

2. Statutory Basis

The proposed rule change to extend the Waiver is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders in that it is intended to attract more customer volume on the Exchange in SPY options. The SPY option class is one of the most active and liquid classes and trades with a significant electronic trading volume. Because of its current trading profile, CBOE believes it might be better able to attract electronic liquidity by not assessing the marketing fee on electronic SPY transactions and therefore proposes to extend the current waiver. However, CBOE believes that continuing to collect the marketing fee on open outcry transactions, as well as electronic orders submitted to AIM for price improvement, from market makers that trade with customer orders from payment accepting firms would continue to attract liquidity in SPY to the floor and AIM mechanism, respectively. Accordingly, CBOE believes continuing the waiver is equitable because it reflects the trading profile of SPY and is designed and intended to attract additional order flow in SPY to the Exchange, which would benefit all market participants.

The proposed rule change to change the marketing fee assessed on EEM transactions furthers the objectives of Section 6(b)(4) of the Act,⁸ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders and other persons using Exchange facilities. The amount of the fee, \$0.25 per contract, is reasonable, as it is the same amount as is charged for transactions in other ETFs. The assessment of the fee is equitable and not unfairly discriminatory because it is designed and intended to attract additional order flow in EEM to the Exchange, which would increase liquidity and benefit all market participants, and because the same fee is assessed similar transactions in nearly all other ETFs.

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

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or

appropriate in furtherance of the purposes of the Act.

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 with respect to the proposed rule change.

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

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-CBOE-2011-097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2011-097. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-CBOE-2011-097, and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65516; File No. SR-BATS-2011-040]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Inbound Router, as Described in Rule 2.12

October 7, 2011.

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 September 29, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed with the Commission a proposal to extend the pilot program so that the Exchange can receive inbound routes of equities orders through BATS Trading, Inc. ("BATS Trading"), the Exchange's routing broker-dealer, from BATS Y-Exchange, Inc. ("BYX").

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

Currently, BATS Trading is the approved outbound order routing facility of BYX.³ The Exchange, through BATS Trading, has also been authorized to receive inbound routes of equities orders by BATS Trading from BYX.⁴ The Exchange's authority to receive inbound routes of equities orders by BATS Trading from BYX is subject to a pilot period of twelve months, ending October 15, 2011. The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional six months, through April 15,

2012. This is reflected in the proposed amendment to BATS Rule 2.12(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁵ In particular, the proposal is consistent with Section 6(b)(5) of the Act,⁶ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from BATS Trading acting in its capacity as a facility of BYX, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via BATS Trading, including the attendant obligations and conditions.⁷

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it would permit the Exchange to continue receiving inbound routes of equities orders from BATS Trading, in a manner consistent with prior approvals and established protections.¹⁰ The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without undue delay through April 15, 2011 while the Exchange's proposal to make the pilot permanent is under consideration.¹¹ Therefore, the Commission designates the proposal operative upon filing.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2011-040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

³ See Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (Order Approving Application of BATS Y-Exchange, Inc. for Registration as a National Securities Exchange).

⁴ See Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR-BATS-2010-024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt BATS Rule 2.12, Entitled "BATS Trading, Inc. as Inbound Router" and To Make Related Changes) (the "Inbound Router Notice").

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ The Exchange plans to submit a proposal prior to the expiration of the new pilot period to make permanent the Exchange's authority to receive direct inbound routes of equities orders via BATS Trading.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁰ See SR-BATS-2011-040, Item 7.

¹¹ See *supra* note 7.

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2011-040. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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-BATS-2011-040 and should be submitted on or before November 4, 2011.

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

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-26529 Filed 10-13-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65515; File No. SR-BYX-2011-026]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Inbound Router, as described in Rule 2.12

October 7, 2011.

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 September 29, 2011, BATS Y-Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed with the Commission a proposal to extend the pilot program so that the Exchange can receive inbound routes of equities orders through BATS Trading, Inc. (“BATS Trading”), the Exchange's routing broker-dealer, from BATS Exchange, Inc. (“BZX”).

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

Currently, BATS Trading is the approved outbound order routing facility of BZX.³ The Exchange, through BATS Trading, has also been approved to receive inbound routes of equities orders by BATS Trading from BZX.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58375 (August 21, 2008), 73 FR 49498 (August 21, 2008) (Order Approving Application of BATS Exchange, Inc. for Registration as a National Securities Exchange).

⁴ See Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (Order Approving Application of BATS Y-

The Exchange's authority to receive inbound routes of equities orders by BATS Trading from BZX is subject to a pilot period of twelve months, ending October 15, 2011. The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional six months, through April 15, 2012. This is reflected in the proposed amendment to BYX Rule 2.12(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁵ In particular, the proposal is consistent with Section 6(b)(5) of the Act,⁶ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from BATS Trading acting in its capacity as a facility of BZX, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via BATS Trading, including the attendant obligations and conditions.⁷

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

Exchange, Inc. for Registration as a National Securities Exchange).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ The Exchange plans to submit a proposal prior to the expiration of the new pilot period to make permanent the Exchange's authority to receive direct inbound routes of equities orders via BATS Trading.

¹³ 17 CFR 200.30-3(a)(12).