

All submissions should refer to File Number SR-BATS-2012-018. 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 10:00 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-BATS-2012-018 and should be submitted on or before June 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67092; File No. SR-BYX-2012-009]

### Self-Regulatory Organizations; BATS-Y Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BYX Rules Related to the Operation of BATS Post Only Orders and Match Trade Prevention Functionality

June 1, 2012

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 May 23, 2012, BATS-Y Exchange, Inc. ("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 proposes to amend Rule 11.9, entitled "Orders and Modifiers", to modify the operation of BATS Post Only orders. The Exchange is also proposing changes to its match trade prevention functionality described in Rule 11.9.

#### 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

The Exchange proposes to modify the functionality associated with its existing BATS Post Only Order, which is an order that an entering User<sup>5</sup> intends to be posted to the Exchange's order book and thus will not remove liquidity or route away from the Exchange. In addition to modifying the Exchange's handling of BATS Post Only Orders, the Exchange proposes a minor, unrelated modification to allow an additional

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

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

<sup>5</sup> As defined in BYX Rule 1.5(cc), a User is "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

option for users of the match trade prevention functionality offered by the Exchange.

###### BATS Post Only Orders

Under the Exchange's current rules, when the Exchange receives a BATS Post Only order that would lock or cross an order displayed by the Exchange, because the Exchange cannot display such order at a locking or crossing price and the User has submitted the order with the instruction not to remove liquidity from the Exchange, such order will be cancelled back to the User.

The Exchange proposes to modify the functionality of BATS Post Only Orders described in Rule 11.9(c)(6) to permit such orders to remove liquidity from the Exchange's order book ("BATS Book") if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity.

###### Match Trade Prevention

In addition to the changes described above, the Exchange proposes to enhance its existing match trade prevention ("MTP") functionality, which is a process through which Users can delineate certain orders as being ineligible to match with another order from the same trading firm. Under current MTP functionality, a User can prevent orders from matching with other orders from the same market participant identifier ("MPID"), Exchange member identifier or sponsored participant identifier. The Exchange proposes to allow Users to apply more MTP functionality at a more granular, trading group level. By allowing Users to establish MTP at a trading group level, the Exchange will allow such Users to prevent matched trades amongst traders or desks within a certain firm, but permit orders from outside such group or desk to interact with other firm orders.

###### 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>6</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> because it is designed to prevent fraudulent and manipulative acts and

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>18</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.

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that the proposed modification to the handling of BATS Post Only Orders is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> particularly Section 6(b)(5),<sup>9</sup> in that the change will help to enhance executions for market participants that utilize BATS Post Only Orders. The Exchange believes that the provision of an additional level at which a User may apply match trade prevention is consistent with the requirements of Section 6(b)(5) of the Act,<sup>10</sup> because the ability to prevent matches amongst the same trading group identifier will allow Users to better manage order flow and prevent undesirable executions against themselves. The Exchange notes that a similar functionality was effective upon filing with the Commission for EDGX Exchange, Inc. ("EDGX").<sup>11</sup>

#### *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 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The proposal would allow the Exchange to immediately offer price-improving or economically-neutral executions on BATS Post Only Orders that currently would be cancelled and MTP functionality similar to that already offered by other exchanges.<sup>16</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>17</sup> Therefore, the Commission designates the proposal operative upon filing.

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 Exchange 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 Number SR-BYX-2012-009 on the subject line.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the 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.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> See NASDAQ Rules 4751(f)(10) and 4757(a)(4); EDGX Rule 11.9(f); NYSE Arca Equities Rule 7.31(qq).

<sup>17</sup> 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).

#### *Paper Comments*

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

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See EDGX Exchange, Inc. Rule 11.9(f); Securities and Exchange Act Release No. 53428 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR-EDGX-2010-18), which was based on NYSE Arca Equities Rule 7.31(qq).