Act and in particular with the requirements of Section 17A of the Act\textsuperscript{18} and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FICC–2013–04) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\textsuperscript{19}

Kevin M. O’Neill,
Deputy Secretary.

\textsuperscript{18} 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. 78f(f).

\textsuperscript{19} 17 CFR 200.30–3(a)(12).


\textsuperscript{17} 17 CFR 240.19b–4.


\textsuperscript{4} 17 CFR 242.600(b)(47).

\textsuperscript{5} See Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as “Common Rules”); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE MKT LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE MKT to the substance of any of the Common Rules.

\textsuperscript{6} FINRA’s rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, see FINRA Information Notice, March 12, 2008.

activity that may inadvertently and unknowingly result in executions with no change in beneficial ownership, and that such conduct should not always be treated as a wash sale violation if the market participant did not act with purpose. The Exchange noted that activity involving an off-floor market participant’s algorithmic orders that inadvertently execute against themselves due to latency issues could be deemed a violation of the second prong of NYSE Rule 476(a)(8), thus the Exchange has proposed to eliminate NYSE Rule 476(a)(8) because it believes that such conduct should not be treated as a wash sale violation in all instances, and stated that it will instead utilize NYSE Rule 6140 for disciplinary actions involving wash sales.

The Exchange also proposes to make a conforming amendment to NYSE Rule 6140(a) and (b) to expand its coverage to include principal executives, approved persons, registered or non-registered employees of a member or member organization or persons otherwise subject to the jurisdiction of the Exchange. The change to NYSE Rule 6140 will cover the persons originally covered by NYSE Rule 476(a)(8) who would be subject to disciplinary action for wash sales.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and, in general, to protect investors and the public interest.

The Exchange is deleting NYSE Rule 476(a)(8), a rule which the Exchange explained was adopted to address manual, floor-based trading activity. The Exchange stated that NYSE Rule 6140, which has a scienter standard that the second prong of NYSE Rule 476(a)(8) lacks, substantively covers the same conduct as NYSE Rule 476(a)(8). The Exchange has explained that in today’s markets, algorithmic trading can result in unintended executions with no change in beneficial ownership. The Exchange believes that such executions should not be treated as wash sale violations because they lack the intent to create or induce a false or misleading appearance of activity in a security. In addition, the Exchange is amending NYSE Rule 6140 to cover the same persons that NYSE Rule 476(a)(8) covered.

The Commission understands that algorithmic trading can result in inadvertent executions with no change in beneficial ownership. The Exchange has represented that the proposed rule change would not result in any material diminution of the Exchange’s enforcement authority as it may still bring a disciplinary action in cases where a market participant engages in a significant number of trades without a change of beneficial ownership, even if such activity does not per se violate Rule 6140(b) because the participant did not act with “purpose.” The Exchange further represented that such unintended activity could also give rise to other violations, such as a failure to supervise under NYSE Rule 342, or a violation of just and equitable principles of trade or could otherwise constitute unethical activity under NYSE Rule 2010. Accordingly, the Commission expects the Exchange to continue to surveil for potential wash sale activity and to take necessary action as appropriate.

The Commission believes that the proposed deletion of NYSE Rule 476(a)(8) promotes harmonization, consistency and clarity with respect to the Exchange’s rules by resolving the inconsistent scienter standards of NYSE Rule 476(a)(8) and NYSE Rule 6140 and FINRA Rule 6140, as well as extending the breadth of persons covered by NYSE Rule 6140 to those persons covered by NYSE Rule 476(a)(8). The Commission further believes that the proposed rule change would result in less burdensome and more efficient regulatory compliance for firms that are members of FINRA and the NYSE. As such, the Exchange’s rules would continue to protect investors and the public interest.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NYSE–2013–29) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.15

Kevin M. O’Neill, Deputy Secretary.

FR Doc. 2013–14467 Filed 6–17–13; 8:45 am

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 2.11, Entitled “BATS Trading, Inc. as Outbound Router”

June 12, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”), and Rule 19b–4 thereunder, notice is hereby given that on June 3, 2013, BATS Y-Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below.

For the foregoing reasons, the Commission notes that algorithmic trading resulting in executions with no change in beneficial ownership, even if unintended, raises concerns. The Exchange stated that it can bring disciplinary actions under NYSE Rule 476(a)(8) for conduct that occurred prior to the time the rule is deleted. Thus, the proposed rule change would have no impact on ongoing disciplinary actions involving violations of NYSE Rule 476(a)(8).12