

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-NASDAQ-2019-004, and should be submitted on or before March 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85107; File No. SR-CboeBYX-2019-001]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange's Eighth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of Its Parent Corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent")

February 12, 2019.

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 January 28, 2019, Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission (the "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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 the Exchange's Eighth Amended and Restated Bylaws (the "Exchange Bylaws") the Fourth Amended and Restated Bylaws (the "Parent Bylaws") of its parent corporation, Cboe Global Markets, Inc. ("Cboe" or the "Parent"). The text of the proposed amendments to the Exchange Bylaws is included in Exhibit 5A, and the text of the proposed amendments to the Parent Bylaws is included in Exhibit 5B.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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

The proposed rule change amends the Exchange Bylaws to (1) amend the provision regarding which offices may be held by the same person and (2) amend the description of the duties of President of the Exchange. The proposed rule change also amends the Parent Bylaws to (1) amend the description of the duties of President of the Parent, (2) amend language relating to the definition of "director independence," and (3) make a non-

substantive update to the zip code for the registered office the Corporation.

#### Offices Held by Same Person

Section 5.1(b) of the Exchange Bylaws currently provides that two or more offices may be held by the same person, except the offices of Chief Executive Officer and President.<sup>5</sup> The Exchange proposes to amend Section 5.1(b) of the Exchange Bylaws to eliminate this restriction, and thus permit the same person to hold the offices of Chief Executive Officer and President. This proposal will provide the Exchange with the flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President.

#### Description of President

Section 5.3 of the Parent Bylaws and Section 5.3 of the Exchange Bylaws each provide that the President of the Parent or Exchange, as applicable, shall be the chief operating officer of the Parent or Exchange, as applicable. The Exchange proposes to amend Section 5.3 of each of the Parent Bylaws and Section 5.3 of the Exchange Bylaws to provide that the President of the Parent or Exchange, as applicable, may be the chief operating officer of the Parent or Exchange, as applicable. Pursuant to this proposed change, the President of the Parent or Exchange may also serve as the chief operating officer,<sup>6</sup> but, rather than requiring that one individual serve in both capacities, Parent and the Exchange will each have flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of the President and duties of a chief operating officer. In either case, Parent and the Exchange each will have one or more persons performing the necessary duties of each role.

#### Definition of Director Independence

Cboe recently determined to remove from listing its common stock, par value \$0.01 per share (the "Common Stock"), on the Nasdaq Stock Market LLC ("Nasdaq") and to designate BZX as the primary listing venue for Parent's Common Stock, which became effective in September 2018. In connection with the delisting and primary listing venue designation, the Exchange proposes to

<sup>5</sup> Section 5.1(b) also prohibits the Chief Executive Officer and President from also being the Secretary or Assistant Secretary, which prohibition the proposal does not substantively amend.

<sup>6</sup> This is consistent with the provision in each of the Parent Bylaws and Exchange Bylaws that provide that two or more offices may be held by the same person, subject to certain exceptions. See Section 5.1 of the Parent Bylaws and Section 5.1 of the Exchange Bylaws.

<sup>18</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)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

update certain corporate governance documents, including the Parent Bylaws. Particularly, the Exchange proposes to amend Section 3.3 of the Parent Bylaws to change the definition of director independence from referencing the listing standards of the New York Stock Exchange and Nasdaq to language referencing the listing standards of each national securities exchange on which the common stock of Parent is listed.

#### Registered Office Zip Code

The Exchange proposes to amend Section 1.1 of the Parent Bylaws to update the zip code of the Parent's registered agent from 19805 to 19801. This change is in accordance with an update from the U.S. Postal Service.

#### 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.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>8</sup> which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the Exchange believes the proposed changes are not material and will have a de minimis impact on the governance, ownership, or operations of the Exchange.

The proposed rule change to permit the same person to hold the offices of Chief Executive Officer and President of the Exchange will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide the Exchange with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of both Chief Executive Officer and the President. The Exchange will continue to have a Chief Executive Officer and President—the proposed change merely permits a single person rather than multiple people to hold these offices. This will ensure continued orderly operation of the Exchange in a

manner the Exchange deems most appropriate.<sup>9</sup>

The proposed rule change to permit each of Parent and the Exchange to appoint different persons to serve as President and chief operating officer of each entity will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, because it will provide each entity with flexibility to appoint the person or persons it deems qualified and appropriate to perform the duties of President and a chief operating officer. Parent and the Exchange each will continue to have the necessary duties of each role performed—the proposed change merely permits multiple people rather than a single person to perform these duties. This will ensure continued orderly operation of the Exchange in a manner Parent and the Exchange deem most appropriate.

The Exchange believes in light of the delisting of Parent's Common Stock from Nasdaq, it is appropriate to remove the requirement to comply with the independence requirements contained in the listing standards of Nasdaq, as well as the independence requirements contained in the listing standards of NYSE. The Exchange notes that the independence requirements of BZX are substantially similar to the independence requirements contained in the listing standards of Nasdaq and NYSE.

The Exchange believes that by ensuring its parent company's governance documents accurately reflect the correct legal address of Parent's registered office, the proposed rule change would reduce potential investor or market participant confusion.

#### 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 proposed rule change is not intended to address competitive issues but rather is concerned solely with updating the Parent Bylaws and Exchange Bylaws to reflect the changes described above.

#### 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that proposal may become operative upon filing. The Exchange states that the proposed changes relating to the ability of the same person to hold multiple officer titles and the amended independence requirements are consistent with other national securities exchanges and will enable the Exchange to continue to be organized and have the capacity to be able to carry out the purposes of the Act, including protecting investors and the public interest. Further, the proposed change of updating the zip code of the Parent's registered office does not raise any regulatory issues. For the foregoing reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>14</sup>

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has also

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(1).

<sup>9</sup> The proposed change also conforms this provision to the corresponding provision in Parent's Bylaws. See Section 5.1 of Parent's Bylaws.

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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2019-001 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-2019-001. 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

considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2019-001 and should be submitted on or before March 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-401; OMB Control No. 3235-0459]

#### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

*Extension:*  
Rule 3a-4

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 3a-4 (17 CFR 270.3a-4) under the Investment Company Act of 1940 (15 U.S.C. 80a) ("Investment Company Act" or "Act") provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include "wrap fee" programs, generally are designed to provide professional portfolio management services on a discretionary basis to clients who are investing less than the minimum investments for individual accounts usually required by the investment adviser but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected

investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially similar securities in their accounts. Because of this similarity of management, some of these investment advisory programs may meet the definition of investment company under the Act.

In 1997, the Commission adopted rule 3a-4, which clarifies that programs organized and operated in accordance with the rule are not required to register under the Investment Company Act or comply with the Act's requirements.<sup>1</sup> These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

For a program to be eligible for the rule's safe harbor, each client's account must be managed on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor<sup>2</sup> (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.<sup>3</sup> In addition, the sponsor (or its designee) must contact the client annually to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) must also notify the client quarterly, in writing, to contact the sponsor (or its designee) regarding changes to the client's

<sup>1</sup> Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Rel. No. 22579 (Mar. 24, 1997) [62 FR 15098 (Mar. 31, 1997)] ("Adopting Release"). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for programs that meet the requirements of rule 3a-4. See 17 CFR 270.3a-4, introductory note.

<sup>2</sup> For purposes of rule 3a-4, the term "sponsor" refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

<sup>3</sup> Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

<sup>15</sup> 17 CFR 200.30-3(a)(12).