

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–2019–005 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>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85113; File No. SR–NASDAQ–2019–004]

### Self-Regulatory Organizations; the Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt a New MIDP Routing Option Under Rule 4758 and Make a Conforming Change to Rule 4703(e)

February 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on January 31, 2019, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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

The Exchange proposes to adopt a new MIDP routing option under Rule 4758 and make a conforming change to Rule 4703(e).

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaq.cchwallstreet.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 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 is proposing to adopt MIDP, a new order routing<sup>3</sup> option under Rule 4758(a)(1)(A). The Exchange provides a variety of routing options under Rule 4758(a)(1). Routing options may be combined with all available Order Types and Times-in-Force, with the exception of Order Types and Times-in-Force whose terms are inconsistent with the terms of a particular routing option. The MIDP routing option would allow members to seek midpoint liquidity on Nasdaq and other markets on the System routing table.<sup>4</sup> Specifically, the MIDP routing option may be assigned only to a Non-Displayed Order Type<sup>5</sup> with a Midpoint

<sup>3</sup> Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies (also called “routing options”) offered by Nasdaq, as described in Rule 4758; such an Order may be referred to as a “Routeable Order.” Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, including MIDP, the Order will attempt to access liquidity available on Nasdaq in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to Nasdaq, where they will (i) again attempt to access liquidity available on Nasdaq and (ii) post to the Nasdaq Book or be cancelled, depending on the Time-in-Force of the Order. See Rule 4703(f).

<sup>4</sup> The term “System routing table” refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. Nasdaq reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. See Rule 4758(a)(1)(A).

<sup>5</sup> See Rule 4702(b)(3).

Pegging Order Attribute.<sup>6</sup> An Order with MIDP will check the System for available shares and then the remaining shares are routed to destinations on the System routing table<sup>7</sup> that support midpoint eligible orders with a limit price that is at the lesser (greater) of: (1) The current NBO (NBB); or (2) the Order’s entered limit price (if applicable).<sup>8</sup> If shares remain unexecuted after routing, the Order returns to Nasdaq and will check the System for available shares, with remaining shares posted on the Nasdaq Book<sup>9</sup> as a Non-Displayed Order with a Midpoint Pegging Order Attribute.<sup>10</sup>

A member may specify a Minimum Quantity Order Attribute upon entry.<sup>11</sup> Minimum Quantity is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained.<sup>12</sup> If at any point during the routing process, but prior to returning to post on the Nasdaq Book (unless an IOC), the remaining size of the Order becomes less than the specified minimum quantity, the Order will be cancelled back to the member. This will avoid an execution of a member’s Order that is inconsistent with its minimum quantity instructions. If shares remain unexecuted after routing, they return to Nasdaq and check the System for available shares with remaining shares posted on the Nasdaq Book as a Non-Displayed Order with a Midpoint Pegging Order Attribute and the minimum quantity condition specified by the member upon entry of the Order. For example, if the National Best Bid and Offer (“NBBO”) is \$5.00 × \$5.01 and a member enters a Non-Displayed Order with a Midpoint Pegging Order Attribute to buy 500

<sup>6</sup> Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the “Midpoint”). See Rule 4703(d).

<sup>7</sup> The Order is routed sequentially to the various venues on the System routing table in the full amount. An Order with MIDP and a Minimum Quantity Order Attribute will similarly route to the venues sequentially.

<sup>8</sup> If the entered limit price of a buy (sell) Order entered with MIDP is less (greater) than the current Midpoint price, the Order will not be routed but will instead be posted on the Nasdaq Book as a Midpoint Peg Order (if not an IOC). Once on the Nasdaq Book, if the NBBO moves and the Order’s limit price is equal to or greater (less) than the NBO (NBB), the Order would not subsequently route.

<sup>9</sup> See Rule 4701(a).

<sup>10</sup> An Order with the MIDP routing option will only be accepted with a Time-in-Force of Market Hours DAY or IOC and may not be flagged to participate in any of the Nasdaq Crosses. Unexecuted shares of an order with the MIDP routing option will be cancelled after routing if the order has a Time-in-Force of IOC.

<sup>11</sup> If upon entry the Order size is less than the minimum quantity designated by the member the Order will be rejected.

<sup>12</sup> See Rule 4703(e).

<sup>11</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

shares with a TIF of Day, a limit of \$5.01 and no minimum quantity, the System will first attempt to execute the Order on Nasdaq at the midpoint of the NBBO and if no shares are executed, the Order will be routed as a midpoint order to destinations on the System routing table that support midpoint eligible orders. If the Order does not receive an execution at the venues to which it was routed, the Order would return to Nasdaq and check the System for available shares, with remaining shares posted to the Nasdaq Book at the midpoint price of \$5.005. If, however, the Order also had a minimum quantity of 300 shares and received an execution of 300 shares at a venue on the System routing table, instead of continuing to route or post to the Nasdaq Book, the Order will instead be cancelled back to the member, consistent with the minimum quantity instruction.

The Exchange does not currently allow an Order with Minimum Quantity to also have a Routing Order Attribute.<sup>13</sup> Historically, the Exchange System has been unable to support Minimum Quantity and Routing due to limitations in the System. The Exchange has made technical changes to the System to allow for Minimum Quantity and MIDP, and Minimum Quantity would only be available for MIDP. Thus, the Exchange is making a conforming change to Rule 4703(e) to allow Minimum Quantity with MIDP. Should Participants request Minimum Quantity for other Routing strategies, the Exchange would consider making the technical changes to allow for such Routing and submit a rule change proposal to the Commission.

The Exchange will implement the proposal in the second quarter of 2019, subject to approval by the Commission. The Exchange will provide notice of the implementation date at least 30 days prior to implementation via an Equity Trader Alert.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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, by providing members additional control over the execution of their Orders so that they may source Midpoint liquidity

from venues other than Nasdaq. Midpoint Orders allow participants to receive price improvement by executing against other non-displayed liquidity at the midpoint of the NBBO. An entirely optional routing option, MIDP will help maximize the potential that members will receive Midpoint executions for their Orders. In addition, the proposed functionality is currently offered by competitor exchanges.<sup>16</sup> The Exchange believes that allowing Minimum Quantity to be an Order Attribute to an Order with MIDP is consistent with the Act because it provides market participants with greater flexibility and control over their Orders. As noted above, the Exchange has not allowed Orders with both Minimum Quantity and Routing for technical reasons. The Exchange has made technical changes that will allow Minimum Quantity with Routing solely for MIDP, although it may make the change for other Routing strategies based on market participant interest.<sup>17</sup> For these reasons, the Exchange believes that the proposed rule change is consistent with the Act.

### 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. To the contrary, the proposed change is pro-competitive because it may make the Exchange a more attractive venue to market participants, which may incent other exchanges and trading venues to adopt similar routing functionality. In this regard, the proposed change does not create any competitive barriers or in any way preclude competitor exchanges and other trading venues from implementing similar functionality. As noted above, the proposed functionality copies, in part, existing functionality available on competitor exchanges. In addition, to the extent other exchanges and other trading venues do not support minimum quantity and routing, they are free to make the changes to their

<sup>16</sup> BYX Rule 11.13(b)(3)(Q) and EDGA Rule 11.11(g)(13). These rules provide that RMPT and RMPL routing strategies may be used with a Mid-Point Peg Order to check the exchanges' respective Systems for available shares and any remaining shares are then sent to destinations on their routing tables that support midpoint eligible orders. Any shares remaining unexecuted after routing are posted on the exchanges' respective books as a Mid-Point Peg Order, unless otherwise instructed by the exchange participant. It is unclear to the Exchange if market participants may associate a minimum quantity attribute with RMPT or RMPL. As a consequence, MIDP may differ from RMPT and/or RMPL in this way.

<sup>17</sup> Subject to submission of a rule change filing with the Commission.

systems to allow for such. Thus, the proposed change is reflective of competition among trading venues, and does not impose any burden thereon.

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

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-NASDAQ-2019-004 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2019-004. 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

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

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

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).