

Markets, Inc.<sup>21</sup> Apparent violations of any BYX rules by any broker-dealer subsidiary of BATS Global Markets, Inc. will be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA.<sup>22</sup> The effect of these provisions is that regulatory oversight and enforcement responsibilities for any broker-dealer subsidiary of BATS Global Markets, Inc., which is the parent company of BYX, will be vested with FINRA. These provisions should help avoid any potential conflicts of interest that could arise if BYX was primarily responsible for regulating any affiliated broker-dealer.

According to the Plan, BYX will review the Certification at least annually, or more frequently if required by changes in either the rules of BYX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add BYX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete BYX rules included in the then-current list of Common Rules that are no longer substantially similar to FINRA rules; and confirm that the remaining rules on the list of Common Rules continue to be BYX rules that are substantially similar to FINRA rules.<sup>23</sup> FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Plan. Under the Plan, BYX will also provide FINRA with a current list of Dual Members and shall update the list no less frequently than once each quarter.<sup>24</sup>

The Commission is hereby declaring effective a plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all BYX rules that are substantially similar to the rules of FINRA for Dual Members of BYX and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Plan, provided that the Parties are only adding to, deleting from, or confirming changes to BYX rules in the Certification in conformance with the definition of Common Rules provided in the Plan. However, should the Parties decide to add a BYX rule to the Certification that is not substantially similar to a FINRA rule; delete a BYX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a BYX rule that is no longer substantially similar to

a FINRA rule, then such a change would constitute an amendment to the Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act and noticed for public comment.<sup>25</sup>

The Plan also permits BYX and FINRA to terminate the Plan, subject to notice.<sup>26</sup> The Commission notes, however, that while the Plan permits the Parties to terminate the Plan, the Parties cannot by themselves reallocate the regulatory responsibilities set forth in the Plan, since Rule 17d-2 under the Act requires that any allocation or re-allocation of regulatory responsibilities be filed with the Commission.<sup>27</sup>

#### IV. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-613. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

*It is therefore ordered*, pursuant to Section 17(d) of the Act, that the Plan in File No. 4-613, between FINRA and BYX, filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

*It is therefore ordered* that BYX is relieved of those responsibilities allocated to FINRA under the Plan in File No. 4-613.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63097; File No. SR-BYX-2010-002]

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend BATS Y-Exchange Rules To Conform to the Current Rules of BATS Exchange

October 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 4, 2010, 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 Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to amend BYX Rules 11.9, 11.13, 11.17, and 11.18 in order to bring BYX Rules up to date with recent changes that have been made to the rules of the Exchange's affiliate, BATS Exchange, Inc. ("BATS Exchange"). 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

<sup>25</sup> The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Plan for examining, and enforcing compliance by, Dual Members, also would constitute an amendment to the Plan.

<sup>26</sup> See paragraph 12 of the proposed 17d-2 Plan.

<sup>27</sup> The Commission notes that paragraph 12 of the Plan reflects the fact that FINRA's responsibilities under the Plan will continue in effect until the Commission approves any termination of the Plan.

<sup>28</sup> 17 CFR 200.30-3(a)(34).

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

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

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

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

<sup>21</sup> See paragraph 2 of the proposed 17d-2 Plan.

<sup>22</sup> See paragraph 6 of the proposed 17d-2 Plan.

<sup>23</sup> See paragraph 2 of the proposed 17d-2 Plan.

<sup>24</sup> See paragraph 3 of the proposed 17d-2 Plan.

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

The Exchange proposes to amend BYX Rules 11.9, 11.13, 11.17, and 11.18 in order to bring BYX Rules up to date with the changes that were made to the rules of BATS Exchange while BYX's Form 1 Application to register as a national security exchange was pending approval.

*Background:*

BYX plans to commence operations as a national securities exchange registered under Section 6 of the Act<sup>5</sup> on October 15, 2010. As described more fully in BYX's Form 1 application,<sup>6</sup> the Exchange is an affiliate of BATS Exchange: both are wholly owned subsidiaries of BATS Global Markets, Inc. ("BGM"). BYX Rules, in their current form, were filed as part of Amendment No. 1 to its Form 1 on July 1, 2010 and, at that time, were nearly identical to BATS Exchange Rules. In the time between when BYX was preparing to file Amendment No. 1 to its Form 1 and the filing of this proposed rule change, BATS Exchange has made several changes to its rule book. Despite the limited time frame since the Commission approved BYX to operate as a national stock exchange, BYX and BATS Exchange already have many common members and the Exchange anticipates that the number of common members will only continue to grow. In order to prevent confusion among common members, to ensure consistent operation of both BYX and BATS Exchange, and to bring the Exchange's Rules in line with industry standards, the Exchange proposes to amend BYX Rules as described below.

*Match Trade Prevention:*

The Exchange proposes to make a minor change to its Member Match Trade Prevention, or MMTP, functionality, described in BYX Rule 11.9(f) and to rename the functionality as Match Trade Prevention. Specifically, the Exchange is proposing to allow Users to opt-out of the default behavior of the MMTP Decrement and Cancel ("MDC") modifier to automatically cancel two orders in their entirety when the resting order contains an MMTP

modifier rather than MDC and is larger than the incoming order. Also, as mentioned above, the Exchange also proposes to rename the functionality as Match Trade Prevention ("MTP"). These changes would make BYX Rule 11.9(f) consistent with BATS Exchange Rule 11.9(f) and are identical to changes made by BATS Exchange when modifying its MMTP rules.<sup>7</sup>

*Routing Strategies:*

The Exchange also proposes to amend Rule 11.13(a), which describes its order routing processes, to modify the existing general description of Exchange routing functionality, to describe available routing options in greater detail, and to add certain new routing options. Specifically, the Exchange is proposing various modifications to its general routing standards, which modifications, the Exchange believes, will help clarify the rule, including adding a reference to the "RECYCLE Option" in its rule. Additionally, the Exchange is proposing to amend the Rule to include a definition of "System routing table," in order to reflect the fact that the Exchange, like other trading venues, maintains different routing tables for different routing options and modifies them on a regular basis to reflect assessments about the destination markets. Finally, the Exchange proposes to add descriptions of the following routing options: CYCLE, Parallel D, Parallel 2D, Parallel T, DRT, and Destination Specific Orders. These changes would make BYX Rule 11.13 consistent with BATS Exchange Rule 11.13 and are substantively identical to changes made by BATS Exchange when modifying its execution and routing rules.<sup>8</sup>

*Clearly Erroneous Executions:*

The Exchange also proposes to amend its Rule 11.17, entitled Clearly Erroneous Executions, to provide for uniform treatment: (1) Of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange. The Exchange also proposes additional changes to Rule 11.17 that reduce the ability of the Exchange to deviate from the objective standards set forth in the Rule. These changes would make BYX Rule 11.17

consistent with BATS Exchange Rule 11.17 and are identical to changes made by BATS Exchange when modifying its clearly erroneous executions rules.<sup>9</sup>

*Individual Stock Trading Pause:*

The Exchange also proposes to amend its Rule 11.18, which describes BYX's procedures for trading halts due to extraordinary market volatility, on a pilot basis so that the Exchange may, from time to time, pause trading in an individual stock when the primary listing market for such stock issues a trading pause in any of the securities covered by the pilot. The Exchange is proposing the rule change in order to recognize what is now a uniform market-wide trading pause standards for individual securities in the S&P 500® Index, the Russell 1000® Index and specified Exchange Trade Products that experience rapid price movement. These changes would make BYX Rule 11.18 consistent with BATS Exchange Rule 11.18 and are identical to changes made by BATS Exchange when modifying its trading halt rule.<sup>10</sup>

2. Statutory Basis

The rule change proposed in this submission 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.<sup>11</sup> In particular, the proposed changes are consistent with Section 6(b)(5) of the Act,<sup>12</sup> because they 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, and, in general, protect investors and the public interest. Specifically, the Exchange believes that although BYX Rules may, in certain instances, intentionally differ from BATS Exchange rules, the proposed changes will promote uniformity with BATS Exchange with respect to rules that are intended to be identical but were difficult to modify until BYX's Form 1 application had been approved. The Exchange believes that it will reduce the potential for confusion by its members that are also members of BATS Exchange if it commences operations with only those differences between BYX and BATS Exchange rules that are intentional. Furthermore, certain of the

<sup>9</sup> Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-BATS-2010-016).

<sup>10</sup> Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR-BATS-2010-018).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

<sup>6</sup> See Securities Exchange Act Release No. 34-62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (order approving application of BATS Y-Exchange, Inc. for registration as a national securities exchange).

<sup>7</sup> Securities Exchange Act Release No. 62102 (May 13, 2010), 75 FR 28670 (May 21, 2010) (SR-BATS-2010-11).

<sup>8</sup> Securities Exchange Act Release No. 61883 (April 9, 2010), 75 FR 20418 (April 19, 2010) (SR-BATS-2010-007).

proposed changes will align the Exchange's rules with rules of other market centers that were recently amended to address the type of sudden price declines that the market experienced on the afternoon of May 6, 2010.

#### *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:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to commence operations as a national securities exchange with rules substantively identical to the equity trading rules of BATS Exchange. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will align the Exchange's rules with recently amended rules of BATS Exchange. Therefore, the Commission designates the proposal operative upon commencement of Exchange operation, which the Exchange anticipates will be October 15, 2010.<sup>15</sup>

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its 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.

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the

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 proposal 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](mailto:rule-comments@sec.gov). Please include File No. SR-BYX-2010-002 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 No. SR-BYX-2010-002. 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,<sup>16</sup> 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 changes 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. Copies of such filing will also 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

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

<sup>16</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BYX-2010-002 and should be submitted on or before November 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63101; File No. SR-NASDAQ-2010-130]**

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for the Clearly Erroneous Module**

October 14, 2010.

Pursuant to Section 19(b)(1) of the Securities exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 7, 2010, The NASDAQ Stock Market LLC ("NASDAQ"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 the Substance of the Proposed Rule Change**

NASDAQ proposes to establish fees for the Clearly Erroneous Module. The text of the proposed rule change is below. Proposed new language is underlined.

7024. *Clearly Erroneous Module*  
[Reserved]

*The Clearly Erroneous Module, which provides real-time clearly erroneous surveillance alerts and reports, is available to subscribers for a fee of \$400 per MPID, per month for the first 15 MPIDs subscribed, and for a fee of \$100 per MPID, per month for each MPID subscribed in excess of 15.*

\* \* \* \* \*

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

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

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