additional Port to the Missed Liquidity Report on September 27th (for a total of 11 subscribing Ports), the firm would then be assessed a fee of \$2,000 for the month of September for the Missed Liquidity Report. Additionally, the Exchange proposes to make clear in its fee schedule that new subscribers will be charged a prorated fee for a mid-month subscription based on the initial date of the subscription.

more time and lead to Sponsored Participants waiting longer to receive their data. In response, the Exchange has received feedback from both Members and Sponsored Participants requesting that Sponsored Participants may be able to directly subscribe and pay for this data.

The Exchange now proposes to amend its Fees Schedule to allow a Member's Sponsored Participants to subscribe and be charged directly for this report. This will permit a Sponsored Participant to request and have access to their information directly. The same fees that are currently in place shall apply to a Sponsored Participant.

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.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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

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).

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed reports are the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition: “[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.”¹²

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. The Cboe Timestamping Service (i.e., the Missed Liquidity and Cancels Reports) provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.¹³

The reports are designed for firms that are interested in gaining insight into latency in connection with their respective (1) orders that failed to execute against an order resting on the Exchange order book and/or (2) cancel messages that failed to cancel resting orders. The Exchange believes that providing this optional data to be purchased directly by Sponsored Participants if they desire to receive this is consistent with facilitating transactions in securities,

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ See Regulation NMS Adopting Release, *supra*, at 37503.

removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides Sponsored Participants with an opportunity to receive additional information and insight into their trading activity on the Exchange, that they may not otherwise receive from their Sponsoring Members.

The Exchange previously only allowed Members to subscribe and be billed for this as during the initial launch, it did not yet have the capabilities to pull activities on a per Sponsored Participant basis. Due to requests from Sponsored Participants and Members alike to permit Sponsored Participants to subscribe directly, the Exchange proposes to amend its Fees Schedule to allow a Sponsored Participant to subscribe and be billed directly for this.

The Exchange believes the fee proposals for both the Missed Liquidity Report and Cancels Report are reasonable as the Exchange is offering any Sponsored Participant or Member access to subscribe to one or both report(s) in the firm's sole discretion based on their unique business needs. The Exchange notes that these existing fees have previously been established¹⁴ and the Exchange now only proposes to expand this to be offered and billed directly to a Sponsored Participant. The reports are optional for a firm to subscribe to if they believe it to be helpful and are not required for firms to purchase in order to access the Exchange. Additionally, firms may cancel their usage of this report at any time.

The proposal would also not permit unfair discrimination as both the Cancels Report and Missed Liquidity Report will be available to all Sponsored Participants, in addition to Members, who may opt to subscribe to one, both, or neither, and will help to protect a free and open market by continuing to provide additional non-core data (offered on an optional basis for a fee) to the marketplace and by providing investors with greater choices.¹⁵ As such, the Exchange believes

¹⁴ See supra note 4.

¹⁵ See Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data). See also the decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition

that the proposed fees are reasonable and set at a level to compete with other exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's reports and instead purchase another exchange's similar data product(s), which may offer similar data points, albeit based on that other market's trading activity.

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. The Exchange believes expanding the scope of who may directly subscribe to the reports will contribute to robust competition among national securities exchanges. The Missed Liquidity Report and Cancels Report further enhances competition between exchanges by allowing the Exchange to provide these reports directly to a broader group similar to reports that are currently offered by other exchanges.¹⁶

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports with lower prices to better compete with the Exchange's offerings and this fee does not change based on if a subscribing firm is a Member or Sponsored Participant. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The Exchange must consider this in its pricing discipline in order to compete for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's reports, which as discussed, firms are under no obligation to utilize. In this

v. SEC, 615 F.3d 525 (D.C. Cir. 2010) ("NetCoalition I") (upholding the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data).

¹⁶ See e.g., MIAX Emerald Rule 531.

competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between the different subscribing firms that may purchase the reports directly from the Exchange. The proposed fees are set at a modest level that would allow any interested Member or Sponsored Participant to purchase such data based on their business needs.

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:

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBYX-2025-022 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-2025-022. 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 filing 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-2025-022 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.¹⁹

Sherry R. Haywood,

Assistant Secretary.

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¹⁹ 17 CFR 200.30-3(a)(12).