

given to a simpler rule in which more onus is placed on the dealer that fails to deliver the securities by forcing those dealers to take responsibility for resolving the short, even suggesting the seller break the trade or resolve a fail through a buy-back. Currently the rule places more emphasis on the buyer, allowing the buyer to control the execution and agree to the terms of the close-out in the event the seller does not resolve the fail. SIFMA noted that it is not uncommon for dealers to simply allow the delivery deadline to pass, thereby forcing the buyers to do all the "heavy lifting." In response to this comment the proposed rule change would amend Rule G-12(h)(i)(D) to specifically address "seller's responsibilities," which will further clarify that the seller is expected to use its best efforts to locate the securities referenced in the notice. Currently, the Manual on Close-out Procedures interprets any change in market price as attributable to the seller. The proposed amendments would further clarify that any financial burden as the result of the purchaser effecting a "buy-in" is borne by the seller, but any benefit remains with the purchaser.

Guidance for Customer Accounts

SIFMA would like guidance on how to close-out a short position that results from an inter-dealer fail when that position is in a customer's self-directed account where the dealer may not have the discretion to sell or cancel a position in that account or purchase a comparable security for that account. The MSRB believes the guidance requested by SIFMA is outside the scope of the Request for Comments because the proposal does not impose an obligation on dealers to effect transactions in customer accounts in order to resolve inter-dealer fails and should a customer want to retain a position that effectively requires a dealer to pay substitute interest, that issue is one outside the scope of MSRB rules.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-MSRB-2016-07 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-MSRB-2016-07. 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 MSRB. 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-MSRB-2016-07 and should be submitted on or before June 22, 2016.

¹⁷ 17 CFR 200.30-3(a)(12).

For the Commission, pursuant to delegated authority.¹⁷

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77911; File No. SR-NYSEMKT-2016-42]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Rule 952NY With Respect to Opening Trading in an Options Series

May 25, 2016.

On March 23, 2016, NYSE MKT LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Exchange's process for opening trading in an options series. The proposed rule change was published for comment in the **Federal Register** on April 12, 2016.³ The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is May 27, 2016.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act⁵ and for the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 77540 (April 6, 2016), 81 FR 21623.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2)(A)(ii)(I).

reasons stated above, the Commission designates July 11, 2016 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEMKT-2016-42).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77919; File No. SR-BatsBYX-2016-09]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.23, Opening Process

May 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 20, 2016, Bats BYX 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 Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ 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 filed a proposal to amend Rule 11.23, Opening Process, to await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours.⁵

The text of the proposed rule change is available at the Exchange's Web site at 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 the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 11.23, Opening Process, to await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours.

Exchange Rule 11.23 describes the Exchange's current opening process. Subparagraph (a) to Rule 11.23 states that prior to the beginning of the Regular Trading Hours, Users⁶ who wish to participate in the Opening Process may enter orders to buy or sell.⁷ Subparagraph (a)(2) to Rule 11.23 provides that, with certain exceptions,⁸ all orders with a time-in-force instruction of Regular Hours Only may participate in the Opening Process. Subparagraph (b) to Rule 11.23 states that the Exchange will open by performing the Opening Process in which the System will attempt to match buy and sell orders that are executable at the midpoint of the National Best Bid and Offer ("NBBO"). Subparagraph (c) to Exchange Rule 11.23 sets forth the process by which the System sets the opening price of the Opening Process.

⁶ See Exchange Rule 1.5(cc).

⁷ Orders cancelled prior to the Opening Process will not participate in the Opening Process.

⁸ The following order types and instruction may not participate in the opening process: (i) BYX Post Only Orders, Partial Post Only at Limit Orders, ISOs not modified by Rule 11.23(a)(1) above, and Minimum Quantity Orders. See Exchange Rule 11.23(a)(2). Limit orders with a Reserve Quantity may participate to the full extent of their displayed size and Reserve Quantity. *Id.* Discretionary Orders may participate only up to their ranked price for buy orders or down to their ranked price for sell orders. *Id.* The discretionary range of such orders will not be eligible for participation in the Opening Process. *Id.* All Pegged Orders and Mid-Point Peg Orders, as defined in Rule 11.9(c)(8) and (9), will be eligible for execution in the Opening Process based on their pegged prices. *Id.*

Currently, the System⁹ sets the price of the Opening Process at the midpoint of the first NBBO after 9:30:00 a.m. Eastern Time. However, for securities listed on either the New York Stock Exchange, Inc. ("NYSE") or NYSE MKT LLC ("NYSE MKT"), the System currently sets the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade on the listing exchange after 9:30:00 a.m. Eastern Time. The Exchange may alternatively set the price of the Opening Process for securities listed on either the NYSE or NYSE MKT at the midpoint of the then prevailing NBBO when the first two-sided quotation published by the relevant listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange. The System waits to set the price at the midpoint of the first NBBO as set forth above because securities listed on the NYSE or NYSE MKT may not open at precisely 9:30:00 a.m. Eastern Time.

Pursuant to subparagraph (b) of Rule 11.23, all orders executable at the midpoint of the NBBO will continue to be processed in time sequence, beginning with the order with the oldest time stamp. Matches occur until there are no remaining contra-side orders or there is an imbalance of orders. An imbalance of orders may result in orders that cannot be executed in whole or in part. Any unexecuted orders may then be placed by the System on the BYX Book,¹⁰ cancelled, executed, or routed to away Trading Centers in accordance with the Users' instructions pursuant to Exchange Rule 11.13(a)(2).

The Exchange proposes to amend subparagraph (c) to Rule 11.23 to now await a two-sided quotation from the listing exchange prior to opening a security for trading during Regular Trading Hours. As amended, subparagraph (c)(2) to Rule 11.23 would state that the System would set the price of the Opening Process at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time. For securities listed on either the NYSE or NYSE MKT, subparagraph (c)(1)(i) to Rule 11.23 would state that the System would set the price of the Opening Process at the midpoint of the first NBBO subsequent to the first reported trade and first

⁹ See Exchange Rule 1.5(aa).

¹⁰ The term "BYX Book" is defined as "the System's electronic file of orders." See Exchange Rule 1.5(e).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ See Exchange Rule 1.5(w).