



Angelo Evangelou
Chief Policy Officer

March 18, 2021

The Honorable Patrick Toomey
Ranking Member
Senate Committee on Banking, Housing, and
Urban Affairs
U.S. Senate
Washington, D.C. 20515

Re: Request for Proposals to Facilitate Capital Formation

Dear Senator Toomey:

Cboe Global Markets, Inc. (“Cboe”) is a leading operator of equities exchanges, an advocate for capital markets, and a strong supporter of efforts to promote capital formation. We appreciate your solicitation for proposals to facilitate capital formation and are eager to engage on this topic.

Cboe operates both options and equities exchanges.¹ Maintaining accessible, liquid, and resilient markets is of paramount importance to Cboe. Exchanges drive innovation, compete vigorously, and play a critical role when it comes to price discovery. Registered national securities exchanges are truly at the heart of our capital markets. Cboe is proud that during the recent period of heightened volatility and increased trade and message traffic volumes, that exchange infrastructure was well-prepared and operated without any downtime or material disruption – further evidence that U.S. equity and derivative market structure is sound.

Cboe agrees that it is beneficial for capital formation and investors generally to have more public companies in the ecosystem. It is also important to continue encouraging additional companies to go (and stay) public. As such, targeted innovative solutions that provide increased liquidity for thinly traded securities, without dampening competition are highly desirable. In that regard, we’ve submitted the attached proposal to the SEC seeking to implement Periodic Auctions as an innovative solution for increasing liquidity and improving overall market quality for investors – including in thinly traded securities, where liquidity is naturally scarcer and which trade in lower volumes. Periodic Auctions would allow for liquidity to be centralized without imposing concerning changes to U.S. equity market structure. The ability of Periodic Auctions to cultivate liquidity is particularly important for thinly traded securities. Additionally, Cboe previously submitted the attached letter to the SEC which includes potential solutions for improving market quality in thinly traded stocks as well as some interesting and

¹ Cboe operates four U.S. stock exchanges (BYX Equities, BZX Equities, EDGA Equities, and EDGX Equities), four U.S. options exchanges (Cboe Options, C2 Options, BZX Options, and EDGX Options), a designated contract market (CFE), a swap execution facility (Cboe SEF), one of the largest pan European stock exchanges (Cboe Equities Europe), and a foreign exchange trading platform (Cboe FX).

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relevant data points related to thinly traded stocks. Cboe believes that solutions that provide meaningful value to investors while also furthering investor choice, rather than limiting choice, are a step in the right direction.

Cboe appreciates the opportunity to share its innovative approach to improve market quality in thinly traded securities, and to engage generally on efforts to facilitate capital formation.

Sincerely,

A handwritten signature in black ink, appearing to read "Angelo Evangelou". The signature is fluid and cursive, with the first name "Angelo" and last name "Evangelou" clearly distinguishable.

Angelo Evangelou
Chief Policy Officer
Cboe Global Markets, Inc.

Attachments



July 29, 2020

Via Electronic Submission

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE Washington, D.C. 20549-1090

Re: Release No. 34-87327, File No. S7-18-19

Dear Ms. Countryman:

Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to further comment on the Commission’s Statement on Market Structure Innovation for Thinly Traded Securities (“Statement”)¹. The Statement requested comment on potential innovations and solutions for improving market quality in equity securities that trade in lower volume (“thinly traded securities”) and sought further feedback on the regulatory changes that could help facilitate such improvement.

Cboe recently submitted the attached rule filing to the Commission to introduce Periodic Auctions for the trading of U.S. equity securities on Cboe BYX, one of Cboe’s four equity exchanges². Cboe believes that Periodic Auctions, as proposed in Cboe’s recently submitted rule filing, are a potential solution to help improve market quality in these thinly traded securities, consistent with the Commission’s request.

We share the Commission’s interest in improving market quality in this segment of the U.S. equities market and believe that innovation, one of Cboe’s core tenets, coupled with targeted approaches that invite investor choice is the best way to accomplish this shared goal. As we have previously stated, we believe that there are several different approaches that could be taken by U.S. equities exchanges to improve market quality in thinly traded securities without unnecessarily restricting an exchange’s ability to compete or risking harm to U.S. equities market structure³.

¹ See Securities Exchange Act Release No. 87327 (October 17, 2019), 84 FR 56956 (October 24, 2019) (File No. S7-18-19).

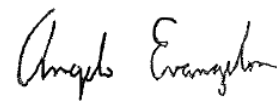
² See attached SR-CboeBYX-2020-021 (July 17, 2020) available at https://cdn.cboe.com/resources/regulation/rule_filings/pending/2020/SR-CboeBYX-2020-021.pdf for more information on how Cboe’s proposed Periodic Auctions would work.

³ See Letter from Adrian Griffiths, Assistant General Counsel, Cboe to Vanessa Countryman, Secretary, Commission dated December 20, 2019, available at <https://www.sec.gov/comments/s7-18-19/s71819-6574727-201085.pdf> for more information on Cboe’s suggested approaches to improving market quality in thinly traded securities.

Moreover, we believe that the implementation of Periodic Auctions would enhance the ability for investors to source important liquidity in both thinly traded securities where liquidity is naturally scarcer, as well as in more actively traded securities, including where available liquidity may be diminished due to increased volatility or other market conditions. Innovative solutions, like Periodic Auctions, that provide meaningful value to investors, rather than potentially harmful regulatory changes that favor a limited segment of the market, are what is needed to facilitate better market quality in thinly traded securities.

Cboe appreciates the opportunity to share its innovative solution to improve market quality in thinly traded securities. Cboe believes that innovative solutions that foster, rather than limit, continued competition and investor choice will help improve market quality in thinly traded securities while also improving the overall investor experience in the U.S. equities market.

Sincerely,

A handwritten signature in black ink that reads "Angelo Evangelou". The signature is written in a cursive style with a large initial 'A'.

Angelo Evangelou
Chief Policy Officer
Cboe Global Markets

Required fields are shown with yellow backgrounds and asterisks.

Filing by Cboe BYX Exchange, Inc.
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes to introduce periodic auctions for the trading of U.S. equity securities.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Last Name *
 Title *
 E-mail *
 Telephone * Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date
 By
 (Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to introduce periodic auctions for the trading of U.S. equity securities.

The text of the proposed rule change is enclosed as Exhibit 5. The text of the proposed rule change is available on the Exchange’s website at <http://markets.cboe.com/>, at the Exchange’s principal office and at the Public Reference Room of the Commission.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on July 14, 2020.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Adrian Griffiths, Assistant General Counsel, (646) 856-8723.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) Purpose

The purpose of the proposed rule change is to introduce periodic auctions for the trading of U.S. equity securities (“Periodic Auctions”).³ On October 17, 2019, the Commission issued a Statement on Market Structure Innovation for Thinly Traded Securities (“Statement”).⁴ The Statement requested comment on potential innovations that could improve market quality in equity securities that trade in lower volume (“thinly-traded securities”), and sought further feedback on the regulatory changes that may be needed to facilitate such innovation. Cboe Global Markets, Inc. (“Cboe”), the Exchange’s parent company, submitted a comment letter in response to the Statement on December 20, 2019.⁵ As expressed in that comment letter, Cboe shares the Commission’s interest in improving market quality in this segment of the U.S. equities market, and believes that the best way to accomplish this goal is through innovation and targeted approaches that invite investor choice.⁶ At that time, Cboe suggested a handful of different approaches that national securities exchanges could take to improve market quality in thinly-traded securities, without requiring anti-competitive and ultimately harmful changes to U.S. equities market structure.⁷ Following the submission of that comment letter, Cboe has continued

³ The term “Periodic Auction” shall mean an auction conducted pursuant to Proposed Rule 11.25. See Proposed Rule 11.25(a)(4).

⁴ See Securities Exchange Act Release No. 87327 (October 17, 2019), 84 FR 56956 (October 24, 2019) (File No. S7-18-19).

⁵ See Letter from Adrian Griffiths, Assistant General Counsel, Cboe to Vanessa Countryman, Secretary, Commission dated December 20, 2019, *available at* <https://www.sec.gov/comments/s7-18-19/s71819-6574727-201085.pdf>.

⁶ Id.

⁷ Id.

to work on the design of potential market structure innovations that it could implement to improve market quality in thinly-traded securities, consistent with the Commission's request. As a result of those efforts, the Exchange is now proposing to implement Periodic Auctions.

As proposed, Periodic Auctions of one hundred milliseconds would be conducted throughout the course of the trading day when there are matching buy and sell Periodic Auction Orders, as defined below, that are available to trade in such an auction. Periodic Auctions would not interrupt trading in the continuous market, and would be 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 market that are executed in the auction. While Periodic Auctions would be available in all securities traded on the Exchange, the Exchange believes that this trading mechanism would be particularly valuable for securities that trade in lower volume and consequently suffer from wider spreads and less liquidity displayed in the public markets. Cboe has been a global leader in the implementation of periodic auctions, and currently runs the largest periodic auction book for the trading of European equities. The proposed Periodic Auctions that the Exchange would implement are based on the model that Cboe offers to clients in Europe, with targeted changes to adapt this model for the U.S. equities market. The Exchange believes that its implementation of Periodic Auctions would enhance the ability for investors to source liquidity in both thinly-traded securities where liquidity is naturally more scarce, as well as in more actively traded securities, including where available liquidity may be diminished due to increased volatility or other market conditions. Today, U.S. equities market participants are largely limited to two significant liquidity events where orders are pooled and executed at a single point in time – *i.e.*, the opening and closing auctions. During the rest of the trading day, liquidity may be more limited, particularly for market participants that are seeking to trade larger

orders. As proposed, Periodic Auctions would offer a new price forming auction that could be utilized by investors seeking liquidity, including block-size liquidity, during the course of the trading day. The Exchange believes that concentrating available liquidity in Periodic Auctions that would take place when the Exchange has received matching auctionable buy and sell orders would assist investors in obtaining needed liquidity, particularly in the case of investors seeking to execute larger orders that would be difficult to execute without market impact in the continuous market. In addition, since the proposed Periodic Auctions would be price forming, these auctions would perform a valuable price discovery function, which may be particularly helpful for investors when trading thinly-traded or other securities that typically trade with wider spreads.

I. Order Entry and Cancellation

The Exchange would offer Periodic Auction Only Orders and Periodic Auction Eligible Orders,⁸ both of which indicate a member's desire to initiate a Periodic Auction, if possible, as well as Continuous Book Orders that would not initiate a Periodic Auction but would be eligible to participate in such an auction when it is executed.⁹ Thus, as provided in Proposed Rule 11.25(b), Users may enter Periodic Auction Orders, *i.e.*, Periodic Auction Only Orders or Periodic Auction Eligible Orders,¹⁰ that are eligible to initiate Periodic Auctions pursuant to

⁸ A "Periodic Auction Only Order" is a Limit Order entered with an instruction to participate solely in Periodic Auctions pursuant to Proposed Rule 11.25. 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 Proposed Rule 11.25. See Proposed Rule 11.25(b)(1)-(2).

⁹ The term "Continuous Book Order" shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term "Continuous Book" shall mean System's electronic file of such Continuous Book Orders. See Proposed Rule 11.25(a)(2).

¹⁰ The term "Periodic Auction Order" shall mean a "Periodic Auction Only Order" or "Periodic Auction Eligible Order" as those terms are defined in Proposed Rules

Proposed Rule 11.25(c), as discussed later in this proposed rule change, and Continuous Book Orders that may participate in such Periodic Auctions if present on the Continuous Book at the time a Periodic Auction is executed. As explained in more detail below, the ability to choose between Periodic Auction Only Orders, Periodic Auction Eligible Orders, and Continuous Book Orders would allow members to control how their orders are handled in Periodic Auctions – e.g., whether the order is able to initiate a Periodic Auction, or not, and whether the order participates on the Continuous Book, or not. The choice of different methods of participating in Periodic Auctions would therefore provide flexibility to members based on their individual business needs, or the needs of their customers. Regardless of the type of order submitted, orders entered on the Exchange that are present when a Periodic Auction is executed would generally be eligible to participate in that execution. The proposed introduction of Periodic Auctions would therefore benefit both Users explicitly seeking to use this functionality, as well as other Users that may benefit from any increased liquidity routed to the Exchange in order to participate in such Periodic Auctions.

General Requirements for Order Entry and Cancellation. Periodic Auction Orders and Continuous Book Orders may be modified and/or cancelled at any time, including during the Periodic Auction Period,¹¹ at the discretion of the User. Periodic Auctions are designed to allow seamless participation in a price forming auction process without impacting continuous trading, and market participants would therefore remain able to manage orders that they have entered to participate in such auctions during the course of the trading day. Since some Users may not wish

11.25(b)(1)-(2), and the term “Periodic Auction Book” shall mean the System’s electronic file of such Periodic Auction Orders.. See Proposed Rule 11.25(a)(6).

¹¹ The term “Periodic Auction Period” would be defined in Proposed Rule 11.25(a)(8) as the fixed time period of 100 milliseconds for conducting a Periodic Auction.

to cancel Periodic Auction Orders inadvertently during the course of an ongoing Periodic Auction, however, the Exchange would provide an optional instruction that would allow such Users to instruct the Exchange not to cancel a Periodic Auction Order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price.¹²

Given that Periodic Auctions are designed, in part, to facilitate the sourcing of larger blocks of liquidity that may not be available in continuous trading, the Exchange would also implement certain size restrictions that would be applicable to Periodic Auction Orders. Specifically, Periodic Auction Orders would have to be for a size of 100 shares or more in securities priced below \$500 based on the consolidated last sale price, *i.e.*, the last sale price that is disseminated by the securities information processor, or if no consolidated last sale price is available, the previous day's closing price.¹³ There would be no similar size restrictions for higher-priced securities, where such a size requirement would require a higher notional value to participate in a Periodic Auction.

Periodic Auction Only Orders. A "Periodic Auction Only Order" would be defined in proposed Rule 11.25(b)(1) as a Limit Order entered with an instruction to participate solely in Periodic Auctions pursuant to Proposed Rule 11.25. The Periodic Auction Only Order is designed for market participants that want to access liquidity that is available in one or more

¹² The Periodic Auction Book Price is an indicative price that is designed to provide information about the price where a Periodic Auction may ultimately be executed. See *infra* note 28. The instruction to "lock-in" a Periodic Auction Order would be included as a port setting that a User can use to flag any orders entered through a particular port. Users that wish to use this feature must use the port setting and would not be able to flag individual orders on an order-by-order basis.

¹³ Periodic Auction Only Orders that do not meet applicable size requirements would be rejected. Periodic Auction Eligible Orders would be handled as Continuous Book Orders, and would be eligible to trade on the Continuous Book based on User instructions.

Periodic Auctions and do not wish to participate in the continuous market. As such, a Periodic Auction Only Order would not be eligible for execution on the Continuous Book. Instead, such orders would remain on the Periodic Auction Book for participation in Periodic Auctions until executed or cancelled.

Periodic Auction Only Orders would only be accepted with a time-in-force of Regular Hours Only (“RHO”) or immediate-or-cancel (“IOC”). Specifically, Periodic Auction Only Orders entered outside of Regular Trading Hours must include a time-in-force of Regular Hours Only (“RHO”) as the Exchange would conduct Periodic Auctions only during Regular Trading Hours,¹⁴ and not during the Early Trading,¹⁵ Pre-Opening,¹⁶ or After Hours Trading Sessions.¹⁷ Periodic Auction Only Orders entered during Regular Trading Hours may be either RHO or immediate-or-cancel (“IOC”). If entered with a time-in-force of IOC, the order must include an instruction pursuant to Proposed Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price. As previously discussed, with the inclusion of this instruction, an order that initiates a Periodic Auction would be considered “locked-in” and would not be cancellable by the entering User during the course of an ongoing Periodic Auction Period unless it is not marketable at the Periodic Auction Book Price. An IOC order entered with this instruction would therefore be able to immediately initiate a Periodic

¹⁴ The term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See BYX Rule 1.5(w).

¹⁵ The term “Early Trading Session” means the time between 7:00 a.m. and 8:00 a.m. Eastern Time. See BYX Rule 1.5(ee).

¹⁶ The term “Pre-Opening Session” means the time between 8:00 a.m. and 9:30 a.m. Eastern Time. See BYX Rule 1.5(r).

¹⁷ The term “After Hours Trading Session” means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. See BYX Rule 1.5(c).

Auction on entry. And, if it does so, it would not be cancelled for the duration of the Periodic Auction Period, except in circumstances where the Periodic Auction Book Price indicates that the order might not be executable, thereby ensuring that Periodic Auction Only Orders entered with these attributes would ordinarily be eligible to participate in Periodic Auctions that they initiate.

The Exchange believes that the Periodic Auction Only Order may be particularly valuable for market participants that are seeking to execute larger orders that they may not be willing expose for trading on the Continuous Book. Thus, the Exchange would permit Users to specify a minimum execution quantity for their Periodic Auction Only Orders. A Periodic Auction Only Order entered with a minimum execution quantity would be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders or Continuous Book Orders. The Exchange offers Minimum Quantity Orders to Users that trade on the Continuous Book today.¹⁸ The proposed instruction that could be attached to a Periodic Auction Only Order is similar to the current Minimum Quantity Orders used for trading on the Continuous Book but would only permit the default handling of that order type, and would not allow a member to alternatively specify that the minimum quantity condition be satisfied by each individual contra-side order. Periodic Auction Eligible Orders and Continuous Book Orders entered as Minimum Quantity Orders would be subject to similar restrictions.

In addition, the Exchange believes that some Users may wish to use Periodic Auctions to seek liquidity at or better than a pegged price that is based on the applicable national best bid and

¹⁸ See BYX Rule 11.9(c)(5).

offer (“NBBO”). The Exchange would therefore allow a User to optionally include an instruction on its Periodic Auction Only Orders to peg such orders to either the midpoint of the NBBO (“midpoint peg”), or the same side of the NBBO (“primary peg”). Similar to pegging instructions offered for Continuous Book Orders today,¹⁹ Periodic Auction Only Orders entered with a primary peg instruction could be pegged to the NBB or NBO, or a certain amount above the NBB or below the NBO (“offset”).²⁰ The inclusion of a pegging instruction for Periodic Auction Only Orders would ensure that Users have the opportunity to specify that these orders are only executed at prices defined in relation to the market for the particular security, including midpoint executions that offer price improvement compared to the applicable NBBO.

Periodic Auction Eligible Orders. A “Periodic Auction Eligible Order” would be defined in Proposed Rule 11.25(b)(2) as 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 Proposed Rule 11.25. The Periodic Auction Eligible Order would allow market participants to trade in the continuous market during the course of the trading day, with the ability to also initiate Periodic Auctions when there is contra-side liquidity available to trade. The Exchange notes that there may be situations where an incoming Periodic Auction Eligible Order would be able to either initiate a Periodic Auction, or alternatively trade immediately with one or more orders resting on the Continuous Book. Since Periodic Auction Eligible Orders are geared towards participation in Periodic Auctions, with attendant price discovery benefits and potential price improvement opportunities, an incoming Periodic Auction Eligible Order that is

¹⁹ See BYX Rule 11.9(c)(8)(A).

²⁰ Since Periodic Auctions are restricted from trading outside of the applicable Protected NBBO, the offset included on such orders would have to result in the order being more aggressive than the NBBO – *i.e.*, priced higher for buy orders or lower for sell orders.

eligible both to trade on the Continuous Book and initiate a Periodic Auction would initiate a Periodic Auction. For similar reasons, Periodic Auction Eligible Orders would not trade on the Continuous Book during a Periodic Auction Period in the security. Although the Exchange would not halt or otherwise suspend trading on the Continuous Book while conducting a Periodic Auction, the Exchange believes that Periodic Auction Eligible Orders that are designed for use in Periodic Auctions should preference trading in such auctions over trading on the Continuous Book.

The time-in-force included on a Periodic Auction Eligible Order would also need to allow the order to be entered and remain on the Periodic Auction Book during the course of a Periodic Auction. As a result, there would be certain limitations on the entry of Periodic Auction Eligible Orders with a time-in- IOC or fill-or-kill (“FOK”). An IOC order is defined in BYX Rule 11.9(b)(1) as a limit order that is to be executed in whole or in part as soon as such order is received. Thus, under the ordinary terms of an IOC order, if such an order were to initiate a Periodic Auction, it would generally not be available for later execution at the end of any Periodic Auction Period. To ensure that IOC orders that initiate a Periodic Auction are eligible to participate in the auction’s eventual execution, the Exchange therefore proposes that Periodic Auction Eligible Orders entered with a time-in-force of IOC must include an instruction pursuant to Proposed Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price. Such Periodic Auction Eligible Orders would be handled in a manner consistent with that described above with respect to Periodic Auction Only Orders. Similarly, an FOK order is defined in BYX Rule 11.9(b)(6) as a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, cancelled. The Exchange

is not proposing to support the use of FOK orders in Periodic Auctions, and therefore Periodic Auction Eligible Orders would not be able to be entered with a time-in-force of FOK.²¹

As previously explained, the Exchange believes that Users seeking liquidity in Periodic Auctions may wish to use such auctions to receive an execution at prices at or better than the midpoint of the NBBO. The Exchange currently offers functionality that allows members entering Mid-Point Peg Orders on the Continuous Book to forgo an execution in situations where the NBBO is locked.²² However, in order to avoid a Periodic Auction from being initiated that may not ultimately result in an execution during a locked market, Mid-Point Peg Orders that are entered with an instruction to not execute when the NBBO is locked would not be eligible to be entered as Periodic Auction Eligible Orders.²³ This handling would mirror the handling of Periodic Auction Orders, which as proposed could be entered with a midpoint peg instruction, but would not include any further instructions that would allow the User to elect not to trade during a locked market.

Since the Exchange believes that Periodic Auctions may be beneficial to market participants trading larger orders that they may not want to be executed unless a specified minimum size can be satisfied, the Exchange would also allow for Minimum Quantity Orders to be entered as Periodic Auction Eligible Orders. As previously discussed, the Exchange currently

²¹ Although the Exchange is not proposing any special handling for IOC or FOK orders that are entered as Continuous Book Orders, the Exchange notes that such orders would not participate in Periodic Auctions as they would never be posted to the Continuous Book.

²² See BYX Rule 11.9(c)(9).

²³ This restriction would not apply to Continuous Book Orders. Since Continuous Book Orders do not initiate Periodic Auctions, a Continuous Book Order entered with these instructions would be able to participate in the eventual execution of Periodic Auctions if such execution can take place in accordance with the terms of the order.

offers two variants of this order type. By default, a Minimum Quantity Order would execute upon entry against a single order or multiple aggregated orders simultaneously. Alternatively, such orders may be entered with an instruction that the order not trade with multiple aggregated orders simultaneously, and that the minimum quantity condition instead be satisfied by each individual order resting on the Continuous Book. As proposed, Minimum Quantity Orders, as defined in Rule 11.9(c)(5), may be entered as Periodic Auction Eligible Orders only if the order includes the default instruction that allows the minimum size specified to be executed against one or more contra-side orders – *i.e.*, similar to the proposed handling of Periodic Auction Only Orders entered with a minimum execution quantity instruction. Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order would not be eligible to be entered as Periodic Auction Eligible Orders. As discussed later in this proposed rule change, similar restrictions would also apply to Continuous Book Orders, which would not participate in Periodic Auctions if entered with this alternative instruction.

Finally, similar to the opening process used to begin trading in a security pursuant to BYX Rule 11.23: (1) Discretionary Orders, as defined in rule 11.9(c)(10), would be eligible to participate only up to their ranked price for buy orders or down to their ranked price for sell orders;²⁴ and (2) all Pegged Orders and Mid-Point Peg Orders, as defined in BYX Rule 11.9(c)(8) and (9), would be eligible for execution in Periodic Auctions based on their pegged prices. The Exchange believes that this proposed handling is equally relevant to Periodic

²⁴ The discretionary range of such orders would not be considered in Periodic Auctions.

Auctions, and would ensure, where appropriate, that the order handling experienced in such Periodic Auctions is familiar to members and investors.

Continuous Book Orders. A “Continuous Book Order” would be defined in Proposed Rule 11.25(a)(2) as an order on the BYX Book that is not a Periodic Auction Order. Continuous Book Orders, which may participate in the eventual execution of a Periodic Auction but would not be able to initiate such an auction, would be handled in the same manner as Periodic Auction Eligible Orders solely with respect to handling of (1) Discretionary Orders, and (2) Pegged Orders and Mid-Point Peg Orders, each as discussed in the preceding paragraph. Continuous Book Orders would also be subject to the handling discussed for Periodic Auction Eligible Orders entered as Minimum Quantity Orders, with the caveat that this handling would only apply to Continuous Book Orders entered with the default instruction that permits the execution of such orders against one or more contra-side orders. As proposed, similar to the treatment of Periodic Auction Orders – including both Periodic Auction Only Orders and Periodic Auction Eligible Orders – Continuous Book Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order would not be included in Periodic Auctions. However, rather than prohibiting Users from entering Minimum Quantity Orders with this instruction on the Continuous Book, where this instruction may still be valuable for investors, the Exchange would simply prohibit any orders entered with that instruction from participating in the execution of any Periodic Auctions. Finally, Continuous Book Orders that are entered as Reserve Orders, as defined in Rule 11.9(c)(1), would be eligible

to participate in Periodic Auctions to the full extent of their displayed size and Reserve Quantity.²⁵

II. Initiation and Publication of Periodic Auction Information

The Exchange would conduct Periodic Auctions during Regular Trading Hours to give market participants an opportunity to obtain liquidity during the course of the trading day. Instead of initiating such auctions on a set schedule, the Exchange would wait until it has executable interest that is eligible to initiate a Periodic Auction, thereby ensuring that Periodic Auctions are only performed when it may be possible for interested market participants to obtain an execution at the end of the Periodic Auction Period. Specifically, as provided in Proposed Rule 11.25(c), a Periodic Auction would be initiated in a security during Regular Trading Hours when one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell pursuant to Proposed Rule 11.25. This would begin a Periodic Auction Period of 100 milliseconds where the Exchange would match buy and sell orders for potential execution.²⁶

Once the Periodic Auction Period has begun, the Exchange would consolidate any additional Periodic Auction Orders that it receives, which would be used to calculate the

²⁵ There are no similar requirements applicable to Periodic Auction Eligible Orders since Reserve Orders include a displayed portion and therefore would not be eligible for entry as Periodic Auction Eligible Orders. As discussed, Periodic Auction Eligible Orders, as defined, would include only Non-Displayed Limit Orders.

²⁶ One relevant exception to this would be for Periodic Auctions that would otherwise end after the Regular Trading Session. As previously discussed, Periodic Auctions would only be conducted during Regular Trading Hours. As a result, such Periodic Auctions would be performed at the end of the Regular Trading Session.

information disseminated at a randomized time thereafter in a Periodic Auction Message.²⁷

Specifically, at a randomized time in one millisecond intervals after a Periodic Auction has been initiated and before the end of the Periodic Auction, the Exchange would disseminate via electronic means a Periodic Auction Message that includes two important pieces of information about the Periodic Auction: (1) the Periodic Auction Book Price,²⁸ and (2) the total number of shares of Periodic Auction Orders that are matched at the Periodic Auction Book Price. With these two pieces of information, market participants would be informed of both the price at which Periodic Auction Orders would match based on current market conditions, and the number of shares of such orders that would be matched. The calculation of the Periodic Auction Book Price would exclude Continuous Book Orders. Although Continuous Book Orders are eligible to trade in a Periodic Auction at the end of the Periodic Auction Period, they are potentially subject to execution on the Continuous Book prior to the execution of the Periodic Auction. As a result, similar to certain information disseminated by other national securities exchanges in advance of their auctions,²⁹ Continuous Book Orders would not be used to calculate the data elements

²⁷ The “Periodic Auction Message” would be defined in Proposed Rule 11.25(a)(7) as a message disseminated by electronic means that includes information about any matched Periodic Auction Orders on the Periodic Auction Book, as described in Rule 11.25(c).

²⁸ The “Periodic Auction Book Price” would be defined in Proposed Rule 11.25(a)(5) as the price within the Collar Price Range at which the most shares from the Periodic Auction Book would match. In the event of a volume-based tie at multiple price levels, the Periodic Auction Book Price would be the price that results in the minimum total imbalance. In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Book Price would be the price closest to the Volume Based Tie Breaker. As calculated, the Periodic Auction Book Price would be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Book Price.

²⁹ For example, the “Current Reference Price” disseminated ahead of Nasdaq’s closing cross is defined as the single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired, subject to certain tie-breakers. See Nasdaq Rule 4754(a)(7)(A). Nasdaq

included in the Periodic Auction Message. After its initial dissemination, a revised Periodic Auction Message would be disseminated in one millisecond intervals for the remaining duration of the auction, thereby ensuring that market participants maintain a current view of the market with which to make appropriate trading decisions throughout the Periodic Auction Period.

III. Determination of Periodic Auction Price

Periodic Auctions are designed to facilitate meaningful price discovery in securities traded on the Exchange throughout the course of the trading day. Similar to the operation of opening and closing auctions in securities listed on the Exchange's affiliate, Cboe BZX Exchange, Inc. ("BZX"),³⁰ as well as similar auctions conducted on other national securities exchanges, Periodic Auctions would therefore be executed at a price that maximizes the number of shares traded in the auction within designated auction collars ("Collar Price Range").³¹ Specifically, as provided in Proposed Rule 11.25(d), the Periodic Auction Price would be established by determining the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book and Periodic Auction Book in the Periodic Auction.³²

does not include "Close Eligible Interest" entered on its continuous book in determining the Current Reference Price pursuant to Nasdaq Rule 4754(a)(7)(A), nor does it include such orders in its dissemination of the number of shares represented by MOC, LOC, and IO orders that are paired at the Current Reference Price. See Nasdaq Rule 4754(a)(7)(B).

³⁰ See BZX Rule 11.23(b)(2)(B); (c)(2)(B).

³¹ The term "Collar Price Range" shall mean the more restrictive of the Midpoint Collar Price Range, as defined in Proposed Rule 11.25(a)(1), and the Protected NBBO. See Proposed Rule 11.25(a)(1). Notwithstanding the foregoing, if the Collar Price Range calculated by the Exchange would be outside of the applicable Price Bands established pursuant to the Limit Up-Limit Down Plan, the Collar Price Range will be capped at such Price Bands. Id.

³² The calculation of Collar Price Range, as defined in the Proposed Rule, is described in more detail in Section IV of this proposed rule change. As calculated, the Periodic

The Exchange would also implement certain “tie-breakers” that would be used to determine the applicable Periodic Auction Price if multiple price levels would satisfy the requirement to maximize the number of shares executed in the auction. These tie-breakers would be the same as the tie-breakers currently used for opening and closing auctions on BZX for that exchange’s listed securities. Specifically, in the event of a volume-based tie at multiple price levels, the Periodic Auction Price would be the price that results in the minimum total imbalance – *i.e.*, the price at which the number of any executable shares to buy or sell that do not participate in the Periodic Auction is minimized.³³ In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Price would be the price closest to the Volume Based Tie Breaker, which would be defined in Proposed Rule 11.25(a)(9) as the midpoint of the NBBO for a particular security where the NBBO is a Valid NBBO.³⁴

IV. Determination of Collar Price Range

As discussed, the Periodic Auction Price would be constrained by auction collars that are designed to ensure that the execution of a Periodic Auction takes place at a price that is reasonably related to the market for the security. While Periodic Auctions are designed to

Auction Price would be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Price.

³³ Selecting a price that would minimize the imbalance best reflects the value of the security based on the auction's price discovery process because it is the price level where the amount of buy and sell interest is closest to equal.

³⁴ As is the case on the Exchange’s affiliate, BZX, for opening and closing auctions for BZX-listed securities, a NBBO would be considered a Valid NBBO where: (i) there is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO as determined by the Exchange and published in a circular distributed to Members with reasonable advance notice prior to initial implementation and any change thereto. See BZX Rule 11.23(b)(23). Where the NBBO is not a Valid NBBO, the consolidated last sale price would be used. Id.

balance supply and demand through a competitive auction process, the Collar Price Range would restrict trading from occurring at prices that are far away from the market. Specifically, as proposed, the term “Collar Price Range” would be defined in Proposed Rule 11.25(a)(1) as the more restrictive of the Midpoint Collar Price Range and the Protected NBBO.³⁵ The Collar Price Range would be similar to the auction collars used today for BZX’s opening and closing processes, with important differences to account for the fact that Periodic Auctions would be subject to the requirements of the Rule 611 of Regulation NMS (“Order Protection Rule”) and the Plan to Address Extraordinary Market Volatility (the “Limit Up-Limit Down” or “LULD” Plan).

Specifically, Periodic Auctions would be subject to a Collar Price Range that is the more restrictive of the Midpoint Collar Price Range (described below) and the Protected NBBO. This implementation would therefore ensure that such Periodic Auctions are executed at a price that is consistent with the requirements of the Order Protection Rule as well as the additional protections provided by auction collars that are similar to those currently used by the Exchanges’ affiliate, BZX, for opening and closing auctions in that exchange’s listed securities. For all Periodic Auctions, the Exchange would calculate a Midpoint Collar Price Range to establish an upper and lower bound for the execution of such auctions. The Midpoint Collar Price Range would mirror the collars currently established for use in BZX auctions, and would be defined in Proposed Rule 11.25(a)(3) as the range from a set percentage below the Collar Midpoint to

³⁵ The term “Midpoint Collar Price Range” shall mean the range from a set percentage below the Collar Midpoint (as defined below) to above the Collar Midpoint, such set percentage being dependent on the value of the Collar Midpoint at the time of the auction, as described below. See Proposed Rule 11.25(a)(3). The “Protected NBBO” is the national best bid or offer that is a Protected Quotation. See BYX Rule 1.5(s).

above the Collar Midpoint,³⁶ such set percentage being dependent on the value of the Collar Midpoint at the time of the auction. Specifically, the Collar Price Range would be determined as follows: (1) where the Collar Midpoint is \$25.00 or less, the Collar Price Range would be the range from 10% below the Collar Midpoint to 10% above the Collar Midpoint; (2) where the Collar Midpoint is greater than \$25.00 but less than or equal to \$50.00, the Collar Price Range would be the range from 5% below the Collar Midpoint to 5% above the Collar Midpoint; and (3) where the Collar Midpoint is greater than \$50.00, the Collar Price Range would be the range from 3% below the Collar Midpoint to 3% above the Collar Midpoint. Finally, all Periodic Auctions would be conducted during Regular Trading Hours and therefore would be subject to the requirements of the LULD Plan. Generally, the LULD Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands. Consistent with the requirements of the LULD Plan, the Exchange would not execute Periodic Auctions at a price that is outside of the applicable Price Bands. Thus, if the Collar Price Range calculated by the Exchange would be outside of the applicable Price Bands established pursuant to the LULD Plan, the Collar Price Range would be capped at such Price Bands.

V. Priority and Execution of Orders

As discussed, Periodic Auction Orders and Continuous Book Orders that are executable at the end of the Periodic Auction Period would be executed at the Periodic Auction Price determined pursuant to Proposed Rule 11.25(d). Such orders would be executed in accordance with Proposed Rule 11.25(e), which describes the allocation model for Periodic Auctions.

³⁶ The Collar Midpoint would be the Volume Based Tie Breaker for all Periodic Auctions. As discussed later in this proposed rule change, the Volume Based Tie Breaker would generally be the midpoint of the NBBO, except where there is no Valid NBBO.

Generally, the allocation model described in this rule is intended to encourage active participation of Periodic Auction Orders, including participation of larger orders, while ensuring that Continuous Book Orders are also able to participate in resulting executions, as appropriate, in order to encourage continued liquidity on the Continuous Book. First, any displayed Continuous Book Orders that are executable at the Periodic Auction Price would be executed in price/time priority, thereby encouraging the continued submission of displayed orders. Second, after any displayed Continuous Book Orders have been executed, the Exchange would execute any Periodic Auction Orders that are executable at the Periodic Auction Price. Since Periodic Auctions are designed, in part, to facilitate the execution of larger orders, such Periodic Auction Orders would be executed in size/time priority, beginning with the largest order. Finally, any non-displayed Continuous Book Orders that are executable at the Periodic Auction Price would be executed pursuant to the normal price-time priority allocation used for the execution of orders on the Continuous Book, as provided in BYX Rule 11.9(a)(2)(B). All Match Trade Prevention modifiers, as defined in BYX Rule 11.9(f), would be ignored as it relates to executions occurring during a Periodic Auction.

VI. Regulatory and Other Considerations

The Exchange would also adopt rule language in the Interpretations and Policies to the proposed rule that describes how Periodic Auctions would be processed consistent with certain other regulatory obligations, including obligations related to member conduct, or otherwise to ensure transparent handling in certain specified circumstances. These rules would provide additional clarity and transparency to members and investors with respect to how the Exchange would process Periodic Auctions consistent with relevant obligations under the Exchange Act, or as otherwise necessary or appropriate to maintain a fair and orderly market on the Exchange.

First, as explained in Interpretations and Policies .01 to Proposed Rule 11.25, the Exchange would not conduct Periodic Auctions during a trading halt when such trading is prohibited. If a symbol is halted prior to the execution of a Periodic Auction that has already been initiated pursuant to Proposed Rule 11.25(c), the Periodic Auction would be immediately cancelled without execution, consistent with applicable limitations on trading during a halt.

Second, as explained in Interpretations and Policies .02 to Proposed Rule 11.25, a Periodic Auction would not be initiated during a Crossed Market. If the market becomes crossed during a Periodic Auction that has already been initiated pursuant to Proposed Rule 11.25(c), and remains crossed at the end of the Periodic Auction Period, the Periodic Auction would be cancelled without execution.³⁷ If the market subsequently becomes uncrossed, resting Periodic Auction Orders may trigger a Periodic Auction pursuant to Rule 11.25(c).

Third, Interpretations and Policies .03 to Proposed Rule 11.25 would detail the proposed handling of orders consistent with Regulation SHO. As proposed, all short sale orders designated for participation in the Periodic Auction would have to be identified as “short” or “short exempt” pursuant to Rule 11.10(a)(5). Rules 201(b)(1)(i) and (ii) of Regulation SHO generally requires that trading centers such as the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to: (i) prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security’s closing price; and (ii) impose this price restriction for the remainder of the day and the following day. So as to maintain compliance with Rule 201 of Regulation SHO, the Exchange would only execute short

³⁷ The Exchange would not immediately cancel the auction as crossed markets are typically short-lived and the market may no longer be crossed at the end of the Periodic Auction Period, in which case the Exchange could successfully execute the auction.

sale orders (*i.e.*, those not marked short exempt) if the execution would take place at a permissible price pursuant to Regulation SHO. Specifically, if a security is in a short sale circuit breaker, orders marked short will only trade in a Periodic Auction if the Periodic Auction Price determined pursuant to Rule 11.25(d) is above the national best bid.³⁸

Finally, Interpretations and Policies .04 to Proposed Rule 11.25 would describe member conduct obligations with respect to the entry of Periodic Auction Orders. As proposed, Periodic Auction Orders must be entered with the intent to participate in Periodic Auctions. A pattern or practice of submitting orders for the purpose of disrupting or manipulating Periodic Auctions, including entering and immediately cancelling Periodic Auction Orders, would be deemed conduct inconsistent with just and equitable principles of trade. The Exchange would conduct surveillance to ensure that Users do not inappropriately enter Periodic Auction Orders for impermissible purposes, such as to gain information about other Periodic Auction Orders that are resting on the Periodic Auction Book, or otherwise disrupting or manipulating Periodic Auctions.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,³⁹ in general, and Section 6(b)(5) of the Act,⁴⁰ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to

³⁸ This restriction would not apply to orders marked short exempt, which are exempted from these restrictions pursuant to Rule 201(b)(1)(iii)(B) of Regulation SHO. Rule 201(b)(1)(iii)(B) of Regulation SHO provides that the policies and procedures required by the rule must be reasonably designed to permit the execution or display of a short sale order of a covered security marked “short exempt” without regard to whether the order is at a price that is less than or equal to the current national best bid.

³⁹ 15 U.S.C. § 78f(b).

⁴⁰ 15 U.S.C. § 78f(b)(5).

protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would facilitate improved price formation and provide additional execution opportunities for investors, particularly in thinly-traded or other securities that may suffer from limited liquidity.

As mentioned in the purpose section of this proposed rule change, the Exchange believes that its proposed introduction of Periodic Auctions is responsive to the Statement that the Commission issued in October 2019 to address market quality concerns in thinly-traded securities.⁴¹ Specifically, the Periodic Auction proposal is designed to improve liquidity and price formation in such thinly-traded securities, while also allowing the Exchange to better compete with off-exchange venues that currently offer features that investors may find beneficial for sourcing liquidity when displayed liquidity in the public markets is more scarce. Cboe offered its thoughts in response to the Statement in a comment letter submitted to the Commission on December 20, 2019. As stated in that comment letter, Cboe believes that innovation by national securities exchanges, rather than potentially harmful regulatory changes that favor a limited segment of the market, is what is ultimately needed to facilitate better market quality in thinly-traded securities. The Exchange believes that Periodic Auctions, as designed, are such an innovation.

Periodic Auctions would supplement existing opening and closing auctions by consolidating buy and sell interest in a price forming auction when investors seek liquidity during the course of the trading day. Although liquidity is frequently available in size around the open and close of trading, liquidity may be more limited intraday. Thus, investors looking to

⁴¹ See supra note 4.

trade in size may have issues getting their orders filled during the trading day, or may receive inferior execution quality due to the market impact of trading larger blocks of equity securities in a market with limited liquidity. As proposed, Periodic Auctions would allow the Exchange to consolidate volume from market participants, thereby increasing the liquidity available to investors. By creating a deeper pool of liquidity for the intraday execution of orders, including block-sized liquidity, the Exchange believes that members and investors would be able to secure better quality executions. In addition, Periodic Auctions would perform an important price discovery function, which the Exchange believes may be particularly valuable in thinly-traded securities that often trade with significantly wider spreads that negatively impact the ability for investors to ascertain market value.⁴² The proposed introduction of Periodic Auctions would therefore contribute to a fair and orderly market in equity securities traded on the Exchange.

The Exchange's affiliate, Cboe Europe, has had a successful history with periodic auctions in the European equities market, and the proposed introduction of Periodic Auctions for the trading of U.S. equity securities is based, in part, on the successful implementation of a similar product offered by Cboe Europe. As illustrated in Chart A, Cboe Europe's periodic auction book has grown to about 2% - 2.5% of notional value traded on European equities exchanges since its introduction in October 2015. Indeed, such periodic auctions now account for an average daily value traded ("ADVT") of about €1 billion, with two months in Q1 2020

⁴² See Letter from Adrian Griffiths, *supra* note 5, which illustrates the wider spreads that often impact trading in thinly-traded securities. The Exchange believes that Periodic Auctions would improve price discovery in securities that tend to trade with wider spreads. As explained in that letter, volume in thinly-traded securities often migrates to off-exchange venues where market participants can trade without publicly displaying their orders and while potentially minimizing market impact.

actually exceeding this threshold, reflecting the value that this offering has provided to market participants that trade European equities.

Chart A: Average Daily Value Traded in Cboe Europe Periodic Auctions

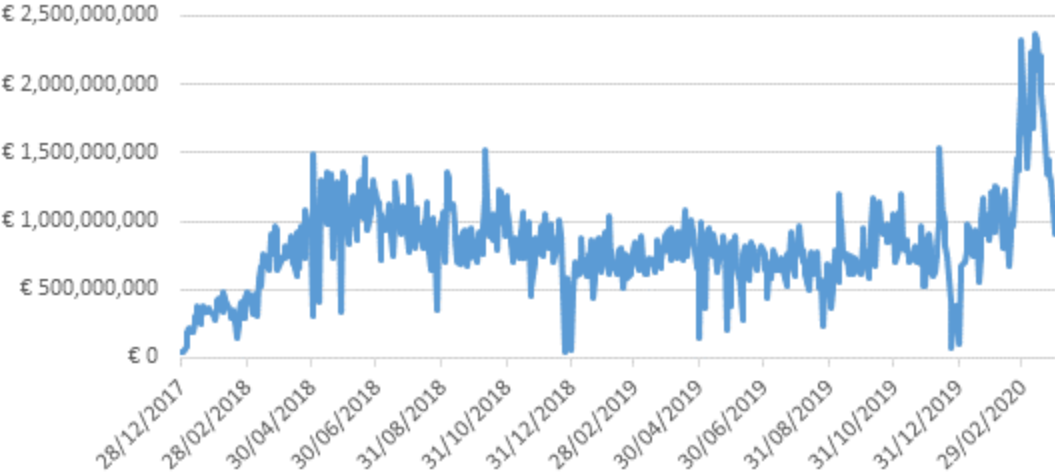


Chart B: Cboe Europe Periodic Auction Statistics

Month	Periodic Auction Value Traded		Periodic Auction Market Share % Notional Value Traded on Exchanges in EU
	Total Monthly	Average Daily	
Jan-20	€ 19,266,389,823	€ 875,883,628	2.42%
Feb-20	€ 24,377,313,487	€ 1,218,865,674	2.52%
Mar-20	€ 36,933,642,050	€ 1,678,801,911	2.46%
Apr-20	€ 18,370,457,305	€ 918,522,865	2.33%
May-20	€ 15,993,488,255	€ 761,594,679	2.13%
Jun-20	€ 18,221,339,811	€ 828,242,719	1.91%

This growth in Cboe Europe's periodic auction offering has promoted price improvement opportunities, with an analysis of periodic auctions conducted by Cboe Europe for Q1 2020 showing such periodic auctions trading about 85% of value traded at the midpoint. Although the Exchange recognizes that there are important differences in market structure between the U.S. and European equities markets, as well as relevant design differences between the two products, the Exchange believes that U.S. investors may receive similar benefits from its proposed introduction of Periodic Auctions. Moreover, the Exchange believes that such innovation should take preference over other regulatory approaches that may impede future innovation. As discussed in detail in the paragraphs that follow, Periodic Auctions are designed to improve the

investor experience for market participants that trade U.S. equities, and the Exchange believes that this product may therefore contribute to a free and open market and national market system.

The Exchange believes that it is consistent with the protection of investors and the public interest to introduce Periodic Auction Only Orders and Periodic Auction Eligible Orders to facilitate trading in the Periodic Auctions. Use of these order types would be voluntary, and market participants would be able to determine whether and how to participate in Periodic Auctions using these order types. Specifically, while both forms of Periodic Auction Orders would be eligible to initiate Periodic Auctions, Periodic Auction Only Orders would allow firms to indicate that they are seeking liquidity solely in Periodic Auctions, while Periodic Auction Eligible Orders would allow firms to also seek liquidity on the Continuous Book before and after the execution of a Periodic Auction. The Exchange believes that it is appropriate to offer these two methods of initiating Periodic Auctions so that market participants can decide whether to use Periodic Auctions as the sole means of sourcing liquidity, or as an additional means of accessing liquidity if an order entered onto the Continuous Book has not been executed.

Periodic Auction Only Orders would provide a means for Users to indicate that they solely wish to have their order executed in a Periodic Auction. Since Periodic Auctions would only take place during the Regular Trading Session, Periodic Auction Only Orders would be accepted with a time-in-force of RHO (either during or outside of Regular Trading Hours), or IOC (solely during Regular Trading Hours). If entered with a time-in-force of IOC, a Periodic Auction Only Order would also have to be entered with an instruction to “lock-in” the order to avoid situations where a Periodic Auction Only Order initiates an auction and then is immediately cancelled prior to the execution of that auction. Periodic Auction Only Orders are not eligible to trade on the Continuous Book and therefore must include instructions that would

allow the order to be executed in a Periodic Auction. The requirement to “lock-in” the order during the course of a Periodic Auction if the order is marketable at the Periodic Auction Book Price is designed to allow a User to specify that they are only interested in participating in a Periodic Auction if they can do so immediately, while ensuring that they are actually eligible to participate in the execution of that auction, if possible. Without this requirement, a Periodic Auction could be initiated even though the order responsible for initiating that auction, by its terms, would not be eligible to participate at the end of the Periodic Auction Period, which would potentially be to the detriment both of the User entering the order and any Users that submitted contra-side orders to trade with it under the assumption that such interest was available. The Exchange believes that the proposed requirements would benefit Users that are looking for a speedy execution in Periodic Auctions, while also ensuring that Periodic Auction Only Orders entered with a time-in-force of IOC can trade at the end of the Periodic Auction Period.

The Exchange would also allow Users to include certain specified instructions on their Periodic Auction Only Orders. Specifically, such orders would be accepted with minimum execution quantity and pegging instructions. The Exchange believes that the Periodic Auction Only Order may be particularly valuable for market participants that have larger orders to be executed in Periodic Auctions that they may not be willing expose for trading in the continuous market. As illustrated in Cboe’s commenter letter in response to the Commission’s statement on thinly-traded securities,⁴³ liquidity is often more limited in these securities, and as such market participants often look to off-exchange venues that may be able to meet their liquidity needs without displaying orders in the public market, thereby limiting the market impact of their trading activity. The Exchange believes that market participants that are looking for liquidity in

⁴³ See Letter from Adrian Griffiths, *supra* note 5.

size may find Periodic Auctions to be a valuable means of sourcing needing liquidity without the potential risks of displaying their orders for execution.

Given the potential benefits to larger orders, the Exchange would permit Users to specify a minimum execution quantity for their Periodic Auction Only Orders. A Periodic Auction Only Order entered with a minimum execution quantity would be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders.⁴⁴ The Exchange offers a Minimum Quantity Order on the Continuous Book today. The proposed instruction that could be attached to a Periodic Auction Only Order is similar to the current Minimum Quantity Order but would only permit the default handling of that order type, and would not allow a member to alternatively specify that the minimum quantity condition be satisfied by each individual contra-side order. Periodic Auction Eligible Orders and Continuous Book Orders entered as Minimum Quantity Orders would be subject to a similar restriction.

In addition, in light of the fact that market participants often value midpoint executions, or may wish to receive executions at other prices based on the applicable national best bid or offer (“NBBO”), the Exchange would also allow Users to enter a pegging instruction for such orders. Periodic Auction Only Orders would therefore accommodate instructions that the order is to be pegged to either the midpoint or same side of the market. As is the case for orders entered for trading on the Continuous Book, Periodic Auction Only Orders entered with a primary peg instruction would be pegged to the NBBO, with or without an offset, provided that only

⁴⁴ The Exchange notes that in rare circumstances, the inclusion of a minimum execution quantity on one or more Periodic Auction Orders and/or Continuous Book Orders may result in the Exchange being unable to process a Periodic Auction in a timely manner. To prevent potential capacity and/or performance issues that may impact both the execution of the auction, as well as trading on Continuous Book, in such an event the Exchange would cancel the auction after a specified number of attempts.

aggressive offsets would be permitted given the fact that Periodic Auctions would be restricted to trading within the Protected NBBO and would not be eligible to trade at inferior prices. Although the Exchange would not generally offer special order handling instructions for Periodic Auction Only Orders, the Exchange believes that midpoint and primary peg instructions, as described, would allow Users to more accurately capture their trading intent, and may therefore promote more active use of Periodic Auctions as a means of sourcing liquidity for such orders.

With respect to Periodic Auction Eligible Orders, the Exchange would allow Users to include an instruction on non-displayed orders entered to trade on the Continuous Book that would allow such orders to initiate a Periodic Auction if executable against contra-side Periodic Auction Orders. The Exchange would not allow Users to enter displayed orders as Periodic Auction Eligible Orders as such Periodic Auction Eligible Orders would not be available for execution during an ongoing Periodic Auction. As a result, displayed orders, which are disseminated to the market and subject to firm quote requirements under Rule 602(b)(2) of Regulation NMS,⁴⁵ would not be able to be entered as Periodic Auction Eligible Orders. However, such displayed orders could still participate in Periodic Auctions as Continuous Book Orders, and would receive execution priority when executed in that manner.

As discussed in the purpose section of the proposed rule change, the time-in-force included on a Periodic Auction Eligible Order would need to allow the order to remain executable during the course of a Periodic Auction. The Exchange has therefore proposed to: (1) only allow IOC orders to be entered as Periodic Auction Eligible Orders if such orders include an instruction not to cancel the order during a Periodic Auction Period; and (2) disallow FOK orders from being entered as Periodic Auction Orders. The Exchange believes that both of these

⁴⁵ See 17 CFR 242.602(b)(2).

requirements are consistent with just and equitable principles of trade as they are designed to ensure that a Periodic Auction Eligible Order, which as discussed would be eligible for the initiation of a Periodic Auction, would not be prevented from participating in the eventual execution of such Periodic Auction due to a time-in-force that contemplates the order either being executed or cancelled immediately on entry. As discussed with respect to Periodic Auction Only Orders, without this requirement, a Periodic Auction could be initiated even though the order responsible for initiating that auction, by its terms, would not be eligible to participate at the end of the Periodic Auction Period, which would potentially be to the detriment both of the User entering the order and any Users that submitted contra-side orders to trade with it under the assumption that such interest was available. Nevertheless, the Exchange believes that some Users may find it valuable to enter IOC orders as Periodic Auction Eligible Orders. Although such Users may be looking for a speedy execution, and would therefore generally prefer an execution on entry, or not at all, they may be willing to wait 100 milliseconds for a potential execution in a Periodic Auction, instead of having the order cancelled immediately. The Exchange would therefore allow Users to signal their intent to trade in this manner by entering the IOC order with an instruction that it should not be cancelled during a Periodic Auction. If entered in this manner, a Periodic Auction Eligible Order may trade immediately on entry on the Continuous Book, or may alternatively participate in a Periodic Auction, subject to cancellation no later than the end of any Periodic Auction Period. The Exchange does not anticipate the same use case for FOK orders, which contain an additional condition that requires the order to be executable in full, and would therefore restrict their ability to be entered as Periodic Auction Eligible Orders.

The Exchange would also not accept Mid-Point Peg Orders entered as Periodic Auction Eligible Orders if the Mid-Point Peg Order is entered with an instruction to not execute when the

NBBO is locked. If the Exchange permitted Mid-Point Peg Orders with this instruction to be entered as Periodic Auction Eligible Orders, those orders could initiate a Periodic Auction but would not be available for the auction's eventual execution if the market subsequently becomes locked at that time. The Exchange believes that the proposed handling is consistent with just and equitable principles of trade as the Exchange wishes to avoid the potential for such orders to initiate a Periodic Auction that may ultimately not execute due to the inclusion of this condition. Periodic Auction Eligible Orders are designed to initiate Periodic Auctions and may encourage other Users to enter orders that could participate in the auction's execution. As a result, the Exchange believes that such orders should reflect trading interest that does not include unnecessary conditions. Users that wish to use Mid-Point Peg Orders with this instruction would still be eligible to participate in Periodic Auctions as Continuous Book Orders, which are able to participate in the eventual execution of a Periodic Auction, but would not initiate such auctions.

Similar to the proposed handling of Periodic Auction Only Orders, the Exchange would allow Periodic Auction Eligible Orders to be entered as Minimum Quantity Orders, but would only permit such orders to be entered with the default handling of that instruction. That is, Minimum Quantity Orders entered as Periodic Auction Eligible Orders would execute only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders or Continuous Book Orders. Although the Exchange does offer an alternative instruction that permits the User to request that the Exchange only execute the order against a single contra-side order, such handling is designed primarily for use on the Continuous Book, and would complicate the execution of Periodic Auctions.⁴⁶ For similar reasons, Minimum Quantity Orders are excluded from the Exchange's opening process for securities traded pursuant to unlisted

⁴⁶ See BYX Rule 11.23(a)(2).

trading privileges. However, as discussed, the Exchange believes that Users participating in Periodic Auctions may value the ability to specify a minimum quantity, and the Exchange has therefore proposed to allow such functionality for Periodic Auction Eligible Orders so long as the User is willing for those orders to be executed against one or more contra-side orders. The Exchange believes that this strikes the right balance between allowing Users to ensure that they only trade in a Periodic Auction if their minimum quantity criteria can be met, while excluding instructions that could unnecessarily complicate the execution of Periodic Auctions.

In addition, the Exchange would specify handling for Discretionary Orders, Pegged Orders, and Mid-Point Pegged Orders that are entered as Periodic Auction Eligible Orders. Including this information in the rule would increase transparency around the operation of the Exchange and ensure that Users are properly informed about how orders with these instructions would be handled in Periodic Auctions. The same handling is currently applied to the Exchange's opening process for securities traded pursuant to unlisted trading privileges, and treating these orders in the same manner for purposes of Periodic Auctions would ensure a consistent and familiar experience for market participants that enter such orders on the Exchange. The Exchange therefore believes that these proposed rules are consistent the maintenance of a fair and orderly market.

The Exchange also believes that it is consistent with just and equitable principles of trade to allow Continuous Book Orders, *i.e.*, orders that are not entered as either Periodic Auction Only Orders or Periodic Auction Eligible Orders, to participate in any Periodic Auction that results in an execution. Although Continuous Book Orders would not initiate a Periodic Auction, such orders would be eligible to participate in the resulting execution, thereby facilitating additional liquidity for those orders without disrupting their ability to trade normally during the

course of the auction. Continuous Book Orders would remain on the Continuous Book and subject to potential execution during a Periodic Auction Period, but would be included in the final determination of the Periodic Auction Price, and participate in any resulting execution. Although the Exchange believes that a number of Users may wish to use Periodic Auction Orders that are specifically designed for participation in Periodic Auctions and have the ability to initiate those auctions, the Exchange also believes that Periodic Auctions would be valuable to Users that wish primarily to trade on the Continuous Book but may be able to secure an execution in a Periodic Auction if possible. As a result, Continuous Book Orders would generally be eligible to trade in Periodic Auctions at the end of the auction process.

Such Continuous Book Orders would be subject to similar handling to Periodic Auction Eligible Orders that may also trade on the Continuous Book in addition to Periodic Auctions, including the same handling discussed above with respect to Discretionary Orders, Pegged Orders, and Mid-Point Peg Orders. The Exchange believes that this handling is consistent with just and equitable principles of trade as it would ensure consistent treatment of similar orders traded in Periodic Auctions. In addition, Continuous Book Orders that are entered as Minimum Quantity Orders would be subject to similar but not identical handling to Periodic Auction Eligible Orders. Given the value of Minimum Quantity Orders that include the alternative instruction that allows a User to specify that the minimum size specified be satisfied by each individual contra-side order, Users would continue to be able to use this instruction for trading on the Continuous Book. However, such orders, which would not be permitted to be entered as Periodic Auction Orders, would similarly not be able to participate in Periodic Auctions as Continuous Book Orders. Users that wish to include a minimum quantity on their orders could participate in Periodic Auctions as either Periodic Auction Only Orders, Periodic Auction

Eligible Orders, or Continuous Book Orders, provided that for each of these order types, the order must be willing to trade against one or more contra-side orders. As discussed, the Exchange believes that this treatment is necessary in order to offer a minimum quantity instruction in an auction that pools interest and executes such interest at a single price.

The Exchange also believes that the proposed handling of Continuous Book Orders entered as Reserve Orders is consistent with the maintenance of a fair and orderly market as it will ensure a familiar and consistent experience for market participants that trade on the Exchange. Although Periodic Auction Eligible Orders must be non-displayed and therefore cannot be entered as a Reserve Order that, by rule, includes both a displayed portion and non-displayed portion, the proposed handling for Continuous Book Orders is the same as the handling applied to the Exchange's opening process securities traded pursuant to unlisted trading privileges. Thus, similar to the treatment of Discretionary Orders, Pegged Orders, and Mid-Point Peg Orders, detailing the proposed handling of Reserve Orders would both increase operational transparency and ensure consistent and familiar treatment of similar orders on the Exchange.

Periodic Auctions would be initiated throughout Regular Trading Hours when Periodic Auction Orders entered by Users are executable against each other, thereby ensuring that the initiation of an auction is tied to demonstrated interest from both buyers and sellers in the security. Once the Exchange has matched two or more Periodic Auction Orders in this manner, a Periodic Auction Period of 100 milliseconds would begin to allow orders from additional market participants to participate in the execution of the Periodic Auction. To facilitate the pooling of Periodic Auction Orders during this period, the Exchange would publish information about the auction, including (1) an indicative Periodic Auction Book Price that reflects price at which the Periodic Auction could be executed, counting only Periodic Auction Orders and excluding

Continuous Book Orders that may be subject to execution prior to the end of the Periodic Auction Period; and (2) the total number of shares of Periodic Auction Orders that are matched at the Periodic Auction Book Price. This information would be published beginning at a randomized time in one millisecond intervals, and would be refreshed in one millisecond intervals thereafter as additional orders are entered or cancelled, or other changes to market conditions are made that could impact the Periodic Auction Book Price. The Exchange believes that it is consistent with the protection of investors and the public interest to publish this information as it may inform potential trading in periodic auctions and encourage additional order flow to be entered to participate in such auctions. The Exchange also believes that sending out the initial dissemination at a randomized time after Periodic Auction Orders have been matched would facilitate the operation of a fair and orderly market. This handling would allow additional Periodic Auction Orders received during this interim period to be pooled in the initial dissemination of auction information. In addition, since market participants would not know how much time is left in the Periodic Auction Period, firms would be incentivized to respond quickly with Periodic Auction Orders to participate in the Periodic Auction, rather than potentially waiting until the end of the auction, which may reduce the value of the information proposed to be disseminated to investors and may impact price discovery.

Once the 100 millisecond Periodic Auction Period has ended, the Exchange would calculate the execution price of the auction, *i.e.*, the Periodic Auction Price, and execute Periodic Auction Orders and Continuous Book Orders that are eligible to trade at that price. The Exchange believes that the proposed methodology for determining the Periodic Auction Price is consistent with just and equitable principles of trade. Generally, the proposed methodology for calculating the Periodic Auction Price is designed to allow Periodic Auctions to facilitate price

discovery while maintaining important investor protections and assuring compliance with applicable regulations. Given the important price formation function of these auctions, the Exchange would use logic for pricing Periodic Auctions that largely mirrors the logic used by its affiliate, BZX, for opening and closing auctions in that exchange's listed securities.

Specifically, the Exchange would seek to execute Periodic Auctions at a price that maximizes the number of shares that can trade in the auction, subject to specified price collars that would limit executions at prices that are not reasonably related to the price of the security established by the market. The applicable price collars would also be based on the auction collars used for BZX opening and closing auctions, except that trading would be further limited by applicable LULD Price Bands and the Protected NBBO, as required pursuant to applicable regulatory requirements.⁴⁷ Finally, the price calculation would be subject to tie-breakers that are consistent with those used for BZX opening and closing auctions in situations where there is a volume-based tie at multiple price levels. These tie-breakers would help ensure the selection of a meaningful Periodic Auction Price by selecting the price that would minimize the potential imbalance between supply and demand, and then favoring prices closer to a Volume Based Tie Breaker that is generally the midpoint of the NBBO. In sum, the proposed calculation of the Periodic Auction Price would allow the Exchange to appropriately balance supply and demand in Periodic Auctions and facilitate robust price formation similar to opening and closing auctions.

⁴⁷ As discussed in the purpose section of this proposed rule change, both the requirements of the LULD Plan and the Order Protection Rule apply to transactions executed during Regular Trading Hours. Although opening and closing auctions are generally exempt from these requirements, there are currently no exemptions that would apply to Periodic Auctions that perform a similar role in facilitating price discovery.

After the Exchange determines the Periodic Auction Price, any Periodic Auction Orders or Continuous Book Orders that are eligible for execution at that price would be executed based on a special allocation methodology designed for use in Periodic Auctions. First, in order to continue to incentivize the entry of displayed orders on the Exchange, Continuous Book Orders that are displayed on the Continuous Book would be executed first in price/time priority.

Although the Exchange is proposing to introduce Periodic Auctions to incentivize additional liquidity, the Exchange believes that it is important to continue to encourage the entry of displayed orders on the Continuous Book. Displayed orders entered in the public market contribute to price formation, and are used as a reference price for the execution of orders on other venues. As a result, the Exchange's proposal to introduce Periodic Auctions is designed to continue to encourage the entry of displayed orders that would both trade on the Continuous Book and simultaneously benefit from priority when executed in a Periodic Auction.

Second, after Continuous Book Orders displayed on the Continuous Book have been executed, Periodic Auction Orders would be executed in size/time priority. As previously noted, the Exchange believes that Periodic Auctions may be valuable for investors that are seeking liquidity in size. As a result, the priority methodology employed by the Exchange for Periodic Auction Orders would preference larger orders, which the Exchange believes may contribute to greater depth in Periodic Auctions. In turn, the liquidity provided by these larger orders would contribute to the execution of smaller orders that may also participate in Periodic Auctions, thereby facilitating the execution of all orders, both large and small, that seek liquidity in such auctions, and furthering execution opportunities for investors that trade on the Exchange.

Finally, non-displayed Continuous Book Orders would be executed last in priority. Unlike displayed orders entered on the Continuous Book, or Periodic Auction Orders that

contribute to important pricing information disseminated to market participants during the course of a Periodic Auction, non-displayed orders entered on the Continuous Book do not contribute to pre-execution price formation.⁴⁸ As a result, while these orders would be eligible to trade in Periodic Auctions, where they may benefit from additional execution opportunities, they would be subject to the lowest priority among Periodic Auction Orders and Continuous Book Orders. In addition, since these orders are not specifically seeking liquidity in Periodic Auctions, and would participate in Periodic Auctions solely as an additional source of liquidity, priority within this band would be determined based on the normal execution priority afforded to such orders on the Continuous Book. The Exchange believes that this approach is consistent with just and equitable principles of trade as it would ensure that non-displayed Continuous Book Orders receive the priority that they would normally be afforded for executions on the Continuous Book.

Similar to the Exchange's opening process for securities traded pursuant to unlisted trading privileges,⁴⁹ all Match Trade Prevention modifiers, as defined in BYX Rule 11.9(f), would be ignored as it relates to executions occurring during a Periodic Auction. The Exchange's Match Trade Prevention modifiers are designed to allow Users to better manage order flow and prevent certain undesirable executions on the Continuous Book. However, this functionality would complicate the execution of Periodic Auctions, where orders are pooled together and executed at a price that balances supply and demand in the auction. As a result, the Exchange believes that ignoring Match Trade Prevention modifiers in Periodic Auctions, similar to the

⁴⁸ Non-displayed orders would contribute to price formation at the end of a Periodic Auction as they would be considered in the determination of the Periodic Auction Price.

⁴⁹ See BYX Rule 11.23(b).

handling currently used by the Exchange for its opening process, is consistent with the maintenance of a fair and orderly market in securities traded in such Periodic Auctions.

In addition, the Exchange believes that the proposed language being codified in the Interpretations and Policies to the proposed rule is consistent with the Exchange Act and the rules and regulations adopted thereunder. As proposed, these rules would include language that identifies how Periodic Auctions would be conducted during a crossed market, and consistent with applicable regulatory requirements related to handling of trading halts and Regulation SHO. Such rules would also describe appropriate standards of member conduct, consistent with the Exchange's obligations under the Act to regulate and surveil its market. The proposed rules included in Interpretations and Policies .01 - .03 would ensure that: (1) Periodic Auctions do not take place when their execution may be complicated by the existence of a crossed market that could interfere with the auction's price discovery function, or when such execution would not be permissible due to a trading halt in a security;⁵⁰ and (2) the execution in Periodic Auctions of any short sale orders that are not marked "short exempt" would only take place at a permissible price when the security is in a short sale circuit breaker pursuant to Rule 201 of Regulation SHO. Further, the proposed rules included in Interpretations and Policies .04 would provide additional guidance to Users with respect to conduct that would be considered inconsistent with just and equitable principles of trade. The Exchange intends to conduct appropriate surveillance of its members to ensure that their participation in Periodic Auctions is done in a manner that is consistent with such rules. As a result, these rules would ensure that orders Periodic Auctions

⁵⁰ Although Rule 611(b)(4) of Regulation NMS provides an exception from the trade-through requirements of that rule for situations where a protected bid is crossed with a protected offer, the Exchange believes that market participants may not desire an execution in a Periodic Auction during periods when the market is crossed.

would be processed in a manner that is consistent with applicable regulatory obligations and the maintenance of a fair and orderly market in securities traded on the Exchange.

In conclusion, the Exchange believes that the proposed rule change would enhance the experience of investors looking to access liquidity in the public market and fill an important role in the U.S. equities market where liquidity may be more limited outside of the open and close of trading. By introducing a price forming auction for the aggregation and execution of buy and sell orders intraday, Periodic Auctions would increase execution opportunities available to investors. In turn, Periodic Auctions may improve trading outcomes for market participants that have trouble sourcing liquidity in the public markets today, including in thinly-traded securities where liquidity is often limited and trading often occurs on a number of off-exchange venues that can offer reduced market impact. As such, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market.

4. 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 proposed rule change is designed to increase competition by introducing an additional mechanism for equities market participants to seek liquidity during the course of the trading day. Indeed, the proposed introduction of Periodic Auctions is a pro-competitive means of addressing the concerns that the Commission expressed in its Statement on thinly-traded securities. The proposal, which seeks to introduce innovative functionality on a non-primary listing exchange, would allow competition, rather than regulatory intervention designed to limit competition (*e.g.*, through the suspension or termination of unlisted trading privileges), to improve market quality in thinly-traded and other securities.

The introduction of Periodic Auctions is designed to improve execution quality for investors sourcing liquidity during the trading day, and, in particular, those that are looking to trade in size, or are looking to access liquidity in thinly-traded or other securities where liquidity may be more scarce. Providing an additional mechanism for price forming orders to be executed would promote competition between venues that seek to execute this order flow, and provide market participants and investors with greater choice with respect to how they choose to source liquidity. The equities industry is fiercely competitive as the Exchange must compete with other equities exchanges and off-exchange venues for order flow. The proposal is both evidence of this competition, and would further enable the Exchange to compete effectively in this market.

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

No written comments were solicited or received on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security Based-Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register.

Exhibit 5 – Text of the Proposed Rule Change

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CboeBYX-2020-021]

[Insert date]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Introduce Periodic Auctions for the Trading of U.S. Equity Securities

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 [insert date], 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, 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. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to introduce periodic auctions for the trading of U.S. equity securities. The text of 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to introduce periodic auctions for the trading of U.S. equity securities (“Periodic Auctions”).³ On October 17, 2019, the Commission issued a Statement on Market Structure Innovation for Thinly Traded Securities (“Statement”).⁴ The Statement requested comment on potential innovations that could improve market quality in equity securities that trade in lower volume (“thinly-traded securities”), and sought further feedback on the regulatory changes that may be needed to facilitate such innovation. Cboe Global Markets, Inc. (“Cboe”), the Exchange’s parent company, submitted a comment letter in response to the Statement on December 20, 2019.⁵ As expressed in that comment letter, Cboe shares the Commission’s interest in improving market quality in this segment of the U.S. equities market, and believes that

³ The term “Periodic Auction” shall mean an auction conducted pursuant to Proposed Rule 11.25. See Proposed Rule 11.25(a)(4).

⁴ See Securities Exchange Act Release No. 87327 (October 17, 2019), 84 FR 56956 (October 24, 2019) (File No. S7-18-19).

⁵ See Letter from Adrian Griffiths, Assistant General Counsel, Cboe to Vanessa Countryman, Secretary, Commission dated December 20, 2019, *available at* <https://www.sec.gov/comments/s7-18-19/s71819-6574727-201085.pdf>.

the best way to accomplish this goal is through innovation and targeted approaches that invite investor choice.⁶ At that time, Cboe suggested a handful of different approaches that national securities exchanges could take to improve market quality in thinly-traded securities, without requiring anti-competitive and ultimately harmful changes to U.S. equities market structure.⁷ Following the submission of that comment letter, Cboe has continued to work on the design of potential market structure innovations that it could implement to improve market quality in thinly-traded securities, consistent with the Commission's request. As a result of those efforts, the Exchange is now proposing to implement Periodic Auctions.

As proposed, Periodic Auctions of one hundred milliseconds would be conducted throughout the course of the trading day when there are matching buy and sell Periodic Auction Orders, as defined below, that are available to trade in such an auction. Periodic Auctions would not interrupt trading in the continuous market, and would be 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 market that are executed in the auction. While Periodic Auctions would be available in all securities traded on the Exchange, the Exchange believes that this trading mechanism would be particularly valuable for securities that trade in lower volume and consequently suffer from wider spreads and less liquidity displayed in the public markets. Cboe has been a global leader in the implementation of periodic auctions, and currently runs the largest periodic auction book for the trading of European equities. The proposed Periodic Auctions that the Exchange would implement are based on the model that Cboe offers to clients in Europe,

⁶ Id.

⁷ Id.

with targeted changes to adapt this model for the U.S. equities market. The Exchange believes that its implementation of Periodic Auctions would enhance the ability for investors to source liquidity in both thinly-traded securities where liquidity is naturally more scarce, as well as in more actively traded securities, including where available liquidity may be diminished due to increased volatility or other market conditions. Today, U.S. equities market participants are largely limited to two significant liquidity events where orders are pooled and executed at a single point in time – *i.e.*, the opening and closing auctions. During the rest of the trading day, liquidity may be more limited, particularly for market participants that are seeking to trade larger orders. As proposed, Periodic Auctions would offer a new price forming auction that could be utilized by investors seeking liquidity, including block-size liquidity, during the course of the trading day. The Exchange believes that concentrating available liquidity in Periodic Auctions that would take place when the Exchange has received matching auctionable buy and sell orders would assist investors in obtaining needed liquidity, particularly in the case of investors seeking to execute larger orders that would be difficult to execute without market impact in the continuous market. In addition, since the proposed Periodic Auctions would be price forming, these auctions would perform a valuable price discovery function, which may be particularly helpful for investors when trading thinly-traded or other securities that typically trade with wider spreads.

I. Order Entry and Cancellation

The Exchange would offer Periodic Auction Only Orders and Periodic Auction Eligible Orders,⁸ both of which indicate a member's desire to initiate a Periodic Auction,

⁸ A "Periodic Auction Only Order" is a Limit Order entered with an instruction to

if possible, as well as Continuous Book Orders that would not initiate a Periodic Auction but would be eligible to participate in such an auction when it is executed.⁹ Thus, as provided in Proposed Rule 11.25(b), Users may enter Periodic Auction Orders, *i.e.*, Periodic Auction Only Orders or Periodic Auction Eligible Orders,¹⁰ that are eligible to initiate Periodic Auctions pursuant to Proposed Rule 11.25(c), as discussed later in this proposed rule change, and Continuous Book Orders that may participate in such Periodic Auctions if present on the Continuous Book at the time a Periodic Auction is executed. As explained in more detail below, the ability to choose between Periodic Auction Only Orders, Periodic Auction Eligible Orders, and Continuous Book Orders would allow members to control how their orders are handled in Periodic Auctions – *e.g.*, whether the order is able to initiate a Periodic Auction, or not, and whether the order participates on the Continuous Book, or not. The choice of different methods of participating in Periodic Auctions would therefore provide flexibility to members based on their individual business needs, or the needs of their customers. Regardless of the type of order submitted, orders entered on the Exchange that are present when a Periodic Auction is executed would generally be eligible to participate in that execution. The proposed

participate solely in Periodic Auctions pursuant to Proposed Rule 11.25. 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 Proposed Rule 11.25. See Proposed Rule 11.25(b)(1)-(2).

⁹ The term “Continuous Book Order” shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term “Continuous Book” shall mean System’s electronic file of such Continuous Book Orders. See Proposed Rule 11.25(a)(2).

¹⁰ The term “Periodic Auction Order” shall mean a “Periodic Auction Only Order” or “Periodic Auction Eligible Order” as those terms are defined in Proposed Rules 11.25(b)(1)-(2), and the term “Periodic Auction Book” shall mean the System’s electronic file of such Periodic Auction Orders.. See Proposed Rule 11.25(a)(6).

introduction of Periodic Auctions would therefore benefit both Users explicitly seeking to use this functionality, as well as other Users that may benefit from any increased liquidity routed to the Exchange in order to participate in such Periodic Auctions.

General Requirements for Order Entry and Cancellation. Periodic Auction Orders and Continuous Book Orders may be modified and/or cancelled at any time, including during the Periodic Auction Period,¹¹ at the discretion of the User. Periodic Auctions are designed to allow seamless participation in a price forming auction process without impacting continuous trading, and market participants would therefore remain able to manage orders that they have entered to participate in such auctions during the course of the trading day. Since some Users may not wish to cancel Periodic Auction Orders inadvertently during the course of an ongoing Periodic Auction, however, the Exchange would provide an optional instruction that would allow such Users to instruct the Exchange not to cancel a Periodic Auction Order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price.¹²

Given that Periodic Auctions are designed, in part, to facilitate the sourcing of larger blocks of liquidity that may not be available in continuous trading, the Exchange would also implement certain size restrictions that would be applicable to Periodic Auction Orders. Specifically, Periodic Auction Orders would have to be for a size of 100

¹¹ The term “Periodic Auction Period” would be defined in Proposed Rule 11.25(a)(8) as the fixed time period of 100 milliseconds for conducting a Periodic Auction.

¹² The Periodic Auction Book Price is an indicative price that is designed to provide information about the price where a Periodic Auction may ultimately be executed. See *infra* note 28. The instruction to “lock-in” a Periodic Auction Order would be included as a port setting that a User can use to flag any orders entered through a particular port. Users that wish to use this feature must use the port setting and would not be able to flag individual orders on an order-by-order basis.

shares or more in securities priced below \$500 based on the consolidated last sale price, *i.e.*, the last sale price that is disseminated by the securities information processor, or if no consolidated last sale price is available, the previous day's closing price.¹³ There would be no similar size restrictions for higher-priced securities, where such a size requirement would require a higher notional value to participate in a Periodic Auction.

Periodic Auction Only Orders. A "Periodic Auction Only Order" would be defined in proposed Rule 11.25(b)(1) as a Limit Order entered with an instruction to participate solely in Periodic Auctions pursuant to Proposed Rule 11.25. The Periodic Auction Only Order is designed for market participants that want to access liquidity that is available in one or more Periodic Auctions and do not wish to participate in the continuous market. As such, a Periodic Auction Only Order would not be eligible for execution on the Continuous Book. Instead, such orders would remain on the Periodic Auction Book for participation in Periodic Auctions until executed or cancelled.

Periodic Auction Only Orders would only be accepted with a time-in-force of Regular Hours Only ("RHO") or immediate-or-cancel ("IOC"). Specifically, Periodic Auction Only Orders entered outside of Regular Trading Hours must include a time-in-force of Regular Hours Only ("RHO") as the Exchange would conduct Periodic Auctions only during Regular Trading Hours,¹⁴ and not during the Early Trading,¹⁵ Pre-Opening,¹⁶

¹³ Periodic Auction Only Orders that do not meet applicable size requirements would be rejected. Periodic Auction Eligible Orders would be handled as Continuous Book Orders, and would be eligible to trade on the Continuous Book based on User instructions.

¹⁴ The term "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See BYX Rule 1.5(w).

¹⁵ The term "Early Trading Session" means the time between 7:00 a.m. and 8:00 a.m. Eastern Time. See BYX Rule 1.5(ee).

or After Hours Trading Sessions.¹⁷ Periodic Auction Only Orders entered during Regular Trading Hours may be either RHO or immediate-or-cancel (“IOC”). If entered with a time-in-force of IOC, the order must include an instruction pursuant to Proposed Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price. As previously discussed, with the inclusion of this instruction, an order that initiates a Periodic Auction would be considered “locked-in” and would not be cancellable by the entering User during the course of an ongoing Periodic Auction Period unless it is not marketable at the Periodic Auction Book Price. An IOC order entered with this instruction would therefore be able to immediately initiate a Periodic Auction on entry. And, if it does so, it would not be cancelled for the duration of the Periodic Auction Period, except in circumstances where the Periodic Auction Book Price indicates that the order might not be executable, thereby ensuring that Periodic Auction Only Orders entered with these attributes would ordinarily be eligible to participate in Periodic Auctions that they initiate.

The Exchange believes that the Periodic Auction Only Order may be particularly valuable for market participants that are seeking to execute larger orders that they may not be willing to expose for trading on the Continuous Book. Thus, the Exchange would permit Users to specify a minimum execution quantity for their Periodic Auction Only Orders. A Periodic Auction Only Order entered with a minimum execution quantity would be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders or Continuous Book

¹⁶ The term “Pre-Opening Session” means the time between 8:00 a.m. and 9:30 a.m. Eastern Time. See BYX Rule 1.5(r).

¹⁷ The term “After Hours Trading Session” means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. See BYX Rule 1.5(c).

Orders. The Exchange offers Minimum Quantity Orders to Users that trade on the Continuous Book today.¹⁸ The proposed instruction that could be attached to a Periodic Auction Only Order is similar to the current Minimum Quantity Orders used for trading on the Continuous Book but would only permit the default handling of that order type, and would not allow a member to alternatively specify that the minimum quantity condition be satisfied by each individual contra-side order. Periodic Auction Eligible Orders and Continuous Book Orders entered as Minimum Quantity Orders would be subject to similar restrictions.

In addition, the Exchange believes that some Users may wish to use Periodic Auctions to seek liquidity at or better than a pegged price that is based on the applicable national best bid and offer (“NBBO”). The Exchange would therefore allow a User to optionally include an instruction on its Periodic Auction Only Orders to peg such orders to either the midpoint of the NBBO (“midpoint peg”), or the same side of the NBBO (“primary peg”). Similar to pegging instructions offered for Continuous Book Orders today,¹⁹ Periodic Auction Only Orders entered with a primary peg instruction could be pegged to the NBB or NBO, or a certain amount above the NBB or below the NBO (“offset”).²⁰ The inclusion of a pegging instruction for Periodic Auction Only Orders would ensure that Users have the opportunity to specify that these orders are only

¹⁸ See BYX Rule 11.9(c)(5).

¹⁹ See BYX Rule 11.9(c)(8)(A).

²⁰ Since Periodic Auctions are restricted from trading outside of the applicable Protected NBBO, the offset included on such orders would have to result in the order being more aggressive than the NBBO – *i.e.*, priced higher for buy orders or lower for sell orders.

executed at prices defined in relation to the market for the particular security, including midpoint executions that offer price improvement compared to the applicable NBBO.

Periodic Auction Eligible Orders. A “Periodic Auction Eligible Order” would be defined in Proposed Rule 11.25(b)(2) as 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 Proposed Rule 11.25. The Periodic Auction Eligible Order would allow market participants to trade in the continuous market during the course of the trading day, with the ability to also initiate Periodic Auctions when there is contra-side liquidity available to trade. The Exchange notes that there may be situations where an incoming Periodic Auction Eligible Order would be able to either initiate a Periodic Auction, or alternatively trade immediately with one or more orders resting on the Continuous Book. Since Periodic Auction Eligible Orders are geared towards participation in Periodic Auctions, with attendant price discovery benefits and potential price improvement opportunities, an incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction would initiate a Periodic Auction. For similar reasons, Periodic Auction Eligible Orders would not trade on the Continuous Book during a Periodic Auction Period in the security. Although the Exchange would not halt or otherwise suspend trading on the Continuous Book while conducting a Periodic Auction, the Exchange believes that Periodic Auction Eligible Orders that are designed for use in Periodic Auctions should preference trading in such auctions over trading on the Continuous Book.

The time-in-force included on a Periodic Auction Eligible Order would also need to allow the order to be entered and remain on the Periodic Auction Book during the

course of a Periodic Auction. As a result, there would be certain limitations on the entry of Periodic Auction Eligible Orders with a time-in- IOC or fill-or-kill (“FOK”). An IOC order is defined in BYX Rule 11.9(b)(1) as a limit order that is to be executed in whole or in part as soon as such order is received. Thus, under the ordinary terms of an IOC order, if such an order were to initiate a Periodic Auction, it would generally not be available for later execution at the end of any Periodic Auction Period. To ensure that IOC orders that initiate a Periodic Auction are eligible to participate in the auction’s eventual execution, the Exchange therefore proposes that Periodic Auction Eligible Orders entered with a time-in-force of IOC must include an instruction pursuant to Proposed Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price. Such Periodic Auction Eligible Orders would be handled in a manner consistent with that described above with respect to Periodic Auction Only Orders. Similarly, an FOK order is defined in BYX Rule 11.9(b)(6) as a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, cancelled. The Exchange is not proposing to support the use of FOK orders in Periodic Auctions, and therefore Periodic Auction Eligible Orders would not be able to be entered with a time-in-force of FOK.²¹

As previously explained, the Exchange believes that Users seeking liquidity in Periodic Auctions may wish to use such auctions to receive an execution at prices at or better than the midpoint of the NBBO. The Exchange currently offers functionality that allows members entering Mid-Point Peg Orders on the Continuous Book to forgo an

²¹ Although the Exchange is not proposing any special handling for IOC or FOK orders that are entered as Continuous Book Orders, the Exchange notes that such orders would not participate in Periodic Auctions as they would never be posted to the Continuous Book.

execution in situations where the NBBO is locked.²² However, in order to avoid a Periodic Auction from being initiated that may not ultimately result in an execution during a locked market, Mid-Point Peg Orders that are entered with an instruction to not execute when the NBBO is locked would not be eligible to be entered as Periodic Auction Eligible Orders.²³ This handling would mirror the handling of Periodic Auction Orders, which as proposed could be entered with a midpoint peg instruction, but would not include any further instructions that would allow the User to elect not to trade during a locked market.

Since the Exchange believes that Periodic Auctions may be beneficial to market participants trading larger orders that they may not want to be executed unless a specified minimum size can be satisfied, the Exchange would also allow for Minimum Quantity Orders to be entered as Periodic Auction Eligible Orders. As previously discussed, the Exchange currently offers two variants of this order type. By default, a Minimum Quantity Order would execute upon entry against a single order or multiple aggregated orders simultaneously. Alternatively, such orders may be entered with an instruction that the order not trade with multiple aggregated orders simultaneously, and that the minimum quantity condition instead be satisfied by each individual order resting on the Continuous Book. As proposed, Minimum Quantity Orders, as defined in Rule 11.9(c)(5), may be entered as Periodic Auction Eligible Orders only if the order includes the default instruction that allows the minimum size specified to be executed against one or more

²² See BYX Rule 11.9(c)(9).

²³ This restriction would not apply to Continuous Book Orders. Since Continuous Book Orders do not initiate Periodic Auctions, a Continuous Book Order entered with these instructions would be able to participate in the eventual execution of Periodic Auctions if such execution can take place in accordance with the terms of the order.

contra-side orders – *i.e.*, similar to the proposed handling of Periodic Auction Only Orders entered with a minimum execution quantity instruction. Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order would not be eligible to be entered as Periodic Auction Eligible Orders. As discussed later in this proposed rule change, similar restrictions would also apply to Continuous Book Orders, which would not participate in Periodic Auctions if entered with this alternative instruction.

Finally, similar to the opening process used to begin trading in a security pursuant to BYX Rule 11.23: (1) Discretionary Orders, as defined in rule 11.9(c)(10), would be eligible to participate only up to their ranked price for buy orders or down to their ranked price for sell orders;²⁴ and (2) all Pegged Orders and Mid-Point Peg Orders, as defined in BYX Rule 11.9(c)(8) and (9), would be eligible for execution in Periodic Auctions based on their pegged prices. The Exchange believes that this proposed handling is equally relevant to Periodic Auctions, and would ensure, where appropriate, that the order handling experienced in such Periodic Auctions is familiar to members and investors.

Continuous Book Orders. A “Continuous Book Order” would be defined in Proposed Rule 11.25(a)(2) as an order on the BYX Book that is not a Periodic Auction Order. Continuous Book Orders, which may participate in the eventual execution of a Periodic Auction but would not be able to initiate such an auction, would be handled in the same manner as Periodic Auction Eligible Orders solely with respect to handling of (1) Discretionary Orders, and (2) Pegged Orders and Mid-Point Peg Orders, each as discussed in the preceding paragraph. Continuous Book Orders would also be subject to

²⁴ The discretionary range of such orders would not be considered in Periodic Auctions.

the handling discussed for Periodic Auction Eligible Orders entered as Minimum Quantity Orders, with the caveat that this handling would only apply to Continuous Book Orders entered with the default instruction that permits the execution of such orders against one or more contra-side orders. As proposed, similar to the treatment of Periodic Auction Orders – including both Periodic Auction Only Orders and Periodic Auction Eligible Orders – Continuous Book Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order would not be included in Periodic Auctions. However, rather than prohibiting Users from entering Minimum Quantity Orders with this instruction on the Continuous Book, where this instruction may still be valuable for investors, the Exchange would simply prohibit any orders entered with that instruction from participating in the execution of any Periodic Auctions. Finally, Continuous Book Orders that are entered as Reserve Orders, as defined in Rule 11.9(c)(1), would be eligible to participate in Periodic Auctions to the full extent of their displayed size and Reserve Quantity.²⁵

II. Initiation and Publication of Periodic Auction Information

The Exchange would conduct Periodic Auctions during Regular Trading Hours to give market participants an opportunity to obtain liquidity during the course of the trading day. Instead of initiating such auctions on a set schedule, the Exchange would wait until it has executable interest that is eligible to initiate a Periodic Auction, thereby ensuring that Periodic Auctions are only performed when it may be possible for

²⁵ There are no similar requirements applicable to Periodic Auction Eligible Orders since Reserve Orders include a displayed portion and therefore would not be eligible for entry as Periodic Auction Eligible Orders. As discussed, Periodic Auction Eligible Orders, as defined, would include only Non-Displayed Limit Orders.

interested market participants to obtain an execution at the end of the Periodic Auction Period. Specifically, as provided in Proposed Rule 11.25(c), a Periodic Auction would be initiated in a security during Regular Trading Hours when one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell pursuant to Proposed Rule 11.25. This would begin a Periodic Auction Period of 100 milliseconds where the Exchange would match buy and sell orders for potential execution.²⁶

Once the Periodic Auction Period has begun, the Exchange would consolidate any additional Periodic Auction Orders that it receives, which would be used to calculate the information disseminated at a randomized time thereafter in a Periodic Auction Message.²⁷ Specifically, at a randomized time in one millisecond intervals after a Periodic Auction has been initiated and before the end of the Periodic Auction, the Exchange would disseminate via electronic means a Periodic Auction Message that includes two important pieces of information about the Periodic Auction: (1) the Periodic Auction Book Price,²⁸ and (2) and the total number of shares of Periodic Auction Orders

²⁶ One relevant exception to this would be for Periodic Auctions that would otherwise end after the Regular Trading Session. As previously discussed, Periodic Auctions would only be conducted during Regular Trading Hours. As a result, such Periodic Auctions would be performed at the end of the Regular Trading Session.

²⁷ The “Periodic Auction Message” would be defined in Proposed Rule 11.25(a)(7) as a message disseminated by electronic means that includes information about any matched Periodic Auction Orders on the Periodic Auction Book, as described in Rule 11.25(c).

²⁸ The “Periodic Auction Book Price” would be defined in Proposed Rule 11.25(a)(5) as the price within the Collar Price Range at which the most shares from the Periodic Auction Book would match. In the event of a volume-based tie at multiple price levels, the Periodic Auction Book Price would be the price that results in the minimum total imbalance. In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction

that are matched at the Periodic Auction Book Price. With these two pieces of information, market participants would be informed of both the price at which Periodic Auction Orders would match based on current market conditions, and the number of shares of such orders that would be matched. The calculation of the Periodic Auction Book Price would exclude Continuous Book Orders. Although Continuous Book Orders are eligible to trade in a Periodic Auction at the end of the Periodic Auction Period, they are potentially subject to execution on the Continuous Book prior to the execution of the Periodic Auction. As a result, similar to certain information disseminated by other national securities exchanges in advance of their auctions,²⁹ Continuous Book Orders would not be used to calculate the data elements included in the Periodic Auction Message. After its initial dissemination, a revised Periodic Auction Message would be disseminated in one millisecond intervals for the remaining duration of the auction, thereby ensuring that market participants maintain a current view of the market with which to make appropriate trading decisions throughout the Periodic Auction Period.

III. Determination of Periodic Auction Price

Book Price would be the price closest to the Volume Based Tie Breaker. As calculated, the Periodic Auction Book Price would be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Book Price.

²⁹ For example, the “Current Reference Price” disseminated ahead of Nasdaq’s closing cross is defined as the single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired, subject to certain tie-breakers. See Nasdaq Rule 4754(a)(7)(A). Nasdaq does not include “Close Eligible Interest” entered on its continuous book in determining the Current Reference Price pursuant to Nasdaq Rule 4754(a)(7)(A), nor does it include such orders in its dissemination of the number of shares represented by MOC, LOC, and IO orders that are paired at the Current Reference Price. See Nasdaq Rule 4754(a)(7)(B).

Periodic Auctions are designed to facilitate meaningful price discovery in securities traded on the Exchange throughout the course of the trading day. Similar to the operation of opening and closing auctions in securities listed on the Exchange's affiliate, Cboe BZX Exchange, Inc. ("BZX"),³⁰ as well as similar auctions conducted on other national securities exchanges, Periodic Auctions would therefore be executed at a price that maximizes the number of shares traded in the auction within designated auction collars ("Collar Price Range").³¹ Specifically, as provided in Proposed Rule 11.25(d), the Periodic Auction Price would be established by determining the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book and Periodic Auction Book in the Periodic Auction.³²

The Exchange would also implement certain "tie-breakers" that would be used to determine the applicable Periodic Auction Price if multiple price levels would satisfy the requirement to maximize the number of shares executed in the auction. These tie-breakers would be the same as the tie-breakers currently used for opening and closing auctions on BZX for that exchange's listed securities. Specifically, in the event of a volume-based tie at multiple price levels, the Periodic Auction Price would be the price that results in the minimum total imbalance – *i.e.*, the price at which the number of any

³⁰ See BZX Rule 11.23(b)(2)(B); (c)(2)(B).

³¹ The term "Collar Price Range" shall mean the more restrictive of the Midpoint Collar Price Range, as defined in Proposed Rule 11.25(a)(1), and the Protected NBBO. See Proposed Rule 11.25(a)(1). Notwithstanding the foregoing, if the Collar Price Range calculated by the Exchange would be outside of the applicable Price Bands established pursuant to the Limit Up-Limit Down Plan, the Collar Price Range will be capped at such Price Bands. *Id.*

³² The calculation of Collar Price Range, as defined in the Proposed Rule, is described in more detail in Section IV of this proposed rule change. As calculated, the Periodic Auction Price would be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Price.

executable shares to buy or sell that do not participate in the Periodic Auction is minimized.³³ In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Price would be the price closest to the Volume Based Tie Breaker, which would be defined in Proposed Rule 11.25(a)(9) as the midpoint of the NBBO for a particular security where the NBBO is a Valid NBBO.³⁴

IV. Determination of Collar Price Range

As discussed, the Periodic Auction Price would be constrained by auction collars that are designed to ensure that the execution of a Periodic Auction takes place at a price that is reasonably related to the market for the security. While Periodic Auctions are designed to balance supply and demand through a competitive auction process, the Collar Price Range would restrict trading from occurring at prices that are far away from the market. Specifically, as proposed, the term “Collar Price Range” would be defined in Proposed Rule 11.25(a)(1) as the more restrictive of the Midpoint Collar Price Range and the Protected NBBO.³⁵ The Collar Price Range would be similar to the auction collars

³³ Selecting a price that would minimize the imbalance best reflects the value of the security based on the auction's price discovery process because it is the price level where the amount of buy and sell interest is closest to equal.

³⁴ As is the case on the Exchange's affiliate, BZX, for opening and closing auctions for BZX-listed securities, a NBBO would be considered a Valid NBBO where: (i) there is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO as determined by the Exchange and published in a circular distributed to Members with reasonable advance notice prior to initial implementation and any change thereto. See BZX Rule 11.23(b)(23). Where the NBBO is not a Valid NBBO, the consolidated last sale price would be used. Id.

³⁵ The term “Midpoint Collar Price Range” shall mean the range from a set percentage below the Collar Midpoint (as defined below) to above the Collar Midpoint, such set percentage being dependent on the value of the Collar Midpoint at the time of the auction, as described below. See Proposed Rule 11.25(a)(3). The “Protected NBBO” is the national best bid or offer that is a Protected Quotation. See BYX Rule 1.5(s).

used today for BZX's opening and closing processes, with important differences to account for the fact that Periodic Auctions would be subject to the requirements of the Rule 611 of Regulation NMS ("Order Protection Rule") and the Plan to Address Extraordinary Market Volatility (the "Limit Up-Limit Down" or "LULD" Plan).

Specifically, Periodic Auctions would be subject to a Collar Price Range that is the more restrictive of the Midpoint Collar Price Range (described below) and the Protected NBBO. This implementation would therefore ensure that such Periodic Auctions are executed at a price that is consistent with the requirements of the Order Protection Rule as well as the additional protections provided by auction collars that are similar to those currently used by the Exchanges' affiliate, BZX, for opening and closing auctions in that exchange's listed securities. For all Periodic Auctions, the Exchange would calculate a Midpoint Collar Price Range to establish an upper and lower bound for the execution of such auctions. The Midpoint Collar Price Range would mirror the collars currently established for use in BZX auctions, and would be defined in Proposed Rule 11.25(a)(3) as the range from a set percentage below the Collar Midpoint to above the Collar Midpoint,³⁶ such set percentage being dependent on the value of the Collar Midpoint at the time of the auction. Specifically, the Collar Price Range would be determined as follows: (1) where the Collar Midpoint is \$25.00 or less, the Collar Price Range would be the range from 10% below the Collar Midpoint to 10% above the Collar Midpoint; (2) where the Collar Midpoint is greater than \$25.00 but less than or equal to \$50.00, the Collar Price Range would be the range from 5% below the Collar Midpoint to

³⁶ The Collar Midpoint would be the Volume Based Tie Breaker for all Periodic Auctions. As discussed later in this proposed rule change, the Volume Based Tie Breaker would generally be the midpoint of the NBBO, except where there is no Valid NBBO.

5% above the Collar Midpoint; and (3) where the Collar Midpoint is greater than \$50.00, the Collar Price Range would be the range from 3% below the Collar Midpoint to 3% above the Collar Midpoint. Finally, all Periodic Auctions would be conducted during Regular Trading Hours and therefore would be subject to the requirements of the LULD Plan. Generally, the LULD Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands. Consistent with the requirements of the LULD Plan, the Exchange would not execute Periodic Auctions at a price that is outside of the applicable Price Bands. Thus, if the Collar Price Range calculated by the Exchange would be outside of the applicable Price Bands established pursuant to the LULD Plan, the Collar Price Range would be capped at such Price Bands.

V. Priority and Execution of Orders

As discussed, Periodic Auction Orders and Continuous Book Orders that are executable at the end of the Periodic Auction Period would be executed at the Periodic Auction Price determined pursuant to Proposed Rule 11.25(d). Such orders would be executed in accordance with Proposed Rule 11.25(e), which describes the allocation model for Periodic Auctions. Generally, the allocation model described in this rule is intended to encourage active participation of Periodic Auction Orders, including participation of larger orders, while ensuring that Continuous Book Orders are also able to participate in resulting executions, as appropriate, in order to encourage continued liquidity on the Continuous Book. First, any displayed Continuous Book Orders that are executable at the Periodic Auction Price would be executed in price/time priority, thereby encouraging the continued submission of displayed orders. Second, after any displayed

Continuous Book Orders have been executed, the Exchange would execute any Periodic Auction Orders that are executable at the Periodic Auction Price. Since Periodic Auctions are designed, in part, to facilitate the execution of larger orders, such Periodic Auction Orders would be executed in size/time priority, beginning with the largest order. Finally, any non-displayed Continuous Book Orders that are executable at the Periodic Auction Price would be executed pursuant to the normal price-time priority allocation used for the execution of orders on the Continuous Book, as provided in BYX Rule 11.9(a)(2)(B). All Match Trade Prevention modifiers, as defined in BYX Rule 11.9(f), would be ignored as it relates to executions occurring during a Periodic Auction.

VI. Regulatory and Other Considerations

The Exchange would also adopt rule language in the Interpretations and Policies to the proposed rule that describes how Periodic Auctions would be processed consistent with certain other regulatory obligations, including obligations related to member conduct, or otherwise to ensure transparent handling in certain specified circumstances. These rules would provide additional clarity and transparency to members and investors with respect to how the Exchange would process Periodic Auctions consistent with relevant obligations under the Exchange Act, or as otherwise necessary or appropriate to maintain a fair and orderly market on the Exchange.

First, as explained in Interpretations and Policies .01 to Proposed Rule 11.25, the Exchange would not conduct Periodic Auctions during a trading halt when such trading is prohibited. If a symbol is halted prior to the execution of a Periodic Auction that has already been initiated pursuant to Proposed Rule 11.25(c), the Periodic Auction would be

immediately cancelled without execution, consistent with applicable limitations on trading during a halt.

Second, as explained in Interpretations and Policies .02 to Proposed Rule 11.25, a Periodic Auction would not be initiated during a Crossed Market. If the market becomes crossed during a Periodic Auction that has already been initiated pursuant to Proposed Rule 11.25(c), and remains crossed at the end of the Periodic Auction Period, the Periodic Auction would be cancelled without execution.³⁷ If the market subsequently becomes uncrossed, resting Periodic Auction Orders may trigger a Periodic Auction pursuant to Rule 11.25(c).

Third, Interpretations and Policies .03 to Proposed Rule 11.25 would detail the proposed handling of orders consistent with Regulation SHO. As proposed, all short sale orders designated for participation in the Periodic Auction would have to be identified as “short” or “short exempt” pursuant to Rule 11.10(a)(5). Rules 201(b)(1)(i) and (ii) of Regulation SHO generally requires that trading centers such as the Exchange establish, maintain, and enforce written policies and procedures reasonably designed to: (i) prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security’s closing price; and (ii) impose this price restriction for the remainder of the day and the following day. So as to maintain compliance with Rule 201 of Regulation SHO, the Exchange would only execute short sale orders (*i.e.*, those not marked short exempt) if the execution would take place at a

³⁷ The Exchange would not immediately cancel the auction as crossed markets are typically short-lived and the market may no longer be crossed at the end of the Periodic Auction Period, in which case the Exchange could successfully execute the auction.

permissible price pursuant to Regulation SHO. Specifically, if a security is in a short sale circuit breaker, orders marked short will only trade in a Periodic Auction if the Periodic Auction Price determined pursuant to Rule 11.25(d) is above the national best bid.³⁸

Finally, Interpretations and Policies .04 to Proposed Rule 11.25 would describe member conduct obligations with respect to the entry of Periodic Auction Orders. As proposed, Periodic Auction Orders must be entered with the intent to participate in Periodic Auctions. A pattern or practice of submitting orders for the purpose of disrupting or manipulating Periodic Auctions, including entering and immediately cancelling Periodic Auction Orders, would be deemed conduct inconsistent with just and equitable principles of trade. The Exchange would conduct surveillance to ensure that Users do not inappropriately enter Periodic Auction Orders for impermissible purposes, such as to gain information about other Periodic Auction Orders that are resting on the Periodic Auction Book, or otherwise disrupting or manipulating Periodic Auctions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,³⁹ in general, and Section 6(b)(5) of the Act,⁴⁰ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable

³⁸ This restriction would not apply to orders marked short exempt, which are exempted from these restrictions pursuant to Rule 201(b)(1)(iii)(B) of Regulation SHO. Rule 201(b)(1)(iii)(B) of Regulation SHO provides that the policies and procedures required by the rule must be reasonably designed to permit the execution or display of a short sale order of a covered security marked “short exempt” without regard to whether the order is at a price that is less than or equal to the current national best bid.

³⁹ 15 U.S.C. § 78f(b).

⁴⁰ 15 U.S.C. § 78f(b)(5).

principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it would facilitate improved price formation and provide additional execution opportunities for investors, particularly in thinly-traded or other securities that may suffer from limited liquidity.

As mentioned in the purpose section of this proposed rule change, the Exchange believes that its proposed introduction of Periodic Auctions is responsive to the Statement that the Commission issued in October 2019 to address market quality concerns in thinly-traded securities.⁴¹ Specifically, the Periodic Auction proposal is designed to improve liquidity and price formation in such thinly-traded securities, while also allowing the Exchange to better compete with off-exchange venues that currently offer features that investors may find beneficial for sourcing liquidity when displayed liquidity in the public markets is more scarce. Cboe offered its thoughts in response to the Statement in a comment letter submitted to the Commission on December 20, 2019. As stated in that comment letter, Cboe believes that innovation by national securities exchanges, rather than potentially harmful regulatory changes that favor a limited segment of the market, is what is ultimately needed to facilitate better market quality in thinly-traded securities. The Exchange believes that Periodic Auctions, as designed, are such an innovation.

Periodic Auctions would supplement existing opening and closing auctions by consolidating buy and sell interest in a price forming auction when investors seek liquidity during the course of the trading day. Although liquidity is frequently available in

⁴¹ See supra note 4.

size around the open and close of trading, liquidity may be more limited intraday. Thus, investors looking to trade in size may have issues getting their orders filled during the trading day, or may receive inferior execution quality due to the market impact of trading larger blocks of equity securities in a market with limited liquidity. As proposed, Periodic Auctions would allow the Exchange to consolidate volume from market participants, thereby increasing the liquidity available to investors. By creating a deeper pool of liquidity for the intraday execution of orders, including block-sized liquidity, the Exchange believes that members and investors would be able to secure better quality executions. In addition, Periodic Auctions would perform an important price discovery function, which the Exchange believes may be particularly valuable in thinly-traded securities that often trade with significantly wider spreads that negatively impact the ability for investors to ascertain market value.⁴² The proposed introduction of Periodic Auctions would therefore contribute to a fair and orderly market in equity securities traded on the Exchange.

The Exchange's affiliate, Cboe Europe, has had a successful history with periodic auctions in the European equities market, and the proposed introduction of Periodic Auctions for the trading of U.S. equity securities is based, in part, on the successful implementation of a similar product offered by Cboe Europe. As illustrated in Chart A, Cboe Europe's periodic auction book has grown to about 2% - 2.5% of notional value

⁴² See Letter from Adrian Griffiths, *supra* note 5, which illustrates the wider spreads that often impact trading in thinly-traded securities. The Exchange believes that Periodic Auctions would improve price discovery in securities that tend to trade with wider spreads. As explained in that letter, volume in thinly-traded securities often migrates to off-exchange venues where market participants can trade without publicly displaying their orders and while potentially minimizing market impact.

traded on European equities exchanges since its introduction in October 2015. Indeed, such periodic auctions now account for an average daily value traded (“ADVT”) of about €1 billion, with two months in Q1 2020 actually exceeding this threshold, reflecting the value that this offering has provided to market participants that trade European equities.

Chart A: Average Daily Value Traded in Cboe Europe Periodic Auctions

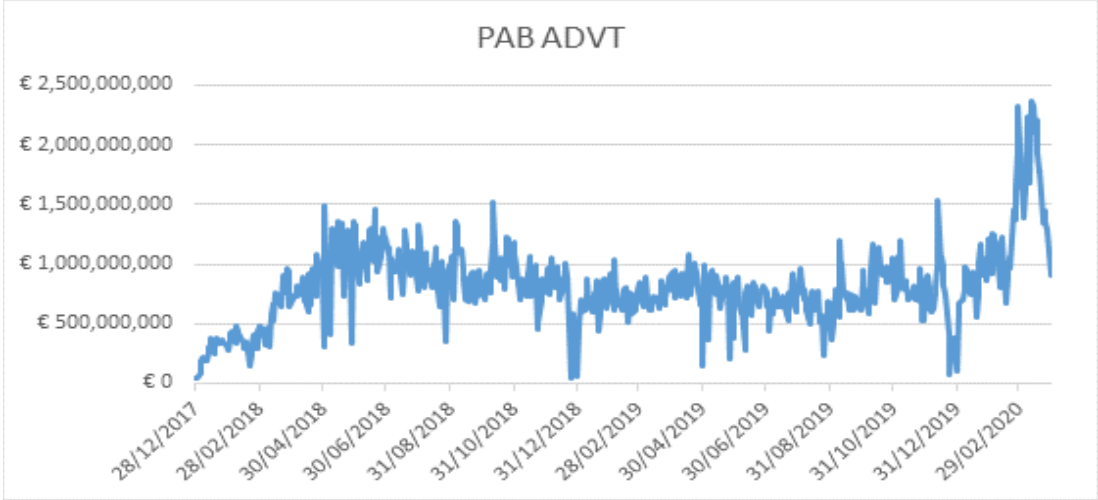


Chart B: Cboe Europe Periodic Auction Statistics

Month	Periodic Auction Value Traded		Periodic Auction Market Share
	Total Monthly	Average Daily	% Notional Value Traded on Exchanges in EU
Jan-20	€ 19,266,389,823	€ 875,883,628	2.42%
Feb-20	€ 24,377,313,487	€ 1,218,865,674	2.52%
Mar-20	€ 36,933,642,050	€ 1,678,801,911	2.46%
Apr-20	€ 18,370,457,305	€ 918,522,865	2.33%
May-20	€ 15,993,488,255	€ 761,594,679	2.13%
Jun-20	€ 18,221,339,811	€ 828,242,719	1.91%

This growth in Cboe Europe's periodic auction offering has promoted price improvement opportunities, with an analysis of periodic auctions conducted by Cboe Europe for Q1 2020 showing such periodic auctions trading about 85% of value traded at the midpoint. Although the Exchange recognizes that there are important differences in market structure between the U.S. and European equities markets, as well as relevant design differences between the two products, the Exchange believes that U.S. investors may receive similar benefits from its proposed introduction of Periodic Auctions. Moreover, the Exchange believes that such innovation should take preference over other regulatory approaches that may impede future innovation. As discussed in detail in the paragraphs that follow, Periodic Auctions are designed to improve the investor experience for market participants that trade U.S. equities, and the Exchange believes that

this product may therefore contribute to a free and open market and national market system.

The Exchange believes that it is consistent with the protection of investors and the public interest to introduce Periodic Auction Only Orders and Periodic Auction Eligible Orders to facilitate trading in the Periodic Auctions. Use of these order types would be voluntary, and market participants would be able to determine whether and how to participate in Periodic Auctions using these order types. Specifically, while both forms of Periodic Auction Orders would be eligible to initiate Periodic Auctions, Periodic Auction Only Orders would allow firms to indicate that they are seeking liquidity solely in Periodic Auctions, while Periodic Auction Eligible Orders would allow firms to also seek liquidity on the Continuous Book before and after the execution of a Periodic Auction. The Exchange believes that it is appropriate to offer these two methods of initiating Periodic Auctions so that market participants can decide whether to use Periodic Auctions as the sole means of sourcing liquidity, or as an additional means of accessing liquidity if an order entered onto the Continuous Book has not been executed.

Periodic Auction Only Orders would provide a means for Users to indicate that they solely wish to have their order executed in a Periodic Auction. Since Periodic Auctions would only take place during the Regular Trading Session, Periodic Auction Only Orders would be accepted with a time-in-force of RHO (either during or outside of Regular Trading Hours), or IOC (solely during Regular Trading Hours). If entered with a time-in-force of IOC, a Periodic Auction Only Order would also have to be entered with an instruction to “lock-in” the order to avoid situations where a Periodic Auction Only Order initiates an auction and then is immediately cancelled prior to the execution of that

auction. Periodic Auction Only Orders are not eligible to trade on the Continuous Book and therefore must include instructions that would allow the order to be executed in a Periodic Auction. The requirement to “lock-in” the order during the course of a Periodic Auction if the order is marketable at the Periodic Auction Book Price is designed to allow a User to specify that they are only interested in participating in a Periodic Auction if they can do so immediately, while ensuring that they are actually eligible to participate in the execution of that auction, if possible. Without this requirement, a Periodic Auction could be initiated even though the order responsible for initiating that auction, by its terms, would not be eligible to participate at the end of the Periodic Auction Period, which would potentially be to the detriment both of the User entering the order and any Users that submitted contra-side orders to trade with it under the assumption that such interest was available. The Exchange believes that the proposed requirements would benefit Users that are looking for a speedy execution in Periodic Auctions, while also ensuring that Periodic Auction Only Orders entered with a time-in-force of IOC can trade at the end of the Periodic Auction Period.

The Exchange would also allow Users to include certain specified instructions on their Periodic Auction Only Orders. Specifically, such orders would be accepted with minimum execution quantity and pegging instructions. The Exchange believes that the Periodic Auction Only Order may be particularly valuable for market participants that have larger orders to be executed in Periodic Auctions that they may not be willing to expose for trading in the continuous market. As illustrated in Cboe’s commenter letter in response to the Commission’s statement on thinly-traded securities,⁴³ liquidity is often

⁴³ See Letter from Adrian Griffiths, *supra* note 5.

more limited in these securities, and as such market participants often look to off-exchange venues that may be able to meet their liquidity needs without displaying orders in the public market, thereby limiting the market impact of their trading activity. The Exchange believes that market participants that are looking for liquidity in size may find Periodic Auctions to be a valuable means of sourcing needing liquidity without the potential risks of displaying their orders for execution.

Given the potential benefits to larger orders, the Exchange would permit Users to specify a minimum execution quantity for their Periodic Auction Only Orders. A Periodic Auction Only Order entered with a minimum execution quantity would be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders.⁴⁴ The Exchange offers a Minimum Quantity Order on the Continuous Book today. The proposed instruction that could be attached to a Periodic Auction Only Order is similar to the current Minimum Quantity Order but would only permit the default handling of that order type, and would not allow a member to alternatively specify that the minimum quantity condition be satisfied by each individual contra-side order. Periodic Auction Eligible Orders and Continuous Book Orders entered as Minimum Quantity Orders would be subject to a similar restriction.

In addition, in light of the fact that market participants often value midpoint executions, or may wish to receive executions at other prices based on the applicable

⁴⁴ The Exchange notes that in rare circumstances, the inclusion of a minimum execution quantity on one or more Periodic Auction Orders and/or Continuous Book Orders may result in the Exchange being unable to process a Periodic Auction in a timely manner. To prevent potential capacity and/or performance issues that may impact both the execution of the auction, as well as trading on Continuous Book, in such an event the Exchange would cancel the auction after a specified number of attempts.

national best bid or offer (“NBBO”), the Exchange would also allow Users to enter a pegging instruction for such orders. Periodic Auction Only Orders would therefore accommodate instructions that the order is to be pegged to either the midpoint or same side of the market. As is the case for orders entered for trading on the Continuous Book, Periodic Auction Only Orders entered with a primary peg instruction would be pegged to the NBBO, with or without an offset, provided that only aggressive offsets would be permitted given the fact that Periodic Auctions would be restricted to trading within the Protected NBBO and would not be eligible to trade at inferior prices. Although the Exchange would not generally offer special order handling instructions for Periodic Auction Only Orders, the Exchange believes that midpoint and primary peg instructions, as described, would allow Users to more accurately capture their trading intent, and may therefore promote more active use of Periodic Auctions as a means of sourcing liquidity for such orders.

With respect to Periodic Auction Eligible Orders, the Exchange would allow Users to include an instruction on non-displayed orders entered to trade on the Continuous Book that would allow such orders to initiate a Periodic Auction if executable against contra-side Periodic Auction Orders. The Exchange would not allow Users to enter displayed orders as Periodic Auction Eligible Orders as such Periodic Auction Eligible Orders would not be available for execution during an ongoing Periodic Auction. As a result, displayed orders, which are disseminated to the market and subject to firm quote requirements under Rule 602(b)(2) of Regulation NMS,⁴⁵ would not be able to be entered as Periodic Auction Eligible Orders. However, such displayed orders could

⁴⁵ See 17 CFR 242.602(b)(2).

still participate in Periodic Auctions as Continuous Book Orders, and would receive execution priority when executed in that manner.

As discussed in the purpose section of the proposed rule change, the time-in-force included on a Periodic Auction Eligible Order would need to allow the order to remain executable during the course of a Periodic Auction. The Exchange has therefore proposed to: (1) only allow IOC orders to be entered as Periodic Auction Eligible Orders if such orders include an instruction not to cancel the order during a Periodic Auction Period; and (2) disallow FOK orders from being entered as Periodic Auction Orders. The Exchange believes that both of these requirements are consistent with just and equitable principles of trade as they are designed to ensure that a Periodic Auction Eligible Order, which as discussed would be eligible for the initiation of a Periodic Auction, would not be prevented from participating in the eventual execution of such Periodic Auction due to a time-in-force that contemplates the order either being executed or cancelled immediately on entry. As discussed with respect to Periodic Auction Only Orders, without this requirement, a Periodic Auction could be initiated even though the order responsible for initiating that auction, by its terms, would not be eligible to participate at the end of the Periodic Auction Period, which would potentially be to the detriment both of the User entering the order and any Users that submitted contra-side orders to trade with it under the assumption that such interest was available. Nevertheless, the Exchange believes that some Users may find it valuable to enter IOC orders as Periodic Auction Eligible Orders. Although such Users may be looking for a speedy execution, and would therefore generally prefer an execution on entry, or not at all, they may be willing to wait 100 milliseconds for a potential execution in a Periodic Auction, instead of having the

order cancelled immediately. The Exchange would therefore allow Users to signal their intent to trade in this manner by entering the IOC order with an instruction that it should not be cancelled during a Periodic Auction. If entered in this manner, a Periodic Auction Eligible Order may trade immediately on entry on the Continuous Book, or may alternatively participate in a Periodic Auction, subject to cancellation no later than the end of any Periodic Auction Period. The Exchange does not anticipate the same use case for FOK orders, which contain an additional condition that requires the order to be executable in full, and would therefore restrict their ability to be entered as Periodic Auction Eligible Orders.

The Exchange would also not accept Mid-Point Peg Orders entered as Periodic Auction Eligible Orders if the Mid-Point Peg Order is entered with an instruction to not execute when the NBBO is locked. If the Exchange permitted Mid-Point Peg Orders with this instruction to be entered as Periodic Auction Eligible Orders, those orders could initiate a Periodic Auction but would not be available for the auction's eventual execution if the market subsequently becomes locked at that time. The Exchange believes that the proposed handling is consistent with just and equitable principles of trade as the Exchange wishes to avoid the potential for such orders to initiate a Periodic Auction that may ultimately not execute due to the inclusion of this condition. Periodic Auction Eligible Orders are designed to initiate Periodic Auctions and may encourage other Users to enter orders that could participate in the auction's execution. As a result, the Exchange believes that such orders should reflect trading interest that does not include unnecessary conditions. Users that wish to use Mid-Point Peg Orders with this instruction would still be eligible to participate in Periodic Auctions as Continuous Book Orders, which are able

to participate in the eventual execution of a Periodic Auction, but would not initiate such auctions.

Similar to the proposed handling of Periodic Auction Only Orders, the Exchange would allow Periodic Auction Eligible Orders to be entered as Minimum Quantity Orders, but would only permit such orders to be entered with the default handling of that instruction. That is, Minimum Quantity Orders entered as Periodic Auction Eligible Orders would execute only if the minimum size specified can be executed against one or more contra-side Periodic Auction Orders or Continuous Book Orders. Although the Exchange does offer an alternative instruction that permits the User to request that the Exchange only execute the order against a single contra-side order, such handling is designed primarily for use on the Continuous Book, and would complicate the execution of Periodic Auctions.⁴⁶ For similar reasons, Minimum Quantity Orders are excluded from the Exchange's opening process for securities traded pursuant to unlisted trading privileges. However, as discussed, the Exchange believes that Users participating in Periodic Auctions may value the ability to specify a minimum quantity, and the Exchange has therefore proposed to allow such functionality for Periodic Auction Eligible Orders so long as the User is willing for those orders to be executed against one or more contra-side orders. The Exchange believes that this strikes the right balance between allowing Users to ensure that they only trade in a Periodic Auction if their minimum quantity criteria can be met, while excluding instructions that could unnecessarily complicate the execution of Periodic Auctions.

⁴⁶ See BYX Rule 11.23(a)(2).

In addition, the Exchange would specify handling for Discretionary Orders, Pegged Orders, and Mid-Point Pegged Orders that are entered as Periodic Auction Eligible Orders. Including this information in the rule would increase transparency around the operation of the Exchange and ensure that Users are properly informed about how orders with these instructions would be handled in Periodic Auctions. The same handling is currently applied to the Exchange's opening process for securities traded pursuant to unlisted trading privileges, and treating these orders in the same manner for purposes of Periodic Auctions would ensure a consistent and familiar experience for market participants that enter such orders on the Exchange. The Exchange therefore believes that these proposed rules are consistent the maintenance of a fair and orderly market.

The Exchange also believes that it is consistent with just and equitable principles of trade to allow Continuous Book Orders, *i.e.*, orders that are not entered as either Periodic Auction Only Orders or Periodic Auction Eligible Orders, to participate in any Periodic Auction that results in an execution. Although Continuous Book Orders would not initiate a Periodic Auction, such orders would be eligible to participate in the resulting execution, thereby facilitating additional liquidity for those orders without disrupting their ability to trade normally during the course of the auction. Continuous Book Orders would remain on the Continuous Book and subject to potential execution during a Periodic Auction Period, but would be included in the final determination of the Periodic Auction Price, and participate in any resulting execution. Although the Exchange believes that a number of Users may wish to use Periodic Auction Orders that are specifically designed for participation in Periodic Auctions and have the ability to

initiate those auctions, the Exchange also believes that Periodic Auctions would be valuable to Users that wish primarily to trade on the Continuous Book but may be able to secure an execution in a Periodic Auction if possible. As a result, Continuous Book Orders would generally be eligible to trade in Periodic Auctions at the end of the auction process.

Such Continuous Book Orders would be subject to similar handling to Periodic Auction Eligible Orders that may also trade on the Continuous Book in addition to Periodic Auctions, including the same handling discussed above with respect to Discretionary Orders, Pegged Orders, and Mid-Point Peg Orders. The Exchange believes that this handling is consistent with just and equitable principles of trade as it would ensure consistent treatment of similar orders traded in Periodic Auctions. In addition, Continuous Book Orders that are entered as Minimum Quantity Orders would be subject to similar but not identical handling to Periodic Auction Eligible Orders. Given the value of Minimum Quantity Orders that include the alternative instruction that allows a User to specify that the minimum size specified be satisfied by each individual contra-side order, Users would continue to be able to use this instruction for trading on the Continuous Book. However, such orders, which would not be permitted to be entered as Periodic Auction Orders, would similarly not be able to participate in Periodic Auctions as Continuous Book Orders. Users that wish to include a minimum quantity on their orders could participate in Periodic Auctions as either Periodic Auction Only Orders, Periodic Auction Eligible Orders, or Continuous Book Orders, provided that for each of these order types, the order must be willing to trade against one or more contra-side orders. As discussed, the Exchange believes that this treatment is necessary in order to offer a

minimum quantity instruction in an auction that pools interest and executes such interest at a single price.

The Exchange also believes that the proposed handling of Continuous Book Orders entered as Reserve Orders is consistent with the maintenance of a fair and orderly market as it will ensure a familiar and consistent experience for market participants that trade on the Exchange. Although Periodic Auction Eligible Orders must be non-displayed and therefore cannot be entered as a Reserve Order that, by rule, includes both a displayed portion and non-displayed portion, the proposed handling for Continuous Book Orders is the same as the handling applied to the Exchange's opening process securities traded pursuant to unlisted trading privileges. Thus, similar to the treatment of Discretionary Orders, Pegged Orders, and Mid-Point Peg Orders, detailing the proposed handling of Reserve Orders would both increase operational transparency and ensure consistent and familiar treatment of similar orders on the Exchange.

Periodic Auctions would be initiated throughout Regular Trading Hours when Periodic Auction Orders entered by Users are executable against each other, thereby ensuring that the initiation of an auction is tied to demonstrated interest from both buyers and sellers in the security. Once the Exchange has matched two or more Periodic Auction Orders in this manner, a Periodic Auction Period of 100 milliseconds would begin to allow orders from additional market participants to participate in the execution of the Periodic Auction. To facilitate the pooling of Periodic Auction Orders during this period, the Exchange would publish information about the auction, including (1) an indicative Periodic Auction Book Price that reflects price at which the Periodic Auction could be executed, counting only Periodic Auction Orders and excluding Continuous Book Orders

that may be subject to execution prior to the end of the Periodic Auction Period; and (2) the total number of shares of Periodic Auction Orders that are matched at the Periodic Auction Book Price. This information would be published beginning at a randomized time in one millisecond intervals, and would be refreshed in one millisecond intervals thereafter as additional orders are entered or cancelled, or other changes to market conditions are made that could impact the Periodic Auction Book Price. The Exchange believes that it is consistent with the protection of investors and the public interest to publish this information as it may inform potential trading in periodic auctions and encourage additional order flow to be entered to participate in such auctions. The Exchange also believes that sending out the initial dissemination at a randomized time after Periodic Auction Orders have been matched would facilitate the operation of a fair and orderly market. This handling would allow additional Periodic Auction Orders received during this interim period to be pooled in the initial dissemination of auction information. In addition, since market participants would not know how much time is left in the Periodic Auction Period, firms would be incentivized to respond quickly with Periodic Auction Orders to participate in the Periodic Auction, rather than potentially waiting until the end of the auction, which may reduce the value of the information proposed to be disseminated to investors and may impact price discovery.

Once the 100 millisecond Periodic Auction Period has ended, the Exchange would calculate the execution price of the auction, *i.e.*, the Periodic Auction Price, and execute Periodic Auction Orders and Continuous Book Orders that are eligible to trade at that price. The Exchange believes that the proposed methodology for determining the Periodic Auction Price is consistent with just and equitable principles of trade. Generally,

the proposed methodology for calculating the Periodic Auction Price is designed to allow Periodic Auctions to facilitate price discovery while maintaining important investor protections and assuring compliance with applicable regulations. Given the important price formation function of these auctions, the Exchange would use logic for pricing Periodic Auctions that largely mirrors the logic used by its affiliate, BZX, for opening and closing auctions in that exchange's listed securities.

Specifically, the Exchange would seek to execute Periodic Auctions at a price that maximizes the number of shares that can trade in the auction, subject to specified price collars that would limit executions at prices that are not reasonably related to the price of the security established by the market. The applicable price collars would also be based on the auction collars used for BZX opening and closing auctions, except that trading would be further limited by applicable LULD Price Bands and the Protected NBBO, as required pursuant to applicable regulatory requirements.⁴⁷ Finally, the price calculation would be subject to tie-breakers that are consistent with those used for BZX opening and closing auctions in situations where there is a volume-based tie at multiple price levels. These tie-breakers would help ensure the selection of a meaningful Periodic Auction Price by selecting the price that would minimize the potential imbalance between supply and demand, and then favoring prices closer to a Volume Based Tie Breaker that is generally the midpoint of the NBBO. In sum, the proposed calculation of the Periodic Auction Price would allow the Exchange to appropriately balance supply and demand in

⁴⁷ As discussed in the purpose section of this proposed rule change, both the requirements of the LULD Plan and the Order Protection Rule apply to transactions executed during Regular Trading Hours. Although opening and closing auctions are generally exempt from these requirements, there are currently no exemptions that would apply to Periodic Auctions that perform a similar role in facilitating price discovery.

Periodic Auctions and facilitate robust price formation similar to opening and closing auctions.

After the Exchange determines the Periodic Auction Price, any Periodic Auction Orders or Continuous Book Orders that are eligible for execution at that price would be executed based on a special allocation methodology designed for use in Periodic Auctions. First, in order to continue to incentivize the entry of displayed orders on the Exchange, Continuous Book Orders that are displayed on the Continuous Book would be executed first in price/time priority. Although the Exchange is proposing to introduce Periodic Auctions to incentivize additional liquidity, the Exchange believes that it is important to continue to encourage the entry of displayed orders on the Continuous Book. Displayed orders entered in the public market contribute to price formation, and are used as a reference price for the execution of orders on other venues. As a result, the Exchange's proposal to introduce Periodic Auctions is designed to continue to encourage the entry of displayed orders that would both trade on the Continuous Book and simultaneously benefit from priority when executed in a Periodic Auction.

Second, after Continuous Book Orders displayed on the Continuous Book have been executed, Periodic Auction Orders would be executed in size/time priority. As previously noted, the Exchange believes that Periodic Auctions may be valuable for investors that are seeking liquidity in size. As a result, the priority methodology employed by the Exchange for Periodic Auction Orders would preference larger orders, which the Exchange believes may contribute to greater depth in Periodic Auctions. In turn, the liquidity provided by these larger orders would contribute to the execution of smaller orders that may also participate in Periodic Auctions, thereby facilitating the

execution of all orders, both large and small, that seek liquidity in such auctions, and furthering execution opportunities for investors that trade on the Exchange.

Finally, non-displayed Continuous Book Orders would be executed last in priority. Unlike displayed orders entered on the Continuous Book, or Periodic Auction Orders that contribute to important pricing information disseminated to market participants during the course of a Periodic Auction, non-displayed orders entered on the Continuous Book do not contribute to pre-execution price formation.⁴⁸ As a result, while these orders would be eligible to trade in Periodic Auctions, where they may benefit from additional execution opportunities, they would be subject to the lowest priority among Periodic Auction Orders and Continuous Book Orders. In addition, since these orders are not specifically seeking liquidity in Periodic Auctions, and would participate in Periodic Auctions solely as an additional source of liquidity, priority within this band would be determined based on the normal execution priority afforded to such orders on the Continuous Book. The Exchange believes that this approach is consistent with just and equitable principles of trade as it would ensure that non-displayed Continuous Book Orders receive the priority that they would normally be afforded for executions on the Continuous Book.

Similar to the Exchange's opening process for securities traded pursuant to unlisted trading privileges,⁴⁹ all Match Trade Prevention modifiers, as defined in BYX Rule 11.9(f), would be ignored as it relates to executions occurring during a Periodic

⁴⁸ Non-displayed orders would contribute to price formation at the end of a Periodic Auction as they would be considered in the determination of the Periodic Auction Price.

⁴⁹ See BYX Rule 11.23(b).

Auction. The Exchange's Match Trade Prevention modifiers are designed to allow Users to better manage order flow and prevent certain undesirable executions on the Continuous Book. However, this functionality would complicate the execution of Periodic Auctions, where orders are pooled together and executed at a price that balances supply and demand in the auction. As a result, the Exchange believes that ignoring Match Trade Prevention modifiers in Periodic Auctions, similar to the handling currently used by the Exchange for its opening process, is consistent with the maintenance of a fair and orderly market in securities traded in such Periodic Auctions.

In addition, the Exchange believes that the proposed language being codified in the Interpretations and Policies to the proposed rule is consistent with the Exchange Act and the rules and regulations adopted thereunder. As proposed, these rules would include language that identifies how Periodic Auctions would be conducted during a crossed market, and consistent with applicable regulatory requirements related to handling of trading halts and Regulation SHO. Such rules would also describe appropriate standards of member conduct, consistent with the Exchange's obligations under the Act to regulate and surveil its market. The proposed rules included in Interpretations and Policies .01 - .03 would ensure that: (1) Periodic Auctions do not take place when their execution may be complicated by the existence of a crossed market that could interfere with the auction's price discovery function, or when such execution would not be permissible due to a trading halt in a security;⁵⁰ and (2) the execution in Periodic Auctions of any short

⁵⁰ Although Rule 611(b)(4) of Regulation NMS provides an exception from the trade-through requirements of that rule for situations where a protected bid is crossed with a protected offer, the Exchange believes that market participants may not desire an execution in a Periodic Auction during periods when the market is crossed.

sale orders that are not marked “short exempt” would only take place at a permissible price when the security is in a short sale circuit breaker pursuant to Rule 201 of Regulation SHO. Further, the proposed rules included in Interpretations and Policies .04 would provide additional guidance to Users with respect to conduct that would be considered inconsistent with just and equitable principles of trade. The Exchange intends to conduct appropriate surveillance of its members to ensure that their participation in Periodic Auctions is done in a manner that is consistent with such rules. As a result, these rules would ensure that orders Periodic Auctions would be processed in a manner that is consistent with applicable regulatory obligations and the maintenance of a fair and orderly market in securities traded on the Exchange.

In conclusion, the Exchange believes that the proposed rule change would enhance the experience of investors looking to access liquidity in the public market and fill an important role in the U.S. equities market where liquidity may be more limited outside of the open and close of trading. By introducing a price forming auction for the aggregation and execution of buy and sell orders intraday, Periodic Auctions would increase execution opportunities available to investors. In turn, Periodic Auctions may improve trading outcomes for market participants that have trouble sourcing liquidity in the public markets today, including in thinly-traded securities where liquidity is often limited and trading often occurs on a number of off-exchange venues that can offer reduced market impact. As such, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market.

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 proposed rule change is designed to increase competition by introducing an additional mechanism for equities market participants to seek liquidity during the course of the trading day. Indeed, the proposed introduction of Periodic Auctions is a pro-competitive means of addressing the concerns that the Commission expressed in its Statement on thinly-traded securities. The proposal, which seeks to introduce innovative functionality on a non-primary listing exchange, would allow competition, rather than regulatory intervention designed to limit competition (*e.g.*, through the suspension or termination of unlisted trading privileges), to improve market quality in thinly-traded and other securities.

The introduction of Periodic Auctions is designed to improve execution quality for investors sourcing liquidity during the trading day, and, in particular, those that are looking to trade in size, or are looking to access liquidity in thinly-traded or other securities where liquidity may be more scarce. Providing an additional mechanism for price forming orders to be executed would promote competition between venues that seek to execute this order flow, and provide market participants and investors with greater choice with respect to how they choose to source liquidity. The equities industry is fiercely competitive as the Exchange must compete with other equities exchanges and off-exchange venues for order flow. The proposal is both evidence of this competition, and would further enable the Exchange to compete effectively in this market.

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

No written comments were solicited or received on the proposed rule change.

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 Exchange consents, the Commission will:

- A. by order approve or disapprove such 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 e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2020-021 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-2020-021. This file number should be included on the subject line if e-mail 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2020-021 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Secretary

⁵¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined; proposed deletions are in [brackets].

Rules of Cboe BYX Exchange, Inc.

* * *

Rule 11.25. [(Reserved)] Periodic Auctions(a) Definitions.

(1) The term “Collar Price Range” shall mean the more restrictive of the Midpoint Collar Price Range, as defined in Rule 11.25(a)(1), and the Protected NBBO. Notwithstanding the foregoing, if the Collar Price Range calculated by the Exchange would be outside of the applicable Price Bands established pursuant to the Limit Up-Limit Down Plan, the Collar Price Range will be capped at such Price Bands.

(2) The term “Continuous Book Order” shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term “Continuous Book” shall mean System’s electronic file of such Continuous Book Orders.

(3) The term “Midpoint Collar Price Range” shall mean the range from a set percentage below the Collar Midpoint (as defined below) to above the Collar Midpoint, such set percentage being dependent on the value of the Collar Midpoint at the time of the auction, as described below. The Collar Midpoint will be the Volume Based Tie Breaker for all Periodic Auctions. Specifically, the Collar Price Range will be determined as follows: where the Collar Midpoint is \$25.00 or less, the Collar Price Range shall be the range from 10% below the Collar Midpoint to 10% above the Collar Midpoint; where the Collar Midpoint is greater than \$25.00 but less than or equal to \$50.00, the Collar Price Range shall be the range from 5% below the Collar Midpoint to 5% above the Collar Midpoint; and where the Collar Midpoint is greater than \$50.00, the Collar Price Range shall be the range from 3% below the Collar Midpoint to 3% above the Collar Midpoint.

(4) The term “Periodic Auction” shall mean an auction conducted pursuant to this Rule 11.25.

(5) The term “Periodic Auction Book Price” shall mean the price within the Collar Price Range at which the most shares from the Periodic Auction Book would match. In the event of a volume-based tie at multiple price levels, the Periodic Auction Book Price will be the price that results in the minimum total imbalance. In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Book Price will be the price closest to the Volume Based Tie Breaker.

(6) The term “Periodic Auction Order” shall mean a “Periodic Auction Only Order” or “Periodic Auction Eligible Order” as those terms are defined in Rules

11.25(b)(1)-(2), and the term “Periodic Auction Book” shall mean the System’s electronic file of such Periodic Auction Orders.

(7) The term “Periodic Auction Message” shall mean a message disseminated by electronic means that includes information about any matched Periodic Auction Orders on the Periodic Auction Book, as described in Rule 11.25(c).

(8) The term “Periodic Auction Period” shall mean the fixed time period of 100 milliseconds for conducting a Periodic Auction. Notwithstanding the foregoing, a Periodic Auction initiated pursuant to Rule 11.25(c) will be performed at the end of the Regular Trading Session if the Periodic Auction Period would otherwise end after the Regular Trading Session.

(9) The term “Volume Based Tie Breaker” shall mean the midpoint of the NBBO for a particular security where the NBBO is a Valid NBBO. A NBBO is a Valid NBBO where: (i) there is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the Maximum Percentage away from both the NBB and the NBO. The Maximum Percentage will be determined by the Exchange and will be published in a circular distributed to Members with reasonable advance notice prior to initial implementation and any change thereto. Where the NBBO is not a Valid NBBO, the consolidated last sale price will be used.

(b) *Order Entry and Cancellation.* Users may enter Periodic Auction Orders that are eligible to initiate Periodic Auctions pursuant to Rule 11.25(c), and Continuous Book Orders that may participate in such Periodic Auctions if present on the Continuous Book at the time a Periodic Auction is executed. Periodic Auction Orders and Continuous Book Orders may be modified and/or cancelled at any time; provided that a User entering a Periodic Auction Order may optionally include an instruction not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price. Periodic Auction Orders must be for a size of 100 shares or more in securities priced below \$500 based on the consolidated last sale price, or if no consolidated last sale price is available, the previous day’s closing price.

(1) A “Periodic Auction Only Order” is a 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.

(A) Periodic Auction Only Orders entered outside of Regular Trading Hours must include a time-in-force of Regular Hours Only (“RHO”). Periodic Auction Only Orders entered during Regular Trading Hours may be either RHO or immediate-or-cancel (“IOC”). If entered with a time-in-force of IOC, the order must include an instruction pursuant to Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price.

(B) A User may specify a minimum execution quantity for its Periodic Auction Only Orders. A Periodic Auction Only Order entered with a minimum execution quantity will be executed in the Periodic Auction only if the minimum

size specified can be executed against one or more contra-side Periodic Auction Orders or Continuous Book Orders.

(C) A User may include an instruction on its Periodic Auction Only Orders to peg such orders to either the midpoint of the NBBO (“midpoint peg”), or the same side of the NBBO (“primary peg”). Periodic Auction Only Orders entered with a primary peg instruction can be pegged to the NBB or NBO, or a certain amount above the NBB or below the NBO (“offset”).

(2) *Periodic Auction Eligible Orders.* 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. An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction will initiate a Periodic Auction. Periodic Auction Eligible Orders will not trade on the Continuous Book during a Periodic Auction Period in the security.

(A) Periodic Auction Eligible Orders entered with a time-in-force of IOC must include an instruction pursuant to Rule 11.25(b) not to cancel the order during a Periodic Auction Period if it is marketable at the Periodic Auction Book Price. Periodic Auction Eligible Orders cannot be entered with a time-in-force of fill-or-kill (“FOK”).

(B) Mid-Point Peg Orders, as defined in Rule 11.9(c)(9), that are entered with an instruction to not execute when the NBBO is locked cannot be entered as Periodic Auction Eligible Orders.

(C) Minimum Quantity Orders, as defined in Rule 11.9(c)(5), will be executed in a Periodic Auction only if the minimum size specified can be executed against one or more contra-side orders. Orders entered with the alternative instruction that requires the minimum size specified to be satisfied by each individual contra-side order cannot be entered as Periodic Auction Eligible Orders.

(D) Discretionary Orders, as defined in Rule 11.9(c)(10), may participate only up to their ranked price for buy orders or down to their ranked price for sell orders. The discretionary range of such orders will not be considered in Periodic Auctions.

(E) All Pegged Orders and Mid-Point Peg Orders, as defined in Rule 11.9(c)(8) and (9), will be eligible for execution in the Periodic Auction based on their pegged prices.

(3) Continuous Book Orders are handled in the same manner as Periodic Auction Eligible Orders pursuant to Rule 11.25(b)(2)(C)-(E); provided that the order handling described in Rule 11.25(b)(2)(C) only applies to Continuous Book Orders entered with the default instruction that permits the execution of such orders against one or more contra-side orders. Continuous Book Orders can be entered with the alternative

instruction that requires the minimum size specified to be satisfied by each individual contra-side order, but such orders are not be eligible to participate in Periodic Auctions. Continuous Book Orders entered as Reserve Orders, as defined in Rule 11.9(c)(1), may participate to the full extent of their displayed size and Reserve Quantity.

(c) *Initiation and Publication of Periodic Auction Information.* A Periodic Auction will be initiated in a security during Regular Trading Hours when one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell pursuant to this Rule 11.25. At a randomized time in one millisecond intervals after a Periodic Auction has been initiated and before the end of the Periodic Auction, the Exchange will disseminate via electronic means a Periodic Auction Message that includes the Periodic Auction Book Price and the total number of shares of Periodic Auction Orders that are matched at the Periodic Auction Book Price. Thereafter, a revised Periodic Auction Message will be disseminated in one millisecond intervals for the remaining duration of the Periodic Auction.

(d) *Determination of Periodic Auction Price.* The Periodic Auction Price will be established by determining the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book and Periodic Auction Book in the Periodic Auction. In the event of a volume-based tie at multiple price levels, the Periodic Auction Price will be the price that results in the minimum total imbalance. In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Price will be the price closest to the Volume Based Tie Breaker.

(e) *Priority and Execution of Orders.* Periodic Auction Orders and Continuous Book Orders that are executable at the end of the Periodic Auction Period are executed at the Periodic Auction Price determined pursuant to Rule 11.25(d), as follows: First, any displayed Continuous Book Orders that are executable at the Periodic Auction Price are executed in price/time priority. Second, any Periodic Auction Orders that are executable at the Periodic Auction Price are executed in size/time priority, beginning with the largest order. Finally, any non-displayed Continuous Book Orders that are executable at the Periodic Auction Price are executed as provided in Rule 11.9(a)(2)(B). All Match Trade Prevention modifiers, as defined in Rule 11.9(f), will be ignored as it relates to executions occurring during a Periodic Auction.

Interpretations and Policies

.01 *Trading Halts.* The Exchange will not conduct Periodic Auctions during a trading halt. If a symbol is halted prior to the execution of a Periodic Auction that has already been initiated pursuant to Rule 11.25(c), the Periodic Auction will be immediately cancelled without execution.

.02 *Crossed Markets.* A Periodic Auction will not be initiated during a Crossed Market. If the market becomes crossed during a Periodic Auction that has already been initiated pursuant to Rule 11.25(c), and remains crossed at the end of the Periodic Auction Period, the Periodic Auction will be cancelled without execution. If the market subsequently becomes uncrossed, resting Periodic Auction Orders may trigger a Periodic Auction pursuant to Rule 11.25(c).

.03 *Short Sales.* All short sale orders must be identified as “short” or “short exempt” pursuant to Rule 11.10(a)(5). If a security is in a short sale circuit breaker pursuant to Rule 201 of Regulation

SHO, orders marked “short” will only trade in a Periodic Auction if the Periodic Auction Price determined pursuant to Rule 11.25(d) is above the NBB. This restriction does not apply to orders marked “short exempt.”

.04 *Member Conduct.* Periodic Auction Orders must be entered with the intent to participate in Periodic Auctions. A pattern or practice of submitting orders for the purpose of disrupting or manipulating Periodic Auctions, including entering and immediately cancelling Periodic Auction Orders, will be deemed conduct inconsistent with just and equitable principles of trade.



December 20, 2019

Via Electronic Submission

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Release No. 34-87327, File No. S7-18-19

Dear Ms. Countryman:

Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to comment on the Commission’s Statement on Market Structure Innovation for Thinly Traded Securities (“Statement”).¹ The Statement requests comment on potential innovations that could improve market quality in equity securities that trade in lower volume (“thinly traded securities”), and seeks further feedback on the regulatory changes that may be needed to facilitate such innovation. Cboe shares the Commission’s interest in improving market quality in this segment of the U.S. equities market, and believes that the best way to accomplish this goal is through innovation and targeted approaches that invite investor choice.

I. *Background on Thinly Traded Securities*

Although there is no generally accepted definition of “thinly traded securities,” corporate equity securities that have a market capitalization of \$2 billion or less, and trade an average daily volume (“ADV”) of 50,000 shares or less, may be considered thinly traded.² In addition to

¹ See Securities Exchange Act Release No. 87327 (October 17, 2019), 84 FR 56956 (October 24, 2019) (File No. S7-18-19).

² The Exchange compiled a list of 781 securities that met the above definition on November 21, 2019. This list included 626 securities listed on The Nasdaq Stock Market

infrequent trading, such securities often trade with wider spreads, and with less liquidity displayed at the national best bid or offer (“NBBO”), ultimately making them more difficult for investors to trade in the public market. Table A below illustrates average and median NBBO spreads, which are significantly wider in thinly traded securities than non-thinly traded securities.

Table A: NBBO Spreads in Thinly Traded Securities

(November 21, 2019)

	Thinly Traded Securities	All Other Securities
Average NBBO Spread	\$0.39	\$0.08
Median NBBO Spread	\$0.14	\$0.03

Further, as illustrated in Table A below, these securities suffer from significantly less liquidity, with average size displayed at the NBB and NBO that is almost three times smaller than size displayed in non-thinly traded securities.

Table A: Smaller Displayed Size in Thinly Traded Securities

(Per Exchange; January – November 2019)

	Thinly Traded Securities	All Other Securities
Average Exchange Size at NBO	249 shares	786 shares
Average Exchange Size at NBB	266 shares	738 shares
Median Exchange Size at NBO	100 shares	120 shares
Median Exchange Size at NBB	100 shares	119 shares

LLC (“Nasdaq”), 69 securities listed on New York Stock Exchange LLC (“NYSE”), and 86 securities listed on NYSE American LLC (“American”). This list of 781 securities is used for the statistical analyses compiled by Cboe and included in this comment letter.

There are also material differences in *where* thinly traded securities trade. It has been claimed that the problem with thinly traded securities lies with exchange fragmentation, and consequently one solution that has been suggested is for the Commission to suspend or terminate unlisted trading privileges (“UTP”) in these securities. The data, however, suggests that *exchange* fragmentation is not actually a problem in thinly traded securities at all. First, when looking exclusively at trading on exchanges, there is actually greater concentration on the primary listing exchange, where more than half of all exchange volume is executed in thinly traded securities, compared to one third of exchange volume for other more liquid securities. Second, looking at the market as a whole, there is greater over-the-counter (“OTC”) trading in thinly traded securities, with such securities trading, on average, more than 47% in OTC volume, compared to 37% OTC volume in more liquid securities. In fact, more than one third (37%) of thinly traded securities have significant OTC volume that exceeds exchange volume, and this volume is often dispersed among a large number of different OTC venues.³ Table B below illustrates the percentage of volume in both thinly traded and non-thinly traded securities that is executed on: (1) the primary listing exchange; (2) other national securities exchanges; and (3) OTC venues.

Table B: Greater Concentration on Primary & OTC in Thinly Traded Securities

(January – November 2019)

	Thinly Traded Securities	All Other Securities
Primary Listing Exchange	29.92%	21.12%
Other National Securities Exchanges	25.78%	41.83%
OTC Venues	47.30%	37.06%

Finally, there are important differences in terms of the prices at which thinly traded securities are executed. Displayed spreads in the public markets can be wide in thinly traded securities, as shown in Table A, but this only tells a part of the whole picture. Almost half of all

³ Specifically, Cboe has found that 292 out of 781 thinly traded securities have OTC volume that constituted more than half of all trading activity.

trading activity in these securities occurs within the spread at prices better than market participants are willing to display in the public markets. One third of all exchange volume in thinly traded securities is executed with price improvement, or about double the amount of price improvement received on exchanges in non-thinly traded securities where a significant majority of trading occurs at the NBBO. Similar results are seen in the OTC market where about half of all volume receives some price improvement in non-thinly traded securities, compared to almost two thirds of all volume executed at improved prices in thinly traded securities. This suggests that solutions to address market quality in these securities require not merely rewarding displayed limit orders posted on an exchange but actually encouraging liquidity to be made available at prices where investors are willing to trade. Table C below illustrates the percentage of volume on exchange and OTC that is executed with price improvement in both thinly traded and non-thinly traded securities.

Table C: Greater Price Improvement in Thinly Traded Securities
(January – November 2019)

	OTC		Exchanges	
	Thinly Traded Securities	All Other Securities	Thinly Traded Securities	All Other Securities
% Shares Better than NBBO	62%	50%	33%	16%

II. *Suspending or Terminating UTP would Curtail Innovation*

Cboe understands that the Commission would consider proposals that could include the suspension or termination of UTP and/or exemptive relief from Regulation NMS and other rules under the Securities Exchange Act of 1934 (“Exchange Act”). If we are to be successful in improving market quality in thinly traded securities, Cboe believes it is critical that the “innovative proposals” that the Commission has requested enable “fair competition... among exchange markets, and between exchange markets and markets other than exchange market” pursuant to

Section 11A of the Exchange Act.⁴ Regulation NMS and related Commission rules have been largely successful in improving market quality as a result of encouraging a diversity of trading venues for investors to transact in NMS stocks. To that end, Cboe’s U.S. equities markets are at the forefront of the competition and innovation that has improved market quality and enhanced the experience of investors that rely on the public market for their investments needs.

Indeed, in the last year alone Cboe has filed several innovative proposals to improve the investor experience in the U.S. equities markets. These include: (1) a recently approved proposal to introduce order book priority for retail investors on Cboe EDGX Exchange, Inc. (“EDGX”);⁵ (2) a proposal to encourage competitive liquidity provision and improved market quality on Cboe EDGA Exchange, Inc. (“EDGA”) by introducing a liquidity provider protection;⁶ (3) a proposal to facilitate the execution of intraday liquidity on EDGX through the introduction of a midday cross;⁷ and (4) an immediately effective fee proposal designed to incentivize Lead Market Makers to improve market quality in exchange traded products (“ETPs”) listed on Cboe BZX Exchange, Inc. (“BZX”).⁸ Without UTP, these innovations would not be available to investors in thinly traded securities, who would be effectively limited to the market structure offered by the primary listing exchange. Proponents of suspending or terminating UTP criticize the “one-size-fits-all” market structure in place today. Their proposed fix is to limit trading to a single national securities exchange, offering a single market structure. The irony of this solution is not lost on Cboe.

The prospect of suspending or terminating UTP in thinly traded securities raises a number of important legal and policy questions that the Commission should confront prior to considering any proposals based on such an impactful change to the regulatory landscape. For example:

⁴ See 15 U.S. Code § 78k–1(a)(1)(C)(ii).

⁵ See Securities Exchange Act Release No. 87200 (October 2, 2019), 84 FR 53788 (October 8, 2019) (SR-CboeEDGX-2019-012) (Approval Order).

⁶ See Securities Exchange Act Release No. 86168 (June 20, 2019), 84 FR 30282 (June 26, 2019) (SR-CboeEDGA-2019-012) (Notice).

⁷ See SR-CboeEDGX-2019-076 (pending publication).

⁸ See Securities Exchange Act Release No. 86213 (June 27, 2019), 84 FR 31951 (July 3, 2019) (SR-CboeBZX-2019-058) (Notice and Immediate Effectiveness).

1. Is it in the public interest to deprive investors of market structure benefits available on diverse equities exchanges (e.g., priority for retail investors) and concentrate exchange trading on a single market that does not offer those benefits?
2. Are sweeping regulatory changes that eliminate innovative and well-regarded trading venues needed to encourage innovation, and would any innovation so encouraged offset present and future innovations lost?
3. Would such limitations be consistent with Section 11A of the Exchange Act, and Congress’s intent to facilitate competition as one of its primary goals for the national market system?
4. Would it be legal and consistent with congressional intent for the Commission to suspend or terminate UTP for thinly traded securities as part of a large scale market structure experiment that may harm investors?⁹
5. Does the Commission have the authority to suspend or terminate UTP for thinly traded securities upon the application of an exchange filed pursuant to Section 12(f)(4) of the Exchange Act instead of “by rules and regulation” – *i.e.*, notice and comment rulemaking – as contemplated for “classes of securities” pursuant to Section 12(f)(3)?¹⁰

Although Cboe is certainly interested in any proposals that the Commission may receive from other U.S. equities exchanges, our answer to each of these questions would be a simple “no.” UTP, and the competition and innovation that it permits, is at the heart of the U.S. equities ecosystem.¹¹ Indeed, the concept of UTP has been repeatedly been strengthened by Congress in

⁹ We note that previous attempts to improve liquidity for thinly traded securities have fallen short (e.g. tick size pilot) while imposing meaningful costs. Although this should not deter further attempts at improvement, costs and potential harm to investors must remain front-of-mind as the Commission considers proposals to address these issues.

¹⁰ See 15 U.S. Code § 78l(f). Section 12(f) contains two provisions related to the temporary suspension or termination of UTP for up to twelve months. Although Section 12(f)(4) authorizes the Commission to suspend or terminate UTP temporarily for individual securities on the application of an interested party, or on its own motion, Section 12(f)(3) requires that such action be taken “by rules and regulations” for suspensions of UTP involving “any or all classes of securities.”

¹¹ In its 2018 application to suspend UTP in a number of Nasdaq-listed securities, Nasdaq suggested that the clear harm to competition between venues that would result from suspending UTP would be mitigated by greater competition for listings. In fact, there is

the years following the 1936 amendment to the Exchange Act that permitted UTP subject to Commission review, including notably through the UTP Act of 1994, which eliminated the prior application, notice, and review process that had already by that time become largely perfunctory.¹² Suspending or terminating UTP in thinly traded securities would risk many of the benefits that have been accrued through increased competition, and may do so in a manner that has spillover effects on the broader market. Cboe is concerned that suspending or terminating UTP may impair rather than improve market quality in thinly traded securities, including by locking innovators like Cboe out of the market. Further, such a change risks eliminating liquidity that is not easily ported to the primary listing exchanges (*e.g.*, liquidity from market makers not registered on those exchanges), and shifting even more order flow from transparent exchange markets into a number of more fragmented and less regulated off-exchange markets. We therefore respectfully suggest that the Commission consider innovations that are designed to improve market quality without eliminating the existing competition that drives innovation in the first place. Some such innovations are discussed in the following section of this letter.

III. *Cboe Recommendations to Improve Trading in Thinly Traded Securities*

Improving market quality in thinly traded securities first requires an understanding of how those securities trade today, and the issues faced by market participants. Although certain commenters have suggested that the problem in these securities is exchange fragmentation, these arguments are simply not supported by the facts. The fact is, Regulation NMS has already fostered seamless interconnectivity between national securities exchanges that trade NMS stocks, allowing investors to source liquidity across the U.S. equities exchanges. Moreover, *there is already significantly lower exchange fragmentation and greater consolidation of liquidity on the primary*

hardly any competition for listing of securities identified by Nasdaq in its application, in large part due to the fact that many of those securities only qualify for listing on a single primary listing market. Of the 776 securities selected by Nasdaq for suspension of UTP only 169 would even qualify for listing on NYSE. That is, the significant majority of those securities (78%) do not meet the higher listing requirements for NYSE, and would therefore effectively be limited to listing on Nasdaq.

¹² The legislative history indicates that the Commission routinely approved requests for UTP, such that no requests for UTP had been denied since 1934. See 140 Cong. Rec. H6508 (daily ed. Aug. 1, 1994) (statement of Rep. Markey).

listing exchanges in these securities. Despite this fact, close to half of trading in thinly traded securities occurs on a large number of diverse OTC venues.

A successful approach to improving market quality in thinly traded securities should therefore focus on the difficulties that market participants face in trading these securities in the public markets today – *e.g.*, sourcing liquidity, the availability of price improvement opportunities, and the potential for significant market impact in securities that are less liquid and trade infrequently. Cboe is currently working on a handful of complementary approaches that may allow market participants to source liquidity without market impact, and potentially at improved prices. While not an exhaustive list by any means, these recommendations can be built upon by Cboe and other U.S. equity exchange operators to improve market quality while continuing to encourage meaningful competition that can drive further innovation.

Improving Market Quality Through Innovative Pricing Initiatives

Our experience in operating a listings business for ETPs has shown that there is a significant opportunity for national securities exchanges to enhance market quality through pricing programs that are designed with thinly traded securities in mind. Indeed, Cboe has done this with its own listed ETPs, many of which trade in lower volume, and has seen positive improvements in market quality as a result of those changes. Notably, Cboe recently introduced an innovative Lead Market Maker (“LMM”) program on BZX that provides daily incentives to LMMs that meet certain enhanced market quality standards in BZX-listed ETPs. The revised LMM program was designed to specifically address issues related to encouraging liquidity provision in new and lower volume ETPs where transaction-based compensation (*i.e.*, rebates) may not be sufficient to incentivize improvements in market quality. While Cboe’s analysis is ongoing, initial results show very promising improvements in market quality in thinly traded ETPs. For example, comparing the first three months where the Program was fully in effect (*i.e.*, September, October, and November) and the three months prior to implementation (*i.e.*, May, June, and July) shows improvement in both spreads and size in BZX-listed ETPs with less than 50,000 shares of consolidated average daily volume.¹³ Specifically, Cboe has found: (1) a 11.1% decrease in quoted

¹³ The month of August is excluded from this analysis as the current program was not fully implemented until September in order to provide sufficient time for LMMs to adjust to the new structure. In addition, symbol RODI is excluded due to infrequent quoting in that symbol during the period studied.

spreads on BZX, a 12.5% decrease in NBBO spreads; and a 28.8% increase in size at the inside on BZX. Table D below illustrates the improvements in market quality in thinly traded ETPs listed on BZX following the recent introduction of our revised LMM Program.

**Table D: Market Quality Improvements in BZX Listed ETPs
Following Introduction of the Revised LMM Program**

	Pre-Period (May – July 2019)	Post-Period (Sept. – Nov. 2019)	% Change
Average BZX Quoted Spread (%)	0.36%	0.32%	-11.1%
Average NBBO Quoted Spread (%)	0.32%	0.28%	-12.5%
Average BZX Inside Size (bid and ask)	2,292 shares	2,951 shares	28.8%

Of course, there may be relevant differences between trading of ETPs and corporate securities but innovative approaches like this should not be ignored by primary listing exchanges that are interested in improving market quality in thinly traded securities. Moreover, such approaches should be considered prior to enacting major market structure reforms that have the potential to reduce competition and harm investors. Although Cboe has chosen this particular approach for improving market quality in its listed ETPs, primary listing exchanges for corporate securities can and should consider different approaches to improve market quality in their listed securities. Such pricing programs need not apply to all NMS stocks but could be limited to thinly traded securities, and therefore be used address the specific issues that investors face when trading those securities in the public markets today, including, for example, by incentivizing more robust midpoint liquidity in thinly traded securities that may not make it to the public markets today.¹⁴

¹⁴ During January to November 2019, Cboe found that in thinly traded securities listed on Nasdaq, only 17% of midpoint volume was executed on the primary listing market, compared to 25% on other national securities exchanges, and 58% on OTC venues.

On Demand Auctions

Cboe has also been actively working on market structure solutions to enhance market quality and improve the ability for investors to access liquidity in securities traded on our U.S. equities exchanges. As mentioned in the previous section of this letter, this includes efforts to encourage more aggressive liquidity provision through the introduction of a liquidity provider protection on EDGA, as well as a new project to introduce a midday cross on EDGX that would help investors source liquidity in size intraday, *i.e.*, outside the open and close of trading. In addition to these projects, which have both been filed with the Commission, Cboe is intends to submit proposals for further refinements that would allow market participants to source liquidity when they need it, rather than at a particular time of day. Specifically, Cboe is considering the introduction of “on demand auctions” – *i.e.*, auctions initiated by a market participant entering an order in a particular security. For example, upon entry of an order entered with an auction instruction, an exchange could initiate a blind auction in that security specifying that an order is available, but without indicating price, side, or size. Such auctions could allow investors to source liquidity without displaying their orders, and could be implemented by one or more exchanges without compromising available liquidity. Further, such mechanisms could reduce the potential for information leakage that moves the market in thinly traded securities, as neither the auction initiator nor responders would be required to display trading interest on the continuous order book.

Regulatory Changes to Facilitate Market Quality Proposals

The proposals outlined above highlight meaningful changes that Cboe and other U.S. equities exchange operators may be able to implement within the existing regulatory framework. That said, the impact of regulation is a key factor that should be considered thoughtfully in any market structure debate, and Cboe appreciates the Commission’s willingness to consider different approaches for encouraging market quality improvements in thinly traded securities. Although revoking UTP would do little to encourage innovation that helps investors, the Commission should remain open to proposals that request relief from Regulation NMS, including the firm quote requirements of Rule 602 (“Quote Rule”), and block or other exemptions from Rule 611 (“Order Protection Rule”). Specifically, the Commission should consider approaches that would allow U.S. equities exchanges to compete directly with OTC venues that offer unique features, such as conditional orders, that cannot be offered on a national securities exchange under current

regulations. A limited exemption from the Quote Rule, for example, would allow exchanges to bring some of this order flow into the public market by permitting them to either offer conditional order types to their members, or to display conditional orders already being used on OTC venues.

IV. *Conclusion*

Cboe appreciates the opportunity to share its views on how to improve market quality in thinly traded securities. While there is clearly work to be done, Cboe believes that approaches to solving the issues that investors face in trading these securities must: (1) allow for continued competition and innovation, consistent with Section 11A of the Exchange Act; and (2) be properly attuned to the realities of trading in thinly traded securities, and the specific issues experienced by investors in trading these securities in the public market.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Griffiths', with a long, sweeping horizontal stroke extending to the right.

Adrian Griffiths
Assistant General Counsel