

Professional orders to C2 on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the proposed Routing Fees will enable the Exchange to recover the public customer and professional transaction fees assessed by C2, plus clearing fees for the execution of Customer and Professional orders. The Exchange also believes that the proposed Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all Customers and Professionals.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>10</sup> 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2011-146 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-Phlx-2011-146. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 such 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 No. SR-Phlx-2011-146 and should be submitted on or before December 8, 2011.

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

**Elizabeth M. Murphy,**

*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65729, File No. SR-BYX-2011-022]

### **Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend and Restate the Amended and Restated Bylaws of BATS Global Markets, Inc.**

November 10, 2011.

#### **I. Introduction**

On September 7, 2011, BATS Y-Exchange, Inc. ("BYX" or "Exchange") 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 the Bylaws of the Exchange's sole stockholder, BATS Global Markets, Inc. ("Corporation"), in connection with the Corporation's anticipated initial public offering of shares of its Class A Common Stock (the "IPO"). The proposed rule change was published for comment in the **Federal Register** on September 26, 2011.<sup>3</sup> On November 3, 2011, the Exchange filed Partial Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Partial Amendment No. 1.

#### **II. Description of the Proposal**

On May 13, 2011, the Corporation filed a registration statement on Form S-1 with the Commission to register shares of Class A common stock and to disclose its intention to conduct an IPO offering those shares and to list those shares for trading on the Exchange. In connection with its IPO, the Exchange filed this proposed rule change to amend and restate the Corporation's current Bylaws and adopt these changes as its Second Amended and Restated Bylaws ("New Bylaws"). The proposal would primarily amend and restate various provisions of the Bylaws in a manner that the Exchange believes

<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. 65352 (September 19, 2011), 76 FR 59462 (September 26, 2011) ("Notice").

<sup>4</sup> Partial Amendment No. 1 corrects an inconsistency between the Third Amended and Restated Certificate of Incorporation of the Corporation and the Corporation's proposed amended bylaws concerning actions of stockholders without a meeting. This is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the rule filing.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

would reflect changes to conform with provisions that are more customary for publicly-owned companies and also conform the New Bylaws to the Corporation's Certificate of Incorporation.<sup>5</sup>

#### A. Stockholders Meetings and Actions Without a Meeting

The Exchange has proposed to revise the current Bylaw procedures to require stockholders to make certain disclosures and representations in notices to the Corporation concerning business proposals and director nominations to be considered at annual meetings.<sup>6</sup> In addition, the Exchange would require that all proposals and nominations comply with applicable requirements of the Act.<sup>7</sup> The Exchange has represented that the purpose of the disclosure and representation requirements is to assure that stockholders asked to vote on stockholder proposals or nominations are more fully informed and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.<sup>8</sup>

In addition, the Exchange has proposed that the New Bylaws would only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by a majority of the board of directors.<sup>9</sup> The Exchange has also proposed to revise certain notice requirements with respect to written consent from stockholders to approve

<sup>5</sup> See Notice, *supra* note 3, 76 FR at 59463. The Exchange also filed a proposed rule change to amend the Corporation's Certificate of Incorporation in anticipation of its upcoming IPO, which proposed rule change was recently approved by the Commission. See Securities Exchange Act Release No. 65647 (October 27, 2011), 76 FR 67784 (November 2, 2011) (SR-BYX-2011-021) (order approving proposed rule change to amend and restate the Second Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc.).

<sup>6</sup> See proposed Section 2.02 of the New Bylaws. The New Bylaws also state that such notice requirements would be satisfied if done in compliance with Exchange Act Rule 14a-8. See Notice, *supra* note 3, 76 FR at 59464. Additionally, the New Bylaws requires stockholders to appear at any meeting to present such proposals or nominations. See *id.*

<sup>7</sup> See Notice, *supra* note 3, 76 FR at 59464.

<sup>8</sup> See *id.*

<sup>9</sup> See proposed Section 2.03 of the New Bylaws. Under the current Bylaws, a special meeting of the stockholders could be called by the chairman of the board of directors, chief executive officer, the majority of the board of directors, or by the stockholders entitled to vote at least ten percent of the votes at the meeting. The Exchange also proposed that, whenever preferred stockholders have the right to elect directors, the preferred stockholders may call a special meeting of preferred stockholders pursuant to a resolution of the board. See *id.*

certain corporate actions taken without a meeting.<sup>10</sup> Additionally, the Exchange has proposed to prohibit any action by written consent following a change of ownership, except as provided in the Corporation's Certificate of Incorporation.<sup>11</sup> The Exchange notes that these provisions are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of the Corporation through a special meeting of the stockholders or action by written consent.<sup>12</sup>

#### B. Board of Directors and Board Committees

The Exchange has proposed changing the current Bylaws to revise the process to remove directors and board committees. The proposed rule change would allow the board of directors or any director to be removed by the affirmative vote of at least a majority of voting power of all outstanding shares of the Corporation.<sup>13</sup> The Exchange has represented that the purpose of this change is to align these requirements with Delaware General Corporation Laws.<sup>14</sup> The Exchange also has proposed to eliminate references to executive committees, to authorize the board of directors to create committees, and, so as to ensure that the full board of directors considers significant corporate decisions, to prohibit board committees from (i) Approving, adopting, or recommending to stockholders any matter required by Delaware law to be submitted for stockholder approval or (ii) adopting, amending, and repealing the New Bylaws.<sup>15</sup>

Currently, the Corporation's Bylaws provide that either the board of directors or shareholders may adopt, amend, or repeal the Bylaws of the Corporation. The proposal would modify this provision so that, upon a Change in Ownership,<sup>16</sup> stockholders may only adopt, amend, or repeal the New Bylaws upon the affirmative vote of at least 70% of the total voting power of all outstanding shares of the Corporation.<sup>17</sup>

<sup>10</sup> See proposed Section 2.10 of the New Bylaws.

<sup>11</sup> See Notice, *supra* note 3, 76 FR at 59464 n. 4 (defining a "Change of Ownership" as occurring at such time as the beneficial owners of the Class B Common Stock and Non-Voting Class B Common Stock own, in the aggregate, less than a majority of the total voting power of the Corporation) and Partial Amendment 1.

<sup>12</sup> See Notice, *supra* note 3, 76 FR 59464.

<sup>13</sup> See proposed Section 3.05 of the New Bylaws.

<sup>14</sup> See Notice, *supra* note 3, 76 FR at 59464.

<sup>15</sup> See proposed Section 3.10 of the New Bylaws.

<sup>16</sup> See *supra* note 11.

<sup>17</sup> See generally proposed Section 2.10 of the New Bylaws.

#### C. Other Amendments

The proposal will also amend and restate various other provisions such as those relating to the registered office of the Corporation,<sup>18</sup> shares held by the Corporation in a fiduciary capacity,<sup>19</sup> form of stock certificates,<sup>20</sup> loans to officers,<sup>21</sup> and indemnification of directors,<sup>22</sup> among others.

#### III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>23</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,<sup>24</sup> which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with the provisions of the Act.

The Exchange has represented that the proposed rule change relates solely to the Bylaws of the Corporation and that the Exchange will continue to be governed by its existing certificate of incorporation and by-laws.<sup>25</sup> The Exchange also has represented that the Corporation will continue to directly and solely hold the stock in, and voting power of, the Exchange and that the Exchange will continue to operate pursuant to its existing governance structure.<sup>26</sup> The Commission also notes that the Exchange does not propose any new substantive changes to Article 12 of the current Bylaws (relating to SRO Functions of BATS Exchange, Inc. and BAT-Y Exchange, Inc.).

The Commission, therefore, believes that the proposed rule change is consistent with Section 6(b)(1) of the Exchange Act, which requires the Exchange to have the ability to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with provisions of the

<sup>18</sup> See Notice, *supra* note 3, 76 FR at 59463.

<sup>19</sup> The Exchange also has proposed that any shares of stock held by the Corporation would have no voting rights, except when such shares are held in a fiduciary capacity. See proposed Section 2.07 of the New Bylaws.

<sup>20</sup> See Notice, *supra* note 3, 76 FR at 59465.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78f(b)(1).

<sup>25</sup> See Notice, *supra* note 3, 76 FR at 59463.

<sup>26</sup> See *id.*

Act, the rules and regulations thereunder, and the rules of the Exchange.<sup>27</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-BYX-2011-022), as modified by Partial Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65731; File No. SR-ISE-2011-74]

#### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove the Requirement That its Members Pass the DTR Examination Prior To Registering

November 10, 2011.

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 28, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 self-regulatory organization. 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

Pursuant to the provisions of Section 19(b)(1) of the Act,<sup>3</sup> the Exchange is filing a proposed rule change to remove the requirement that Designated Trading Representatives ("DTRs") pass an examination administered by the ISE before they can be approved by the Exchange to enter quotations and orders on behalf of market makers.

The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.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 self-regulatory organization 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 self-regulatory organization 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, Proposed Rule Change

###### 1. Purpose

The Exchange rules governing registration, examination, and continuing education requirements for ISE members previously only applied to associated persons who conducted a public customer business. Such persons were required, in part, to pass the General Securities Representative examination ("Series 7") and the ISE's Designated Trading Representative examination ("DTR Exam") to function as representatives if accepting orders from non-member customers.<sup>4</sup> ISE members whose business was limited to proprietary securities trading ("Prop Traders") were only required to pass the DTR exam prior to receiving approval to enter quotations and orders on the Exchange.

The ISE recently amended its rules governing registration, examination, and continuing education to require members, regardless of whether they conduct a public business or proprietary securities business, to register, qualify and comply with continuing education requirements.<sup>5</sup> To address the gap in registration and examination requirements related to Prop Traders, the ISE, in conjunction with other SROs,<sup>6</sup> implemented a new examination

for Prop Traders ("Series 56") that is administered by the Financial Industry Regulatory Authority on behalf of the SROs.<sup>7</sup>

Because the ISE now requires all Prop Traders to pass the Series 56 examination prior to being approved for membership, the Exchange believes that it is no longer necessary to administer its own exam. Likewise, the associated persons who are required to pass the Series 7 examination prior to receiving approval to enter quotations and orders on the Exchange, should no longer be required to also pass the DTR Exam because the Series 7 is a much more comprehensive examination and tests the candidate's knowledge of the subject matter applicable to proprietary trading. Accordingly, the Exchange proposes to delete the requirement that Designated Trading Representatives take the DTR Exam. Such individuals will continue to be subject to the Exchange's registration and other requirements specific [sic] Designated Trading Representatives.

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(1)<sup>9</sup> of the Act in particular, in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange. The Exchange also believes the proposed rule change furthers the objectives of Section 6(c)(3)<sup>10</sup> of the Act, which authorizes ISE to prescribe standards of training, experience and competence for persons associated with ISE members, in that this filing establishes that ISE members must take and pass the Series 56 examination, which is being adopted by other SROs so as to create market-wide consistency in the examination process, instead of administering an ISE specific examination. ISE believes the Series 56 examination program establishes the appropriate

NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, and NYSE Amex, Incorporated.

<sup>7</sup> The Series 56 examination tests a candidate's knowledge of proprietary trading generally and the industry rules applicable to trading of equity securities and listed options contracts. The Series 56 examination covers, among other things, recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. While the examination is primarily dedicated to topics related to proprietary trading, the Series 56 examination also covers a few general concepts relating to customers. The Series 56 examination became available to ISE members on August 1, 2011.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(1).

<sup>10</sup> 15 U.S.C. 78f(c)(3).

<sup>27</sup> 15 U.S.C. 78f(b)(1).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> See ISE Rule 602.

<sup>5</sup> See Securities Exchange Act Release No. 63843 (February 4, 2011), 76 FR 7885 (February 11, 2011) (SR-ISE-2010-115).

<sup>6</sup> The Series 56 examination program is shared by the ISE, Boston Options Exchange, Inc., Chicago Board Options Exchange, Inc., C2 Options Exchange, Inc., Chicago Stock Exchange, Inc., NASDAQ OMX, BX, NASDAQ OMX, PHLX,