

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83441; File No. SR-CboeBYX-2018-006]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Physical Port Fees for BYX

June 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 1, 2018, 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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

The Exchange filed a proposal to amend its fees and rebates applicable to Members<sup>5</sup> and non-Members of the Exchange pursuant to BYX Rule 15.1(a) and (c) to modify its fees for physical ports.

The text of the proposed rule change is available at the Exchange’s website at [www.markets.cboe.com](http://www.markets.cboe.com), at the principal office of the Exchange, 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 parts of such statements.

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

###### 1. Purpose

The Exchange proposes to implement proposed changes to its fee schedule relating to physical connectivity fees, effective June 1, 2018. By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange’s servers are located. The Exchange currently maintains a presence in two third-party data centers: (i) The primary data center where the Exchange’s business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,000 per physical port for a 1 gigabyte circuit and \$7,000 per physical port for a 10 gigabyte circuit. The Exchange proposes to increase the fees per physical ports from (i) \$2,000 to \$2,500 per month, per port for a 1 gigabyte circuit and (ii) \$7,000 to \$7,500 per month, per port for a 10 gigabyte circuit. The Exchange notes the proposed fees enable it to continue to maintain and improve its market technology and services and also notes that the proposed fee changes are in line with the amounts assessed by other exchanges for similar connections.<sup>6</sup>

The Exchange also proposes to adopt separate physical port fees for connection to its secondary data center, which is predominantly maintained for business continuity purposes (“Disaster Recovery Systems”). Particularly, the Disaster Recovery Systems can be

accessed via physical ports in Chicago. Members and Non-Members may maintain physical ports in order to be able to connect to the Disaster Recovery Systems in case of a disaster. Currently, physical ports that are used to connect to the Disaster Recovery Systems are assessed the same fees as physical ports used to connect to the Exchange’s trading system. The Exchange proposes to establish separate pricing for physical ports that are used to connect to the Disaster Recovery Systems (“Disaster Recovery Physical Ports”). Specifically, the Exchange proposes to assess a monthly fee of \$2,000 per 1 gigabyte Disaster Recovery Physical Port and a monthly fee of \$6,000 per 10 gigabyte Disaster Recovery Physical Port. This amount will continue to enable the Exchange to maintain the Disaster Recovery Physical Ports in case they become necessary. The Exchange notes that the Disaster Recovery Physical Ports may also be used to access the Disaster Recovery Systems for the following affiliate exchanges Cboe BZX Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc. and Cboe Futures Exchange, LLC as well. The Exchange proposes to provide that market participants will only be assessed a single fee for any Disaster Recovery Physical Port that also accesses the Disaster Recovery Systems for these exchanges.<sup>7</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</sup> 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. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange.

The Exchange believes that the proposed changes are equitable and non-discriminatory in that it applies uniformly to all Members. Members and

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

<sup>6</sup> See e.g., NYSE Arca Equities Fees and Charges, NYSE Arca Marketplace: Other Fees and Charges, Connectivity Fees. See also, Nasdaq Phlx LLC Pricing Schedule, Section XI, Direct Connectivity to Phlx.

<sup>7</sup> For example, if a market participant uses a 1 gigabyte Disaster Recovery Physical Port to connect to the Disaster Recovery Systems for both BYX and EDGX, the market participant would only be assessed one monthly fee of \$2,000.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

non-Members will continue to choose whether they want more than one physical port and/or Disaster Recovery Physical Port and choose the method of connectivity based on their specific needs. All Members that voluntarily select various service options will be charged the same amount for the same services.

The Exchange believes that the proposal represents an equitable allocation of reasonable dues, fees, and other charges as its fees for physical connectivity are reasonably constrained by competitive alternatives. If a particular exchange charges excessive fees for connectivity, affected Members and non-Members may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

Furthermore, the proposed rule change is also an equitable allocation of reasonable dues, fees, and other charges as the Exchange believes that the proposed increased physical port fees will enable it to cover its infrastructure costs associated with establishing physical ports to connect to the Exchange's systems. The additional revenue from the increased fees will also enable the Exchange to continue to maintain and improve its market technology and services. Similarly, the Exchange believes the proposed fees for the Disaster Recovery Physical Ports will allow the Exchange to maintain the Disaster Recovery Physical Ports in case they become necessary.

Lastly, the Exchange believes the fees remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.<sup>10</sup>

#### *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 not

necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors.

Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Further, excessive fees for connectivity would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

#### **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<sup>11</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>12</sup> 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.

#### **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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2018-006 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-2018-006. 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 this filing will also 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-2018-006 and should be submitted on or before July 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-83429; File No. SR-CboeBZX-2018-038]

#### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Physical Port Fees for BZX Options**

June 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>10</sup> See e.g., NYSE Arca Equities Fees and Charges, NYSE Arca Marketplace: Other Fees and Charges, Connectivity Fees. See also, Nasdaq Phlx LLC Pricing Schedule, Section XI, Direct Connectivity to Phlx.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).