SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78333; File No. SR-BatsBYX-2016-17)

July 14, 2016

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Exchange Rule 11.27 to Describe Changes to System Functionality Necessary to Implement the Regulation NMS Plan to Implement a Tick Size Pilot Program

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 29 June, 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 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 adopt paragraph (c) to Exchange Rule 11.27 to describe changes to System[3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan" or "Pilot").[4] In determining the

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The term "System" is defined as the "electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." See Exchange Rule 1.5(aa).

4 See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

scope of the proposed changes to implement the Pilot,[5] the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities. The Exchange also proposes to amend paragraph (a) of Rule 11.27 to specify that orders entered into the Exchange's Retail Price Improvement ("RPI") Program qualify for certain exceptions to the Plan.

The text of the proposed rule change is available at the Exchange's website 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, Bats BZX Exchange, Inc. ("BZX"), Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc. ("EDGA"), Bats EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory

[5] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan.

Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder, the Plan to implement a tick size pilot program.[7] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a Control Group of approximately 1400 Pilot Securities and three Test Groups

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6 15 U.S.C. 78k-1.

7 See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

8 See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

9 See Approval Order, supra note 4.

with 400 Pilot Securities in each Test Group selected by a stratified sampling.[10] During the Pilot, Pilot Securities in the Control Group will be quoted and traded at the currently permissible increments. Pilot Securities in the first Test Group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[11] Pilot Securities in the second Test Group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[12] Pilot Securities in the third Test Group ("Test Group Three") will be subject to the same restrictions as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a price of a Trading Center's[13] "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[14] The same exceptions provided under Test Group Two will also be available under the Trade-at Prohibition, with an additional exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS.[15]

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10 See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

11 See Section VI(B) of the Plan.

12 See Section VI(C) of the Plan.

13 The Plan incorporates the definition of "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a Trading Center as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent."

14 See Section VI(D) of the Plan.

15 17 CFR 242.611.

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. Accordingly, the Exchange adopted paragraph (a) of Rule 11.27 to require Members[16] to comply with the quoting and trading provisions of the Plan.[17] The Exchange also adopted paragraph (b) of Rule 11.27 to require Members to comply with the data collection provisions under Appendix B and C of the Plan.[18]

Proposed System Changes

The Exchange proposes to amend paragraph (a) of Rule 11.27 to specify that orders entered into the Exchange's RPI Program qualify for certain exceptions to the Plan. The Exchange also proposes to adopt paragraph (c) of Exchange Rule 11.27 to describe changes to System functionality necessary to implement the Plan. Paragraph (c) of Rule 11.27 would set forth the Exchange's specific procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities. Unless otherwise indicated, paragraph (c) of Rule 11.27 would apply to order types and order type instructions in Pilot Securities in Test Groups One, Two, and Three and not to Pilot Securities included in the Control Group. The proposed changes include select and discrete amendments to the operation of: (i) BYX Market Orders; (ii) Market Pegged Orders; (iii) Mid-Point Peg Orders; (iii) Discretionary Orders; (iv) Non-

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16 The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

17 See Securities Exchange Act Release No. 77793 (May 10, 2016), 81 FR 30366 (May 16, 2016) (SR-BatsBYX-2016-07).

18 See Securities Exchange Act Release No. 77418 (March 22, 2016), 81 FR 17213 (March 28, 2016) (SR-BatsBYX-2016-01).

Displayed Orders; (v) Market Maker Peg Orders; (vi) Supplemental Peg Orders; and (vii) orders subject to the Display-Price Sliding process.

In determining the scope of these proposed changes to implement the Plan, the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities. These proposed changes are designed to directly comply with the Plan and to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. As discussed below, certain of these changes are also intended to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage of certain order types in Pilot Securities and/or their limited ability to execute under the Trade-at Prohibition. Therefore, the Exchange firmly believes that these changes will have little or no impact on the operation and data collection elements of the Plan. The Exchange further believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.

RPI Program

In November 2012, the Commission approved the RPI Program on a pilot basis.[19] The Program is designed to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement. Under the Program, all Exchange Users[20] are permitted to provide potential price improvement for Retail Orders[21] in the form of

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19 See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) ("RPI Approval Order") (SR-BYX-2012-019).

20 A "User" is defined as any member or sponsored participant of the Exchange who is authorized to obtain access to the System pursuant to Rule 11.3. See Exchange Rule 1.5(cc).

21 A "Retail Order" is defined in Exchange Rule 11.24(a)(2) as an agency order that

non-displayed interest that is better than the national best bid that is a Protected Quotation or the national best offer that is a Protected Quotation.[22]

Exchange Rule 11.27(a)(4) sets forth the applicable limitations for securities in Test Group One. Consistent with the language of the Plan, Rule 11.27(a)(4) provides that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in increments other than $0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by the applicable Participant, SEC and Exchange rules.[23] Exchange Rule 11.27(a)(5) sets forth the applicable quoting and trading requirements for securities in Test Group Two. This provision states that no Member may display, rank, or accept from any person any

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originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology. The definition of Retail Order is also substantially similar to the definition of Retail Investor Order under the Plan. See Section I(DD) of the Plan.

22 The term Protected Quotation is defined in Exchange Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in Exchange Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO", together with the NBB, the "NBBO") will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

23 The Exchange proposes to amend the last sentence of Rule 11.27(a)(4) to specify that the current permissible price increments are set forth under Exchange Rule 11.11, Price Variations.

displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Two in increments other than $0.05. In Test Groups One and Two, however, orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. Therefore, the Exchange proposes to amend Rule 11.27(a)(4) and (5) to also specify that the RPI Program qualifies as a Participant-operated liquidity program under the Plan and that orders entered into the RPI Program may be ranked and accepted in increments of less than $0.05 in Test Groups One and Two.

Exchange Rule 11.27(a)(5) also sets forth the applicable trading restrictions for Test Group Two securities. Absent any of the exceptions listed in the Rule, no Member may execute orders in any Pilot Security in Test Group Two in price increments other than $0.05. Consistent with the language of the Plan, the Rule provides that Pilot Securities in Test Group Two may trade in increments of less than $0.05 where a Retail Investor Order is provided with price improvement that is at least $0.005 better than the best protected bid and best protected offer ("PBBO").[24] The Exchange proposes to amend Rule 11.27(a)(5) to specify that Retail Orders entered into the Exchange's RPI Program qualify as Retail Investor Orders and may be provided with price improvement

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[24] Regulation NMS defines a protected bid or protected offer as a quotation in an NMS stock that (1) is displayed by an automated trading center; (2) is disseminated pursuant to an effective national market system plan; and (3) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. See 17 CFR 242.600(57). In the Approval Order, the Commission noted that the protected quotation standard encompasses the aggregate of the most aggressively priced displayed liquidity on all Trading Centers, whereas the NBBO standard is limited to the single best order in the market. See Approval Order, supra note 4.

that is at least $0.005 better than the PBBO.

Exchange Rule 11.27(a)(6) sets forth the applicable quoting and trading restrictions for Pilot Securities in Test Group Three. The rule provides that no Member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Three in increments other than $0.05. However, orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. As proposed for Rules 11.27(a)(4) and (5) above, the Exchange similarly proposes to amend Rule 11.27(a)(6) to also specify that the RPI Program qualifies as a Participant-operated liquidity program under the Plan and that orders entered into the RPI Program may be ranked and accepted in increments of less than $0.05.

The rule also states that, absent any of the applicable exceptions, no Member that operates a Trading Center may execute orders in any Pilot Security in Test Group Three in price increments other than $0.05. Exchange Rule 11.27(a)(6)(C) sets forth the exceptions pursuant to which Pilot Securities in Test Group Three may trade in increments of less than $0.05. One exception is that Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO. As proposed for Rule 11.27(a)(5) above, the Exchange similarly proposes to amend Rule 11.27(a)(6) to specify that Retail Orders entered into the Exchange's RPI Program qualify as Retail Investor Orders and may be provided with price improvement that is at least $0.005 better than the PBBO.

Exchange Rule 11.27(a)(6)(D) sets forth the Trade-at Prohibition, which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours,[25] absent any of the exceptions set forth in Rule 11.27(a)(6)(D). Consistent with the Plan, Exchange Rule 11.27(a)(6)(D) excepts an order that is a Retail Investor Order that is executed with at least $0.005 price improvement from the Trade-at Prohibition. The Exchange proposes to amend Rule 11.27(a)(6)(D) to specify that Retail Orders entered into the Exchange's RPI Program qualify as Retail Investor Orders and may be provided with price improvement that is at least $0.005 better than the PBBO.

BYX Market Orders

A BYX Market Order is an order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange. BYX Market Orders shall not trade through Protected Quotations.[26] Any portion of a BYX Market Order that would execute at a price more than $0.50 or 5 percent worse than the NBBO at the time the order initially reaches the Exchange, whichever is greater, will be cancelled.[27] In order to comply with the minimum quoting increments set forth in the Plan, the Exchange proposes to state under proposed Rule 11.27(c)(1) that for purposes of determining whether a BYX Market Order's execution price is more than 5 percent worse than the NBBO under Rule 11.9(a)(2), the execution price for a buy (sell) order will be rounded down (up) to the nearest $0.05 increment.

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25 The term "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." See Exchange Rule 1.5(w).

26 See Exchange Rule 11.9(a)(2).

27 Id.

Market Pegged Orders

The Exchange proposes to amend the operation of Market Pegged Orders to reduce risk in its System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities and their limited ability to execute under the Trade-at Prohibition in Test Group Three. A Pegged Order is a limit order that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the NBBO. A Pegged Order will peg to the NBB or NBO or a certain amount away from the NBB or NBO.[28] A Market Pegged Order is pegged to the contra-side NBBO.[29] A User entering a Market Pegged Order can specify that such order's price will offset the inside quote on the contra-side of the market by an amount (the "Offset Amount") set by the User. Market Pegged Orders are not eligible to be displayed on the Exchange.

In Test Groups One and Two, the Exchange proposes to modify the behavior of Market Pegged Order when it is locked by an incoming BYX Post Only Order[30] or Partial Post Only at Limit Order[31] that does not remove liquidity pursuant to Rule 11.9(c)(6) or Rule 11.9(c)(7),[32] respectively. In such case, the Market Pegged Order would be

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28 See Exchange Rule 11.9(c)(8).

29 See Exchange Rule 11.9(c)(8)(B).

30 See Exchange Rule 11.9(c)(6).

31 See Exchange Rule 11.9(c)(7).

32 A BYX Post Only Order will remove contra-side liquidity from the BYX Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BYX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. See Exchange Rule 11.9(c)(6). A Partial Post Only at Limit Order will remove liquidity from the BYX Book up to the full size of the order if, at the time of

converted to an executable order and will remove liquidity against such incoming order.[33] In no case would a Market Pegged Order execute against an incoming BYX Post Only Order or Partial Post Only at Limit Order if an order with higher priority is on the BYX Book.[34] Specifically, if an order other than a Market Pegged Order maintains higher priority than one or more Market Pegged Orders, the Market Pegged Order(s) with lower priority will not be converted, as described above, and the incoming BYX Post Only Order or Partial Post Only at Limit Order will be posted or cancelled in accordance with Rule 11.9(c)(6) or Rule 11.9(c)(7).

The Exchange notes that Market Pegged Orders are aggressive by nature and believes executing the order in such circumstance is appropriate. The Exchange also notes that the proposed behavior for Market Pegged Orders in Test Groups One and Two is identical to the operation of orders with the Super Aggressive Routing instruction under Exchange Rule 11.13(b)(4)(C). When an order with a Super Aggressive instruction is locked by an incoming BYX Post Only Order or Partial Post Only at Limit Order that does not remove liquidity pursuant to Rule 11.9(c)(6) or Rule 11.9(c)(7), respectively, the order is converted to an executable order and will remove liquidity against such incoming order. In addition, like as proposed above, in no case would an

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receipt, it can be executed at prices better than its limit price. See Exchange Rule 11.9(c)(7).

33 The Exchange notes that a BYX Post Only will, in most cases, remove liquidity from the BYX Book because under its current taker-maker pricing structure, the remover of liquidity is provided a rebate while the provider of liquidity is charged a fee. Therefore, in most cases, value of the execution to remove liquidity will equal or exceed the value of such execution once posted to the BYX Book, including the applicable fees charged or rebates received.

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

order with a Super Aggressive instruction execute against an incoming BYX Post Only Order or Partial Post Only at Limit Order if an order with higher priority is on the BYX Book. The Exchange believes this change is reasonable and appropriate due to the limited usage of Market Pegged Orders in Pilot Securities, to avoid unnecessary additional System complexity, and to ensure the Market Pegged Order may execute in such circumstance.

The Exchange also proposes to not accept Market Pegged Orders in Test Group Three based on limited current usage, additional System complexity, and their limited ability to execute under the Trade-at Prohibition. The Exchange believes that their de minimis usage and limited ability to execute due to the Trade-at Prohibition does not justify the complexity that would be created by supporting Market Pegged Orders in Test Group Three. A vast majority of Market Pegged Orders are entered into the System with a zero Offset and, therefore, create a locked market with the contra-side NBBO. Under the Trade-at Prohibition, a Market Pegged Order would not be eligible for execution at the locking price, including when a Trade-at Intermarket Sweep Order ("ISO")[35] is entered, because of non-cleared contra-side Protected Quotations. For example, assume the NBBO is $10.00 (NYSE) x $10.05 (Nasdaq) in a Test Group 3 security. A Market

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[35] A Trade-at ISO is a Limit Order for a Pilot Security that meets the following requirements: (i) when routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and (ii) simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. See Exchange Rule 11.27(a)(7)(A)(i). These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders. Id.

Pegged Order to buy at $10.10 with a zero Offset is entered on the Exchange. The order would be ranked and hidden on the BYX Book at $10.05. A Trade-at ISO to sell at $10.05 is then entered. In this example, no execution occurs on BYX because Nasdaq is displaying an order to sell at $10.05. The Trade-at ISO instruction only indicates that all of the better and equal priced buy orders have been cleared. It does not indicate that the seller has cleared any Protected Offers. Therefore, the Exchange proposes to not accept Market Pegged Orders in Test Group Three in an effort to reduce unnecessary System complexity, avoid an internally locked book, and due to the limited execution opportunities for Market Pegged Orders due to the Trade-at Prohibition.

Mid-Point Peg Orders

A Mid-Point Peg Order is an order whose price is automatically adjusted by the System in response to changes in the NBBO to be pegged to the midpoint of the NBBO, or, alternatively, pegged to the less aggressive of the midpoint of the NBBO or one minimum price variation[36] inside the same side of the NBBO as the order.[37] The Plan and current Exchange rules permit the acceptance of orders priced to execute at the midpoint of the NBBO to be ranked and accepted in increments of less than $0.05.[38] Consistent with previous guidance issued by the Participants,[39] the Exchange proposes to amend the operation of Mid-Point Peg Orders to explicitly state that Mid-Point Peg

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36 See Exchange Rule 11.11.

37 See Exchange Rule 11.9(c)(9).

38 See Sections VI(B), (C), and (D) of the Plan. See also Exchange Rules 11.27(a)(4), (a)(5), and (a)(6).

39 See e.g., Question 42 of the Tick Size Pilot Program Trading and Quoting FAQs available at http://www.finra.org/sites/default/files/TSPP-Trading-and-Quoting-FAQs.pdf

Orders in Pilot Securities may not be entered in increments other than $0.05. The System will execute a Mid-Point Peg Order: (i) in $0.05 increments priced better than the midpoint of the NBBO; or (ii) at the midpoint of the NBBO, regardless of whether the midpoint of the NBBO is in an increment of $0.05. In order to comply with the minimum quoting and trading increments of the Plan and reduce unnecessary System complexity, a Mid-Point Peg Order will not be permitted to alternatively peg to one minimum price variation inside the same side of the NBBO as the order in Pilot Securities. The Exchange believes that the current de minimis usage of the alternative pegging functionality in Pilot Securities does not justify the complexity and risk that would be created by re-programming the System to support this functionality under the Plan.

Discretionary Orders

The Exchange proposes to not accept Discretionary Orders in all Test Groups, including the Control Group, to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities. In sum, a Discretionary Order is a Limit Order with a displayed or non-displayed ranked price and size and an additional non-displayed "discretionary price".[40] The discretionary price is a non-displayed upward offset at which a User is willing to buy, if necessary, or a non-displayed downward offset at which a User is willing to sell, if necessary. The System changes necessary for a Discretionary Order to comply with the Plan become increasingly complex because both the displayed price and discretionary price must comply with the Plan's minimum quoting and trading increments as well as the Trade-at

[40] See Exchange Rule 11.9(c)(10).

restriction in Test Group Three. In addition, Users do not currently set discretionary prices less than $0.05 away from the order's displayed price and the Exchange does not anticipate Users doing so under the Plan. To date, Discretionary Orders are rarely entered in Pilot Securities and the Exchange anticipates their usage to further decrease due to the Plan's minimum quoting increments. The Exchange believes that the current extremely limited usage of Discretionary Orders in Pilot Securities does not justify the additional System complexity that would be created by supporting Discretionary Orders. As a result of these factors the Exchange proposes to not accept Discretionary Orders in all Test Groups and the Control Group.

Non-Displayed Orders

The Exchange proposes to re-price to the midpoint of the NBBO Non-Displayed Orders in Test Group Three that are priced in a permissible increment better than the midpoint of the NBBO. A Non-Displayed Order is a Market or Limit Order that is not displayed on the Exchange.[41] Exchange Rule 11.27(a)(6)(D) incorporates the Trade-at Prohibition in the Exchange's rules. The Trade-at Prohibition prevents the execution of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours, unless an exception applies. A Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is a Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. Unless an exception applies, a Non-Displayed Order that is able to execute at the price of the Protected Quotation would not be able to

[41] See Exchange Rule 11.9(c)(11).

do so in Test Group Three due to the Trade-at Prohibition and the Exchange's priority rule.[42] Furthermore, such aggressively priced orders would not be able to post to the BYX Book at the contra-side Protected Quotation, and re-pricing the order to the midpoint of the NBBO would increase execution opportunities under normal market conditions. However, orders that are priced to execute at the midpoint of the NBBO are exempt from the Trade-at Prohibition. Therefore, to increase the execution opportunities for Non-Displayed Orders in Test Group Three, the Exchange proposes to re-price to the midpoint of the NBBO Non-Displayed Orders that are priced in a permissible increment better than the midpoint of the NBBO.

<u>Market Maker Peg Orders</u>

A Market Maker Peg Order is a Limit Order that is automatically priced by the System at the Designated Percentage (as defined in Exchange Rule 11.8) away from the then current NBB and NBO, or if no NBB or NBO, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Exchange Rule 11.8(d).[43] Should the above pricing result in a Market Maker Peg Order being priced at an increment other than $0.05, the Exchange proposes to round an order to buy (sell) up (down) to the nearest $0.05 increment in order to comply with the minimum quoting increments of the Plan.

<u>Supplemental Peg Orders</u>

The Exchange proposes to not accept Supplemental Peg Orders in Test Group

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42 Under Exchange Rule 11.12(a)(2), displayed Limit Orders have priority over Non-Displayed Limit Orders.

43 <u>See</u> Exchange Rule 11.9(c)(16).

Three in order to reduce risk in the System by eliminating unnecessary complexity based on infrequent current usage in Pilot Securities and their limited ability to execute under the Trade-at Prohibition. A Supplemental Peg Order is a non-displayed Limit Order that posts to the BYX Book, and thereafter is eligible for execution at the NBB for buy orders and NBO for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price.[44] In sum, Supplemental Peg Orders are only executable at the NBBO against an order that is in the process of being routed away. In such case, the Exchange is not displaying a Protected Quotation and, therefore, the Supplemental Peg Order would be unable to execute in Test Group Three due to the Trade-at Prohibition.[45] Therefore, the Exchange proposes to not accept Supplemental Peg Orders in Test Group Three.

Display-Price Sliding

Under the Display-Price Sliding process, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market, will be ranked at the locking price in the BYX Book and displayed by the System at one minimum price variation (i.e., $0.05) below the current NBO (for bids) or one minimum price variation

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[44] See Exchange Rule 11.9(c)(19).

[45] The Exchange notes that the likelihood of a Supplemental Peg Order qualifying for an exception to the Trade-at Prohibition is small. For example, Supplemental Peg Orders are only executable against orders that are to be routed away and would not be eligible to execute against an incoming ISO or Trade-at ISO. Also, the Exchange would not be displaying a Protected Quotation. In addition, the Exchange does not frequently receive orders of Block Size and, in order to qualify for the Block exception, the contra-side Block Order must be routable and the Supplemental Peg Order be of Block Size.

above the current NBB (for offers).[46] The ranked and displayed prices of an order subject to the Display-Price Sliding process may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO.[47]

As described above, Exchange Rule 11.27(a)(6)(D) sets forth the Trade-at Prohibition, which is the prohibition against executions by a Member that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during Regular Trading Hours, unless an exception applies. Orders that are priced to execute at the midpoint of the NBBO are exempt from the Trade-at Prohibition. Therefore, to increase the execution opportunities and qualify for the mid-point exception to the Trade-at Prohibition, the Exchange proposes to rank orders in Test Group Three that are subject to the Display-Price Sliding process at the midpoint of the NBBO in the BYX Book and display such orders one minimum price variation below the current NBO (for bids) or one minimum price variation above the current NBB (for offers).

The Exchange also proposes to cancel orders subject to Display-Price Sliding in Test Group Three that are only to be adjusted once and not multiple times in the event the NBBO widens and a contra-side Non-Displayed Order is resting on the BYX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Due to the increased minimum quoting increments under the Plan, the Exchange is unable to safely re-price an order subject to single Display-Price Sliding in Test Group Three to the

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46 See Exchange Rule 11.9(g)(1)(A).

47 See Exchange Rule 11.9(g)(1)(C).

original locking price in such circumstances and doing so would add additional System complexity and risk. As discussed above, the Exchange proposes to rank orders in Test Group Three subject to the Display-Price Sliding process at the midpoint of the NBBO. In the event the NBBO changes such that an order subject to Display-Price Sliding would not lock or cross a Protected Quotation of an external market, the order will receive a new timestamp, and will be displayed at the order's limit price.[48] Due to technological limitations arising from the increased minimum quoting increments under the Plan, however, the Exchange is unable to safely re-program its System to re-price such order to the original locking price when the NBBO widens and a contra-side Non-Displayed Order is resting on the BYX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Therefore, the Exchange proposes to cancel orders subject to the single Display-Price Sliding process in such circumstances. Users who prefer an execution in such a scenario may elect to use the multiple Display-Price Sliding process.

Ministerial Change

Currently, both Interpretation and Policy .03 to Rule 11.27(a) and Interpretation and Policy .11 to Rule 11.27(b) state that Rule 11.27 shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan). The Exchange proposes to include this language at the beginning of Rule 11.27 and, therefore, proposes to delete both Interpretation and Policy .03 to Rule 11.27(a) and Interpretation and Policy .11 to Rule 11.27(b) as those provisions would be redundant and unnecessary.

Implementation Date

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48 Id.

If the Commission approves the proposed rule change, the proposed rule change will be effective upon Commission approval and shall become operative upon the commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[49] in general, and furthers the objectives of Section 6(b)(5) of the Act[50] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The proposed rule change is designed to comply with the Plan, reduce complexity and enhance System resiliency while not adversely affecting the data collected under the Plan. Therefore, the Exchange believes that the proposed rule changes are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan and, as discussed further below, other applicable regulations.

The Exchange believes that the proposed changes regarding its Retail Price Improvement Program, BYX Market Orders, Mid-Point Peg Orders, Market Maker Peg Orders, and Display-Price Sliding are consistent with the Act because they are intended

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49 15 U.S.C. 78f(b).

50 15 U.S.C. 78f(b)(5).

to modify the Exchange's System to comply with the provisions of the Plan, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. To the extent that these proposals are intended to comply with the Plan, the Exchange believes that these proposals are in furtherance of the objectives of the Plan, as identified by the Commission, and is therefore consistent with the Act.

The Exchange also believes that its proposed changes to Market Pegged Orders, Discretionary Orders, Non-Displayed Orders, Supplemental Peg Orders, and Display-Price Sliding are also consistent with the Act because they are intended to eliminate unnecessary System complexity and risk based on the de minimis current usage of such order types and instructions in Pilot Securities and/or their limited ability to execute under the Plan's minimum trading and quoting increments or Trade-at Prohibition.[51] For example, during March 2016, the alternative pegging functionality of Mid-Point Peg Orders, Market Pegged Orders, Non-Displayed Orders, and Supplemental Peg Orders accounted for 0.01%, 0.02%, 0.92%, and 0.01%, respectively, of volume in eligible Pilot Securities on the Exchange, BZX, EDGA and EDGX combined. Notably, Discretionary Orders accounted for 0.00% of volume in eligible Pilot Securities on the Exchange, BZX,

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51 The Commission has also expressed concern regarding potential market instability caused by technological risks. See e.g., Chair Mary Jo White, Commission, Enhancing Our Equity Market Structure (June 5, 2014) available at https://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610w6Y.

EDGA and EDGX combined. The Commission adopted Regulation Systems Compliance and Integrity ("Regulation SCI") in November 2014 to strengthen the technology infrastructure of the U.S. securities markets.[52] Regulation SCI is designed to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the Commission's oversight and enforcement of securities market technology infrastructure.

Regulation SCI required the Exchange to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act. Each of these proposed changes are intended to reduce complexity and risk in the System to ensure the Exchange's technology remains robust and resilient. In determining the scope of the proposed changes, the Exchange carefully weighed the impact on the Pilot, System complexity, and the usage of such order types in Pilot Securities.[53] The potential complexity results from code changes for a majority of the Exchange's order types, which requires the implementation and testing of a separate branch of code for each Test Group. For example, the Exchange currently utilizes one branch of code for which to implement and test changes. Development work for the Tick Pilot results in the creation of four additional branches of code that are to be developed and tested (e.g., Control Group + three Test Groups). The Exchange

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52 See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) ("Regulation SCI Approval Order").

53 But for the Plan, the Exchange notes that it would not have proposed to amend the operation of Market Pegged Orders, Discretionary Orders, Non-Displayed Orders, Supplemental Peg Orders, and Display-Price Sliding as described herein.

determined that the changes proposed herein are necessary to ensure continued System resiliency in accordance with the requirements of Regulation SCI. Therefore, the Exchange believes the proposed rule change promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In addition, each of these proposed changes would have a de minimis to zero impact on the data reported pursuant to the Plan. As evidenced above, Market Pegged Orders, Discretionary Orders, the alternative pegging functionality of Mid-Point Peg Orders, and Supplemental Peg Orders are infrequently used in Pilot Securities or the execution of such orders would be scarce due to the Plan's minimum trading and quoting requirement and Trade-at Prohibition. The limited usage and execution scenarios do not justify the additional system complexity which would be created by modifying the System to support such order types in order to comply with the Plan. Therefore, the Exchange believes each proposed change is a reasonable means to ensure that the System's integrity, resiliency, and availability continues to promote the maintenance of fair and orderly markets. Due to the additional complexity, limited usage and execution opportunities, the Exchange believes it is not unfairly discriminatory to apply the changes proposed herein to only Pilot Securities as such changes are necessary to reduce complexity and ensure continued System resiliency in accordance with the requirements of Regulation SCI. The Exchange also believes the proposed changes to Non-Displayed Orders, and orders subject to the Display-Price Sliding process in Test Group Three are consistent with the Act because they are designed to increase the execution opportunities for such order types in compliance with the mid-point exception to the Trade-at

Prohibition. The Exchange also believes the proposed change to Market Pegged Orders in Test Groups One and Two is consistent with the Act because it is identical to the operation of the Super Aggressive instruction under Exchange Rule 11.13(b)(4)(C). The Exchange notes that Market Pegged Orders are aggressive by nature and believes executing the order in such circumstance is reasonable and appropriate.

The Exchange also believes it is reasonable and appropriate to cancel an order subject to the single Display-Price Sliding process in Test Group Three in the event that the NBBO widens and a contra-side Non-Displayed Order is resting on the BYX Book at the price to which the order subject to Display-Price Sliding would be adjusted. Due to technological limitations and the Plan's increased minimum quoting increments, the Exchange is unable to safely re-program its System to re-price such orders to the original locking price in such circumstances. The Exchange also anticipates that the scenario under which it proposes to cancel the Display-Price Sliding order will be infrequent in Tick Pilot Securities. Users who prefer an execution in such a scenario may elect to use the multiple Display-Price Sliding process. Therefore, the Exchange believes it is consistent with the Act to set forth this scenario in its rules so that Users will understand how the System operates and how their orders would be handled in this discrete scenario.

Lastly, the Exchange believes the ministerial changes to Rule 11.27 are also consistent with the Act as they would: (i) clarify a provision under paragraph (a)(4); and (ii) remove redundant provisions from the rule.

(B) <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change is designed to assist the

Exchange in meeting its regulatory obligations pursuant to the Plan, reduce System complexity and enhance resiliency. The Exchange also notes that the proposed rule change will apply equally to all Members that trade Pilot Securities.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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 proposal is consistent with the Act. In particular, the Commission seeks comment on the issue described below.

In the Approval Order, the Commission stressed the importance of testing the impact of wider tick sizes on the trading and liquidity of the securities of small capitalization companies, and doing so in a way that produces robust results that inform future policy decisions.[54] The Commission acknowledged the complexity of the Pilot and the costs that its implementation would create for market participants, but concluded

[54] See Approval Order, supra note 4, at 80 FR 27515.

that the benefits of the empirical data that would be produced by the Pilot warranted incurring those costs.[55] As a result, the Plan requires that each Participant, including the Exchange, adopt rules that are necessary for compliance with the provisions of the Plan.[56]

While the Exchange states that the proposed rule change describes the system changes necessary to implement the Pilot, the Commission notes that the scope of the proposed changes extends beyond those required for compliance with the Plan, and would eliminate certain order types for Pilot Securities during the Pilot Period, or modify their operation in ways not required by the Plan. For example, the Exchange proposes not to accept Market Pegged Orders, Discretionary Orders, and Supplemental Peg Orders, and certain types of Mid-Point Peg Orders, in some or all Test Groups of Pilot Securities for the duration of the Pilot Period.[57] These proposals appear designed to permit the Exchange to avoid the costs of modifying these order types to comply with the Plan. The Exchange notes that these order types are infrequently used in Pilot Securities, and takes the position that "[t]he limited usage and execution scenarios do not justify the additional system complexity which would be created by modifying the System to support such order types in order to comply with the Plan."[58] At the same time, the Exchange also does not appear prepared to propose to eliminate these order types indefinitely. By contrast, the Exchange proposes to modify, in ways not required by the Plan, the operation of Market Pegged Orders and Non-Displayed Orders, and certain orders subject

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55 Id at 27516.

56 See Sections II(B) of the Plan. See also Section IV of the Plan.

57 The Exchange also proposes to cancel certain orders subject to the Display-Price Sliding process in certain Pilot Securities for the duration of the Pilot Period.

58 See supra Item II.A.2**.**

to the Display-Price Sliding process, in some or all Test Groups of Pilot Securities, and to incur the associated system change costs, in order to increase the "execution opportunities" for these order types for the duration of the Pilot Period.[59]

The Commission is concerned that proposed rule changes, other than those necessary for compliance with Plan, that are targeted at Pilot Securities, that have a disparate impact on different Test Groups and the Control Group, and that are to apply temporarily only for the Pilot Period, could bias the results of the Pilot and undermine the value of the data generated in informing future policy decisions. Accordingly, the Commission is concerned that the proposed rule change may not be consistent with Act, including Section 6(b)(5) thereof and Rule 608 of Regulation NMS, or with the Plan.

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 e-mail to rule-comments@sec.gov. Please include File No. SR-BatsBYX-2016-17 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-BatsBYX-2016-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission

59 See supra Item II.A.1-2.

will post all comments on the Commission's Internet website (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 website 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 am and 3:00 pm. Copies of such filing will also 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-BatsBYX-2016-17 and should be submitted on or before [21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Jill M. Peterson
Assistant Secretary

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60 17 CFR 200.30-3(a)(12).