

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64753; File No. SR-BYX-2011-009]

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Approving a Proposed Rule Change To Amend BYX Rule 11.9, Entitled "Orders and Modifiers" and BYX Rule 11.13, Entitled "Order Execution"

June 27, 2011.

#### I. Introduction

On May 9, 2011, BATS Y-Exchange, Inc. (The "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend BYX Rule 11.9, entitled "Orders and Modifiers" and BYX Rule 11.13, entitled "Order Execution." The proposed rule change was published for comment in the *Federal Register* on May 18, 2011.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description

First, the Exchange proposes to change its order handling procedures to allow both Non-Displayed Orders<sup>4</sup> and orders subject to price sliding that are not executable at their most aggressive price to be executed in the manner and under the circumstances described below.<sup>5</sup> Second, the Exchange proposes to modify the Exchange's rules to make clear that an order subject to "NMS price sliding"<sup>6</sup> can be ranked at the same price as an order displayed on the other side of the BATS Book,<sup>7</sup> although temporarily not executable at that price and displayed at one minimum price variation less aggressive than its price.

The Exchange's first proposed change noted above, amending BYX Rules 11.9

and 11.13, is intended to address two specific scenarios that currently exist on the Exchange: (1) Non-Displayed Orders posted opposite same-priced displayed orders and (2) orders subject to price sliding under BYX Rule 11.9(g) that are ranked at a price equal to an opposite-side displayed order (collectively "Resting Orders").<sup>8</sup> These two scenarios can occur when an order on either side of the market is a BATS Post Only Order.<sup>9</sup> Consistent with the Exchange's current rule regarding priority of orders, BYX Rule 11.12, these Resting Orders cannot be executed by the Exchange pursuant to BYX Rule 11.13 when such orders would be executed at prices equal to displayed orders on the opposite side of the market (the "locking price") because if the incoming orders were allowed to execute against such Resting Orders at the locking price, such incoming orders would receive a priority advantage over the prior, displayed order at the locking price.<sup>10</sup>

The Exchange proposes to provide for the execution of these Resting Orders under certain circumstances. For bids or offers equal to or greater than \$1.00 per share, in the event that an order submitted to the Exchange on the side opposite such Resting Order is a market order or a limit order priced more aggressively than the locking price, the Exchange proposes to amend BYX Rule 11.13 to provide for the execution of the Resting Order at, in the case of a Resting Order bid, one-half minimum price variation less than the locking price, and, in the case of a Resting Order offer, at one-half minimum price variation more than the locking price.<sup>11</sup> The Exchange also proposes adding Interpretation and Policy .01 to BYX Rule 11.13 to state that the Exchange will consider it inconsistent with just and equitable principles of trade to engage in a pattern or practice of using Non-Displayed Orders or orders subject to price sliding solely for the purpose of executing such orders at one-half minimum price variation from the locking price.<sup>12</sup> Evidence of such

behavior may include, but is not limited to, a User's pattern of entering orders at a price that would lock or be ranked at the price of a displayed quotation and cancelling orders when they no longer lock the displayed quotation.<sup>13</sup> The Exchange has also stated that it will conduct surveillance to ensure that users are not intentionally seeking to create an internally locked book for the purpose of obtaining an execution at a one-half minimum price variation.<sup>14</sup>

The Exchange notes that its proposal to modify its handling of Resting Orders is intended to address specific conditions that are a current, natural consequence of the Exchange's order handling procedures because such orders are priced at the very inside of the market but are temporarily un-executable at their full limit price due to the Exchange's priority rule and order handling procedures.<sup>15</sup> The Exchange believes the proposed change will provide incoming orders with the benefit of price improvement against such aggressively priced Resting Orders.<sup>16</sup> The Exchange believes this will optimize available liquidity for incoming orders and provide price improvement for market participants at times when such participants are not receiving executions from the Exchange or are receiving less price improvement than is currently available.<sup>17</sup>

The Exchange's second proposed change is to clarify, by amending BYX Rule 11.9, that an order subject to NMS price sliding can be ranked at the same price as an order displayed on the other side of the BATS Book.

#### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>18</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>19</sup> In

<sup>13</sup> See *id.*

<sup>14</sup> See Notice, *supra* note 3.

<sup>15</sup> See *id.* The Exchange further notes that by permitting a Member's Non-Displayed Order to rest at a locking price on the other side of a displayed order, the Exchange is incenting Members to post aggressively priced liquidity, rather than discouraging such liquidity by leaving it unexecuted. *Id.*

<sup>16</sup> See *id.* In addition, if the BATS Book changes so that such orders are no longer resting or ranked opposite a displayed order, then such orders will again be executable at their full limit price, and in the case of price slid orders, will be displayed at that price. *Id.*

<sup>17</sup> See *id.*

<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 64476 (May 12, 2011); 76 FR 28826 ("Notice").

<sup>4</sup> BYX Rule 11.9(c)(11) defines a Non-Displayed Order as "a market or limit order that is not displayed on the Exchange."

<sup>5</sup> The reference to the most "aggressive" price means for bids the highest price the User is willing to pay, and for offers the lowest price at which the User is willing to sell.

<sup>6</sup> For bids, this means that a price slid order is displayed at one minimum price variation less than the current national best offer ("NBO"), and for offers, this means that a price slid order is displayed at one minimum price variation more than the current national best bid ("NBB"). See BYX Rule 11.9(g)(1).

<sup>7</sup> As defined in BYX Rule 1.5(e), the BATS Book is "the System's electronic file of orders."

<sup>8</sup> See Notice, *supra* note 3.

<sup>9</sup> See *id.* As defined in BYX Rule 11.9(c)(6), a BATS Post Only Order is "[a]n order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(1) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the BATS Book." Accordingly, a BATS Post Only Order does not remove liquidity, but posts to the BATS Book to the extent permissible.

<sup>10</sup> See *id.*

<sup>11</sup> See proposed changes to BYX Rule 11.13(a)(1). For bids or offers under \$1.00 per share, Resting Orders priced at the locking price will not be executed by the Exchange. *Id.*

<sup>12</sup> See proposed Interpretation and Policy .01 to BYX Rule 11.13.

particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>20</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Commission finds that the proposal is consistent with Rules 610(d)<sup>21</sup> and 612<sup>22</sup> of Regulation NMS.

The Commission believes that the proposed order handling rule change providing for the execution, under certain circumstances, of certain Non-Displayed Orders and orders subject to price sliding that are not executable at their most aggressive prices should serve to enhance the quality of execution on the Exchange by facilitating executions that would not occur pursuant to the Exchange's current order handling process. In addition to facilitating executions that currently would not take place, the proposed rule change will offer price improvement to the orders executed under the new order handling process. The Commission believes that the new order handling process should benefit market participants by, among other things, providing greater opportunities for buy and sell orders to interact with each other and potentially reducing certain trading costs for market participants. The Commission further believes that any potential abuses are mitigated by the Exchange's addition of Interpretation and Policy .01 to BYX Rule 11.13 and its commitment to monitor relevant trading on its market. Additionally, the Commission believes that this proposed order handling process is consistent with Rule 612 of Regulation NMS because any executions in an increment smaller than \$0.01 are the result of bids, offers or orders that are priced in increments at least equal to \$0.01.<sup>23</sup> With regard to the proposed rule change clarifying that an order

subject to NMS price sliding pursuant to BYX Rule 11.9 can be ranked at the same price as an order displayed on the other side of the BATS Book, the Commission believes that such clarification is consistent with Rule 610(d) of Regulation NMS because the proposed rule change would not result in the display of a locking quotation.<sup>24</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-BYX-2011-009) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Elizabeth M. Murphy**,

*Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64744; File No. SR-NASDAQ-2011-086]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7034 Regarding Co-Location Fees for Additional Power and Cable Options

June 24, 2011.

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 June 23, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7034 regarding co-location fees for additional power and cable options. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at the Exchange's

<sup>24</sup> See Rule 610(d) of Regulation NMS. 17 CFR 242.610(d).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</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.

principal office, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to amend Rule 7034 regarding co-location fees for additional power and cable options. The Exchange proposes to offer a new choice of a pair of power receptacles (60 amps 208 volts), which would provide enough power for a high density cabinet. The proposed fee for installation of the pair of the 60-amp 208-volt power receptacles is \$3,000. There are ten other power choices already available and this new receptacle choice is being offered as more clients are requesting higher power density cabinets. Additionally, the Exchange proposes to offer a new choice of patch cable, twinaxial (otherwise known as "Twinax") cables, in lengths of one meter to five meters. The proposed fee for the Twinax cables is \$34 + \$10 per meter. The Exchange is making the Twinax cables available as a convenience to customers, and notes that use of Exchange-provided patch cords is completely voluntary, and that such patch cords may be freely obtained from other vendors for use by customers in the datacenter.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> SEC Rule 610(d) of Regulation NMS requires policies and procedures to avoid the display of quotations that lock or cross protected quotations. 17 CFR 242.610(d).

<sup>22</sup> SEC Rule 612 of Regulation NMS states that no national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than \$0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than \$1.00 per share. 17 CFR 242.612.

<sup>23</sup> See Rule 612 of Regulation NMS. 17 CFR 242.612.