

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78766; File No. SR-BatsBYX-2016-17)

September 2, 2016

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, 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

I. Introduction

On June 29, 2016, Bats BYX Exchange, Inc. (“Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 11.27(a) to specify that orders entered into the Exchange’s Retail Price Improvement (“RPI”) Program qualify for certain exceptions to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan” or “Pilot”) and to adopt Exchange Rule 11.27(c) to describe changes to System³ functionality to implement the Plan.⁴ The proposed rule change was published for comment in the Federal Register on July 20, 2016.⁵ The Commission received one comment letter from the Exchange in response to the Notice.⁶ On

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 of Directors of the Exchange 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”). Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan

⁵ Securities Exchange Act Release No. 78333 (July 14, 2016), 81 FR 47198 (“Notice”).

⁶ See Letter to Brent J. Fields, Secretary, Commission, from Eric Swanson, General Counsel, Exchange, dated July 26, 2016 (“Exchange Letter”).

September 1, 2016, the Exchange filed an amendment to the proposed rule change (“Amendment No. 1”), which supersedes and replaces the proposal in its entirety.⁷

This order provides notice of filing of Amendment No. 1 and approves the proposal, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Amended Proposal

The proposed amendments to Exchange Rule 11.27(a) would specify that orders entered into the Exchange’s RPI Program would qualify for certain exceptions to the Plan.

Proposed Exchange Rule 11.27(c) would specify the order handling for the following order types in Pilot Securities: (i) BYX Market Orders; (ii) Market Pegged Orders; (iii) Mid-Point Peg Orders; (iv) Discretionary Orders; (v) Market Maker Peg Orders; (vi) Supplemental Peg Orders; and (vii) orders subject to Display-Price Sliding. As proposed, such order handling would apply to all orders entered into the System for Pilot Securities (i.e., Test Group One, Test Group Two, Test Group Three, and the Control Group).

A. Amendment to Exchange Rule 11.27(a)

The proposed amendments to Exchange Rule 11.27(a) would specify that the RPI Program qualifies as a Participant-operated retail liquidity program under the Plan and that Retail

⁷ In Amendment No. 1, the Exchange proposes to: (1) apply the changes in proposed Rule 11.27(c) to all Pilot Securities; (2) clarify in Rule 11.27(c)(1) that the increment for BYX Market Orders and Rule 11.27(c)(5) that the increment for Market Maker Peg Orders will be at “permissible” increments; (3) state in Rule 11.27(c)(2) that Market Pegged Orders, Rule 11.27(c)(4) that Discretionary Orders, and Rule 11.27(c)(6) that Supplemental Peg Orders will not be accepted in Pilot Securities; (4) clarify in Rule 11.27(c)(3) that Mid-Point Peg Orders may not be alternatively pegged to one minimum price variation inside the same side of the NBBO as the order; (5) delete the proposal to amend Non-Displayed Orders; and (6) clarify how orders subject to Display-Price Sliding will operate when they are unexecutable at the locking price.

Orders⁸ entered into the Exchange’s RPI Program qualify as Retail Investor Orders under the Plan. Accordingly, amended Exchange Rule 11.27(a)(4), (a)(5), and (a)(6) would allow orders entered into the RPI Program to be ranked and accepted in increments of less than \$0.05 in Test Groups One, Two, and Three, respectively; amended Exchange Rule 11.27 (a)(5) and (a)(6) would specify that Retail Orders entered into the Exchange’s RPI Program may be provided with price improvement that is at least \$0.005 better than the best protected bid and best protected offer (“PBBO”)⁹ in Test Groups Two and Three, respectively; and amended Exchange Rule 11.27(a)(6)(D) would specify that Retail Orders entered into the Exchange’s RPI Program that are executed with at least \$0.005 price improvement qualify for the exception to the Trade-at Prohibition in Test Group Three. In addition, amended Exchange Rule 11.27(a)(4) would specify that in Test Group One Pilot Securities trades may continue at any price increment that is permitted under Exchange Rule 11.11, Price Variations.

B. Proposed Exchange Rule 11.27(c)

The Exchange proposes in Exchange Rule 11.27(c) specific procedures for handling, executing, repricing and displaying certain order types and order type instructions. The provisions in proposed Rule 11.27(c) would apply to all Pilot Securities. Further, the Exchange

⁸ A “Retail Order” is defined in Exchange Rule 11.24(a)(2) as an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member organization (“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 Exchange believes that 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.

⁹ See 17 CFR 242.600(57). See also Section I.Z of the Plan.

proposes that only the provisions in Exchange Rules 11.27(a) and (b) would be limited to the Pilot Period.¹⁰

1. BYX Market Orders

Proposed Exchange Rule 11.27(c)(1) provides that for purposes of determining whether the execution price of a BYX Market Order is more than 5 percent worse than the national best bid or offer (“NBBO”)¹¹ under current Exchange Rule 11.9(a)(2), the execution price for a buy (sell) will be rounded down (up) to the nearest permissible increment.¹²

2. Market Pegged Orders

Under Exchange Rule 11.9(c)(8)(B), a Market Pegged Order is pegged to the contra-side NBBO. BYX Users can specify that a Market Pegged Order will offset the inside quote on the contra side of the market by an amount (“Offset Amount”). Under proposed Exchange Rule 11.27(c)(2), the Exchange proposes not to accept Market Pegged Orders, regardless of price, in any Pilot Security.¹³

3. Mid-Point Peg Orders

Under Exchange Rule 11.9(c)(9), the System automatically adjusts the price of a Mid-Point Peg Order in response to changes in the NBBO to be pegged to the mid-point of the NBBO, or, alternatively, pegged to the less aggressive midpoint of the NBBO, or one minimum price variation inside the same side of the NBBO as the Mid-Point Peg Order.

¹⁰ The Exchange proposes to clarify in the introduction to Exchange Rule 11.27 that only the provisions in 11.27(a) and 11.27(b) would be in effect during the Pilot Period.

¹¹ See Exchange Rule 1.5(o).

¹² See Amendment No. 1.

¹³ Id.

Under proposed Exchange Rule 11.27(c)(3), the Exchange proposes that Mid-Point Peg Orders for Pilot Securities would not be permitted to alternatively peg to one minimum price variation inside the same side of the NBBO as the order.¹⁴

4. Discretionary Orders

Under Exchange Rule 11.9(c)(10), a Discretionary Order is a limit order with a displayed or non-displayed ranked price and size and an additional non-displayed “discretionary price.” The Exchange proposes to not accept Discretionary Orders, regardless of price, in any Pilot Security.¹⁵

5. Market Maker Peg Orders

Under Exchange Rule 11.9(c)(16), 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(d)) away from the then current national best bid (“NBB”) or national best offer (“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). The Exchange proposes that Market Marker Peg Orders to buy (sell) be rounded up (down) to the nearest permissible increment when the pricing results in an impermissible increment.

6. Supplemental Peg Orders

Under Exchange Rule 11.9(c)(19), a Supplemental Peg Order is a non-displayed limit order that posts to the Exchange 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

¹⁴ Id.

¹⁵ Id.

size of the Supplemental Peg Order interest available at that price. The Exchange proposes not to accept Supplemental Peg Orders, regardless of price, for any Pilot Security.¹⁶

7. Display-Price Sliding

Under Exchange Rule 11.9(g)(1), 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, would be ranked at the locking price in the Exchange Book and displayed by the System at one minimum price variation below the current NBO (for bids) or one minimum price variation above the current NBB (for offers). The ranked and displayed prices of an order subject to Display-Price Sliding may be adjusted once or multiple times depending on the instructions of a User and changes to the prevailing NBBO.

The Exchange proposes that orders subject to the Display-Price Sliding that are unexecutable at the locking price will be ranked at the midpoint of the NBBO, and displayed one minimum price variation below (above) the current NBO (NBB) for bids (for offers) for all Pilot Securities. In the Control Group, Test Group One, and Test Group Two, these orders would be initially ranked at the locking price and displayed one minimum price variation away. If a subsequent incoming Post-Only Order arrives on the Exchange book on the opposite side, then the orders subject to Display-Price Sliding would be adjusted to rank at the midpoint of the NBBO and continue to be displayed at one minimum price variation away. In Test Group Three, orders subject to Display-Price Sliding would be ranked at the midpoint of the NBBO and displayed at one minimum price variation away. In addition, the Exchange proposes to cancel orders subject to Display-Price Sliding when the NBBO widens and a contra-side Non-Displayed Order is resting on the Exchange Book at a price that such order would adjust, and the User has

¹⁶ Id.

selected a single price adjustment. Like today, if the User has selected multiple price adjustments an order subject to Display-Price Sliding would not cancel in this scenario.

III. Discussion and Commission's Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, the Commission finds that the proposal, as modified by Amendment No. 1,¹⁷ is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities exchange.¹⁸ Specifically, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Exchange Act, which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As noted in the Approval Order, the Plan is by design, an objective, data-driven test to evaluate how a wider tick size would impact trading, liquidity, and market quality of securities of smaller capitalization companies. In addition, the Plan is designed with three Test Groups and a Control Group, to allow analysis and comparison of incremental market structure changes on the Pilot Securities and is designed to produce empirical data that could inform future policy decisions.

¹⁷ The Commission notes that the Exchange Letter was submitted in connection with the Exchange's original proposal. Because the Exchange has filed Amendment No. 1, which supersedes and replaces the Exchange's original proposal in its entirety, the Commission does not believe it is necessary to summarize or respond to the Exchange Letter.

¹⁸ In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

The Exchange proposes certain changes to modify the operation of the System for compliance with the Plan. For example, the Exchange proposes to clarify how BYX Market Orders and Market Maker Peg Orders would be rounded to permissible increments under the Plan. In addition, the Exchange proposes to reflect its RPI Program in its Tick Pilot Rule. The Commission finds that these changes are consistent with the Section 6(b)(5) of the Exchange Act¹⁹ and Rule 608 of Regulation NMS²⁰ because they implement the Plan and clarify Exchange rules.

In addition, the Exchange proposes to eliminate certain order types and modify certain order handling functions for Pilot Securities. Specifically, the Exchange proposes to no longer accept three order types: Market Peg Orders, Discretionary Orders, and Supplemental Peg Orders. The Exchange noted that these orders are infrequently used in Pilot Securities. The Exchange stated that eliminating these order types for Pilot Securities could reduce System complexity and maintain consistent functionality among all Pilot Securities. Finally, the Exchange noted that these order types would have limited ability to execute under Test Group Three.

The Exchange also proposes to change the handling of orders subject to Display-Price Sliding in Pilot Securities. Orders that are subject to Display Price-Sliding in Pilot Securities that are unexecutable at the locking price will be ranked at the midpoint of the NBBO and displayed one minimum variation away.

Finally, the Exchange proposes to modify the handling of Mid-Point Peg Orders in Pilot Securities. As proposed, Mid-Point Peg Orders would not be able to alternatively peg to one minimum price variation inside the same side of the NBBO as the order. The Exchange noted

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 17 CFR 242.608.

that there is a de minimis usage of the alternative pegging function in Pilot Securities that does not justify the complexity and risk to the System that would be created by re-programming the System to support the function.

In the Notice, the Commission noted 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. The Commission notes that the Exchange has modified its proposal so that those proposed changes that are not necessary for compliance with the Plan apply equally to all three Test Groups and the Control Group, and their duration is not limited to the Pilot Period. Thus, the Commission believes that the incremental design of the Pilot is maintained such that the data generated by the Test Groups and the Control Group could allow the Commission and interested parties to compare the change in market structure of each group vis-à-vis the other groups. Further, the Commission does not believe that the changes would bias the results of the Pilot or undermine the value of the data generated in informing future policy decisions.

Accordingly, the Commission finds that the proposed rule change, as modified by Amendment No.1, is consistent with the requirements of the Exchange Act.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as modified by Amendment No. 1, 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 e-mail to rule-comments@sec.gov. Please include File Number 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 Number 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 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 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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 Number SR-BatsBYX-2016-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of Amendment No. 1 in the Federal Register. In Amendment No. 1, the Exchange proposes to: (1) apply the changes in proposed Rule 11.27(c) to all Pilot Securities; (2) clarify in Rule 11.27(c)(1) that the increment for BYX Market Orders and Rule 11.27(c)(5) that the increment for Market Maker Peg Orders will be at “permissible” increments; (3) state in Rule 11.27(c)(2) that Market Pegged Orders, Rule 11.27(c)(4) that Discretionary Orders, and Rule 11.27(c)(6) that Supplemental Peg Orders will not be accepted in Pilot Securities; (4) clarify in Rule 11.27(c)(3) that Mid-Point Peg Orders may not be alternatively pegged to one minimum price variation inside the same side of the NBBO as the order; (5) delete the proposal to amend Non-Displayed Orders; and (6) clarify how orders subject to Display-Price Sliding will operate when they are unexecutable at the locking price.

The Commission believes that Amendment No. 1 modifies the proposal so that it does not cause a disparate impact on different Test Groups and the Control Group. In addition, the Commission notes that the Pilot is scheduled to start on October 3, 2016, and accelerated approval would ensure that the rules of the Exchange would be in place for the start of the Pilot. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange

Act,²¹ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,²² that the proposed rule change (SR-BatsBYX-2016-17), as modified by Amendment No. 1, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Brent J. Fields
Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² Id.

²³ 17 CFR 200.30-3(a)(12).