and to encourage additional order flow to the Exchange through a volume-based incentive that is comparable to volume-based incentives adopted by other exchanges and the Exchange.[23] Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, 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.'' [24] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* 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' . . . .''.[25] Accordingly, the Exchange does not believe its proposed pricing changes impose 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.

[23] *See supra* note 11.

[24] *See supra* note 17.

[25] *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–NYSE–2006–21)).

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)(ii) of the Act [26] and Rule 19b–4(f)(2) [27] 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 shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–11 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–MEMX–2022–11. 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 (*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, DC 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–11 and should be submitted on or before June 2, 2022.

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10148 Filed 5–11–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94862; File No. SR–CboeBYX–2022–016]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 6, 2022.

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 May 2, 2022, 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'' or ''BYX Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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.

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

1. Purpose

On March 26, 2021, the Commission approved the Exchange's proposed introduction of periodic auctions in U.S. equity securities (''Periodic Auctions'').[3] Periodic Auctions, which will launch on the Exchange on April 14, 2022, will be conducted throughout the course of the trading day when there are matching buy and sell Periodic Auction orders that are available to trade in such an auction. They are price forming auctions that are executed at the price level that maximizes the total number of shares in both the auction book and the continuous book and are designed to enhance the ability for investors to source liquidity in all equity securities traded on the Exchange. The Exchange now proposes to introduce fees associated with orders executed in Periodic Auctions.[4]

The Exchange 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 Fees 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 $0.00200 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. 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.

Proposed Fee Codes

The Exchange proposes to introduce three new fee codes applicable to orders executed in a Periodic Auction. First, the Exchange proposes to adopt fee code AD,[5] which would be appended to displayed orders executed in a Periodic Auction.[6] Periodic Auction Only Orders [7] or Periodic Auction Eligible Orders [8] are non-displayed orders and therefore fee code AD would not be appended to such orders. However, Continuous Book Orders [9] may be displayed or non-displayed orders and therefore such displayed Continuous Book Orders would be appended with fee code AD. Orders appended with fee code AD would be assessed a fee of $0.00200 in securities priced equal to or greater than $1.00, and would be provided no charge or rebate in securities priced less than $1.00.[10] The proposed fee is the same as other displayed fee codes that add liquidity to the Exchange, such as fee codes B,[11] V,[12] and Y.[13]

Second, the Exchange proposes to adopt fee code AU, which would be appended to Periodic Auction Only or Periodic Auction Eligible orders executed in a Periodic Auction. Orders appended with fee code AU would not be provided a rebate or assessed a fee, regardless of the price of the security.[14]

Third, the Exchange proposes to adopt fee AH, which would be appended to non-displayed orders executed in a Periodic Auction. As noted above, Continuous Book Orders may be displayed or non-displayed orders. Therefore, non-displayed orders that are not Periodic Auction Only or Periodic Auction Eligible Orders would be appended with fee code AH. Orders appended with fee code AH would be assessed a fee of $0.00100 in securities priced equal to or greater than $1.00 and would be provided no charge or rebate in securities priced less than $1.00.[15] The proposed fee is the same as the fee assessed to non-displayed midpoint peg orders (*i.e.,* fee code MM).[16]

Proposed Definitions

The Exchange proposes to adopt two new definitions pertaining to auction volume executed on the Exchange. First, the Exchange proposes to adopt the term ''Auction ADV'' which would mean the average daily auction volume calculated as the number of shares executed in an auction per day. The Exchange also proposes to adopt the term ''Step-Up Auction ADV'' which would mean the Auction ADV in the relevant baseline month subtracted from current Auction ADV.

Proposed Tier Changes

The Exchange proposes to modify the tiers in order to account for volume executed in a Periodic Auction. As noted above, the Exchange offers tiered pricing which provides Members opportunities to qualify for higher

[3] *See* Securities Exchange Act Release No. 91423 (March 26, 2021) 86 FR 17230 (April 1, 2021) (SR–CboeBYX–2020–021).

[4] The Exchange initially filed the proposed fee changes on April 14, 2022 (SR–CboeBYX–2022–012). On April 27, 2022, the Exchange withdrew that filing and re-submitted the proposed fee changes (SR–CboeBYX–2022–014). On April 29, 2022, the Exchange withdrew that filing and re-submitted the proposed fee changes (SR–CboeBYX–2022–015). On May 2, 2022, the Exchange withdrew that filing and submitted this filing.

[5] As discussed more fully below, the Exchange is also proposing to add footnotes 1 and 2 to fee code, AD.

[6] ''Continuous Book Orders'', as defined in Rule 11.25(a)(2), may be displayed or non-displayed orders. Continuous Book Orders will not initiate a Periodic Auction but are eligible to participate in such an auction when it is executed.

[7] A ''Periodic Auction Only Order'' is a non-displayed limit order entered with an instruction to participate solely in Periodic Auctions pursuant to this Rule 11.25. Periodic Auction Only Orders are not eligible for execution on the Continuous Book. *See* Exchange Rule 11.25(b)(1).

[8] A ''Periodic Auction Eligible Order'' is a non-displayed limit order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible, pursuant to this Rule 11.25. *See* Exchange Rule 11.25(b)(2)

[9] A ''Continuous Book Order'' is an order on the BYX Book that is not a Periodic Auction Order. *See* Exchange Rule 11.25(a)(2).

[10] Footnote 15 of the BYX Fee Schedule provides that ''[f]or securities priced below $1.00: no charge or rebate'' is applied. Therefore, the Exchange proposes to apply footnote 15 to proposed fee code AD.

[11] Fee code ''B'' is appended to displayed orders adding liquidity to BYX (Tape B).

[12] Fee code ''V'' is appended to displayed orders adding liquidity to BYX (Tape A).

[13] Fee code ''Y'' is appended to displayed orders adding liquidity to BYX (Tape C).

[14] The Exchange proposes to apply footnote 15 to proposed fee code AU.

[15] The Exchange proposes to apply footnote 15 to proposed fee code AH.

[16] Fee code ''MM'' is appended to non-displayed orders that add liquidity using a midpoint peg.

rebates or reduced fees where certain volume criteria and thresholds are met. The Exchange offers three sets of tiers as set forth in footnotes 1 through 3 of the Fee Schedule. Specifically, under footnote 1 [17] of the Fee Schedule, the Exchange offers Add/Remove Volume Tiers, which offer various enhanced rebates and reduced fees for reaching certain, incrementally more challenging volume-based thresholds. Under footnote 2 [18] of the Fee Schedule, the Step-Up Tiers offers a reduced fee to Members that increase their relative add volume order flow each month over a predetermined baseline as well as add liquidity over and established threshold. Last, under footnote 3 [19] of the Fee Schedule, the Exchange offers the Routing Tier which offers an enhanced rebate for orders routed to Nasdaq BX through the Destination Specific or TRIM routing strategies. Under each of footnotes 1 through 3, the required criteria of certain tiers reference a Member's ADV,[20] ADAV,[21] or Step-Up ADAV [22] as follows:

• The Add Volume Tiers 1 through 4 provide a reduced fee for each Member's qualifying orders that have an ADAV equal to or greater than a certain percentage of TCV;

• The Add Volume Tier 5 provides a reduced fee to each MPID's qualifying orders that have an ADAV equal to or greater than a certain percentage of the TCV; [23]

• The Remove Volume Tier 6 provides the applicable rebate to each Member's qualifying orders that have (1) an ADV equal to or greater than 0.08% of the TCV; and (2) an ADAV equal to or greater than 500,00 shares meet the required criteria; [24]

• The Step-Up Tier provides a reduced fee to each Member's qualifying orders where a Member (1) adds a Step-Up ADAV from June 2021 equal to or greater than 0.05% of TCV or adds a Step-Up ADAV from June 2021 equal to or greater than 2,000,000; and (2) has a total add ADAV equal to or greater than 0.25% of TCV.

• The Routing Tier provides the applicable rebate to each Member's qualifying orders with an ADV equal to or greater than 0.10% of the TCV.

Now, the Exchange proposes to modify each of the above referenced Tiers to include auction volume where ADV, ADAV, and Step-Up ADAV are referenced.[25] Therefore, the Exchange proposes the required criteria of the above Tiers as follows:

• The Add Volume Tiers 1 through 4 provide a reduced fee to each Member's qualifying orders that have a combined Auction ADV and ADAV equal to or greater than a certain percentage of the TCV;

• The Add Volume Tier 5 provides a reduced fee to each MPID's qualifying orders that have a combined Auction ADV and ADAV equal to or greater than a certain percentage of the TCV;

• The Remove Volume Tier 6 would provide the applicable rebate to Members' qualifying orders that have (1) a combined Auction ADV and ADV equal to or greater than 0.08% of the TCV; and (2) a combined Auction ADV and ADAV equal to or greater than 500,000 shares would meet the required criteria; and

• The Step-Up Tier would provide a reduced fee to each Member's qualifying orders with (1) a combined Step-Up Auction ADV and Step-Up ADAV from June 2021 equal to or greater than 0.05% of TCV or a combined Step-Up Auction ADV and Step-Up ADAV from June 2021 equal to or greater than 2,000,000; and (2) a combined Auction ADV and ADAV equal to or greater than 0.25% of TCV; and

• The Routing Tier would provide the applicable rebate to Members' qualifying orders with a combined Auction ADV and ADV of equal to or greater than 0.10% of the TCV.

As discussed above, orders yielding fee code AD will represent displayed Continuous Book Orders that add liquidity to the Exchange. Therefore, if such orders did not execute in a Periodic Auction, they would be appended with fee code B, V, or Y, as applicable, and those executions would qualify towards the Add Volume Tiers 1 through 5 and the Step-Up Tier. Continuous Book Orders that add liquidity to the Exchange will participate in a Periodic Auction, if eligible. Therefore, to ensure such orders are not disincentivized to participate in such a Periodic Auction, the Exchange proposes to allow orders yielding fee code AD to qualify towards the Add Volume Tiers 1 through 5 and Step-Up Tier, as well qualify for the reduced fees or rebates provided by such Tiers.[26]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[27] in general, and furthers the objectives of Section 6(b)(4),[28] in particular, 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. Specifically, the Exchange believes that the proposed rule change is consistent with the requirements of the Act as it is designed to compensate the Exchange for the development of new and innovative market features, *i.e.,* Periodic Auctions, while continuing to provide a pricing model that the Exchange believes is competitive with pricing models offered by other national securities exchanges that offer auctions to their customers. 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. The proposed rule change reflects a competitive pricing structure designed both to compensate the Exchange for the introduction of innovative features and allow it to continue to compete aggressively with other market centers.

As discussed, the proposed rule change would introduce pricing that is specific to orders executed in a Periodic Auction. Generally, orders executed in an auction on other market centers are subject to a fee.[29] However, the Exchange proposes to charge no fee for orders that may initiate a Periodic Auction (*i.e.,* orders yielding fee code AU) in order to incentivize Members to enter such orders on the Exchange. As proposed, orders yielding fee code AD will represent displayed Continuous

[17] Footnote 1, Add/Remove Volume Tiers, applies to fee codes B, V, and Y. The Exchange now proposes to add Footnote 1 to fee code, AD.

[18] Footnote 2, Step-Up Tiers, applies to fee codes B, V, and Y. The Exchange now proposes to add Footnote 2 to fee code, AD.

[19] Footnote 3, Routing Tier, applies to fee code, C (Routed to NASDAQ BX using Destination Specific, TRIM or SLIM routing strategies). AU/AH/AD are included in the calculations to qualify for the Routing Tier rebates.

[20] "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day.

[21] "ADAV" means average daily volume calculated as the number of shares added per day.

[22] "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

[23] "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.

[24] The Exchange notes that Remove Volume Tiers 7 and 8 do not reference ADV or ADAV, but instead reference certain liquidity removing volume executed on the Exchange.

[25] The Exchange is not modifying the applicable fees and rebates associated with Tiers 1 through 4. Rather, the Exchange seeks only to add new types of volume that count toward the Tiers.

[26] Based on the proposal to allow orders yielding fee code AD to qualify towards the Add Volume Tiers 1 through 5 and Step-Up Tier, the Exchange also proposes to append footnotes 1 and 2 to Fee Code AD.

[27] 15 U.S.C. 78f.

[28] 15 U.S.C. 78f(b)(4).

[29] *See e.g.,* the Cboe BZX U.S. Equities Fee Schedule, which charges fees ranging from $0.00060 up to $0.00100 for orders executed in an auction.

Book Orders that add liquidity to the Exchange. Therefore, if such orders did not execute in a Periodic Auction, they would be appended with fee code B, V, or Y, as applicable, and would be charged a fee of $0.00200. Given this, the Exchange proposes that orders yielding fee code AD also be charged a fee of $0.00200 so that the fee is congruent with orders with the same order instruction that did not execute in a Periodic Auction. As discussed above, non-displayed orders that are not Periodic Auction Only or Periodic Auction Eligible Orders would be appended with fee code AH. Such non-displayed orders would include orders that would otherwise yield fee codes HA,[30] HI,[31] or MM [32] had they not executed in a Periodic Auction. Orders yielding fee code HA are assessed a fee of $0.00240 per share, orders yielding fee code HI are assessed a fee of $0.00300 per share, and orders yielding fee code MM are assessed a fee of $0.00100 per share. Given this, the Exchange proposes to assess a fee of $0.00100 per share to orders yielding fee code AH so that there is no disadvantage for a non-displayed order to have executed in a Periodic Auction rather than on the Continuous Book.

The Exchange believes that the proposed fees associated with orders executed in a Periodic Auction are equitable and not unfairly discriminatory because they would apply equally to all orders executed in a Periodic Auction and meeting the applicable execution description. As discussed, Periodic Auction Only and Periodic Auction Eligible order instructions are optional, and a market participant can choose to include such an instruction in order to benefit from a free execution in the Periodic Auction. Furthermore, while orders entered on the Continuous Book that are eligible to participate in a Periodic Auction must participate in the Periodic Auction, the proposed fees are designed to ensure that such executions occur at a fee that is equal or favorable to the fee they would have otherwise been assessed had the order not executed in a Periodic Auction.

The Exchange believes the proposed modifications to the various Tiers are equitable and reasonable. As discussed above, if orders yielding fee code AD did not execute in a Periodic Auction, they would be appended with fee code B, V, or Y, as applicable, and such executions would have counted towards the Add Volume Tiers 1 through 5 and Step-Up Tier. The proposal to include fee code AD to the applicable fee codes of the Add Volume Tiers 1 through 5 and Step-Up Tier is designed to ensure that orders yielding such fee codes are not disadvantaged for having executed in a Periodic Auction rather than the Continuous Book. Additionally, the proposed modifications to the various required criteria of the Tiers is designed to ensure that shares executed in a Periodic Auction are considered in conjunction with any volume added to the Exchange. As discussed above, certain types of orders that may be executed in a Periodic Auction would be included in the Member's or MPID's ADV, ADAV, and Step-Up ADAV if they had otherwise not executed in a Periodic Auction (*e.g.,* orders appended with fee code B, V, or Y). Therefore, so as not to disadvantage Members or MPIDs participating in a Periodic Auction, the Exchange proposes that such orders executed in a Periodic Auction will count toward any required criteria of a Tier involving ADV, ADAV, or Step-Up ADAV. The Exchange believes it is reasonable and equitable not to include volume executed in a Periodic Auction in a Member's remove volume because such orders would not have removed volume on the Exchange had they not executed in a Periodic Auction.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed changes to its fees would promote continued competition between the Exchange, other national securities exchanges, and off-exchange venues that must continuously compete to offer both competitive pricing and services to members and investors. As proposed, the Exchange would charge fee ranging from free up to $0.0020 per share for orders executed in a Periodic Auction. Charging fees for the use of this instruction would both compensate for the development and introduction of new and innovative features, and provide continued incentives for the Exchange to compete on both cost and the quality of its products and services.

The Exchange believes the proposed new fee codes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee codes would apply to all Members equally in that all Members would be subject to the applicable fee for executing in the Periodic Auction based on its order instruction. The Exchange's proposed pricing is based on the characteristics of the order that is executed and has been proposed to reflect that no order will be disadvantaged by participating in a Periodic Auction as opposed to executing on the Exchange's continuous book. In fact, certain orders may benefit from executing in a Periodic Auction by receiving a reduced fee than it would not have otherwise received had it executed on the Exchange's Continuous Book.[33]

Similarly, the Exchange does not believe the proposed changes to the Exchange's tiers will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The revised tiers will continue to be available 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 or enhanced rebate on their qualifying orders if such criteria is met. The proposed changes to the Exchange's tiers are simply designed to ensure that no orders executed in a Periodic Auction are excluded from a tier for which they otherwise would have counted towards had the order not executed in a Periodic Auction. The Exchange does not believe the proposed change to modify the tiers burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BYX by ensuring Members are not disincentivized to participate in Periodic Auctions and thus may 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.

[30] Fee code "HA" is appended to non-displayed orders adding liquidity to BYX.

[31] Fee code "HI" is appended to non-displayed orders adding liquidity to BYX that receive price improvement.

[32] Fee code "MM" is appended to non-displayed orders adding liquidity to BYX using a midpoint peg.

[33] For example, orders that would have been appended with fee code HA or HI had they not executed in a Periodic Auction would be assessed a lesser fee if executed in a Periodic Auction (and thus appended with fee code AH).

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 17% of the market share.[34] 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.'' [35] 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 from broker dealers'. . . .''.[36] 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 Act [37] and paragraph (f) of Rule 19b–4 [38] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2022–016 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–2022–016. 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 (*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, DC 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2022–016, and should be submitted on or before June 2, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10146 Filed 5–11–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94864; File No. SR–CboeEDGX–2022–026]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 6, 2022.

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 May 2, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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.

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[34] See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 11, 2022), available at: *https://markets.cboe.com/us/equities/market_statistics/*.

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

[36] 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)).

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f).

[39] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.