SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63947; File No. SR-BYX-2011-002)

February 23, 2011

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change to Amend BYX Rules in Connection with the Implementation of Amendments to Regulation SHO

I. Introduction

On January 14, 2011, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend BYX Rules 11.9, 11.13 and 11.19 to make certain changes consistent with the upcoming implementation of amendments to Regulation SHO.[3] The proposed rule change was published for comment in the Federal Register on January 31, 2011.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201,[5] pursuant to which, among other things, short sale

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

[2] 17 CFR 240.19b-4.

[3] 17 CFR 242.200(g); 17 CFR 242.201.

[4] See Securities Exchange Act Release No. 63767 (January 25, 2011), 76 FR 5420 (January 31, 2011).

[5] See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a "short exempt" marking requirement. The amendments to Rule 201 and Rule 200(g) have a compliance date of February 28, 2011. See Securities Exchange Act Release No. 63247

orders in covered securities[6] generally cannot be executed or displayed by a trading center[7] such as BYX at a price that is at or below the current national best bid ("NBB") when a short sale circuit breaker is in effect for the covered security (the "short sale price test restriction").[8] In anticipation of the upcoming February 28, 2011 compliance date for Rule 201, the Exchange proposes to amend certain BYX rules to describe the manner in which the System[9] will handle short sell orders when a short sale price test restriction is triggered under Rule 201 of Regulation SHO. These changes include establishing a definition for "short sale price sliding," which is a new form of price sliding the

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(Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). See also Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO.

6 Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(46); and 17 CFR 242.600(b)(47).

7 Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) 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." 17 CFR 242.600(b)(78).

8 17 CFR 242.201(b)(1). See also Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 2.1 and 2.2 (concerning the duration of a short sale price test restriction).

9 The "System" is defined in BYX Rule 1.5(aa) 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."

Exchange proposes to offer when the amendments to Regulation SHO become operative, modifying certain BYX rules regarding order execution and routing when a short sale price test restriction is in effect, and modifying BYX rules related to order marking requirements. Additionally, the Exchange proposes to modify the definition of the current "displayed price sliding process" offered by BYX.

In order to comply with the short sale price test restriction of Regulation SHO, as amended, the Exchange proposes to offer short sale price sliding, which will be defined in BYX Rule 11.9(g). As a default, the Exchange will subject a User's[10] orders to short sale price sliding unless they affirmatively choose to opt-out of the process. As proposed, when a User opts out of the price sliding process, any short sale order that could not be executed or displayed due to a short sale price test restriction would be rejected or cancelled by the Exchange upon entry or while resting on the order book, respectively. When a User's order is subject to the price sliding process, as proposed, orders subject to short sale price sliding that, at the time of entry, could not be executed or displayed due to a short sale price test restriction will be repriced by the System at one minimum price variation above the current NBB to comply with Rule 201(b)(1)(i).[11] An order subject to short sale price sliding will not be readjusted downward even if it could be displayed at a lower price without violation of Rule 201 of Regulation SHO. In the event the NBB changes such that the price of a non-displayed order subject to short sale price sliding would lock or cross the NBB, the order will receive a new timestamp, and will be

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10 A "User" is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

11 Any execution or display will also need to be in compliance with applicable rules regarding minimum pricing increments. 17 CFR 242.612.

repriced by the System at one minimum price variation above the current NBB, again in compliance with Rule 201(b)(1)(i).[12]

As proposed, neither orders marked "short exempt" nor orders displayed by the System at a price above the then current NBB at the time of initial display when a short sale price test restriction is in effect for a covered security will be subject to short sale price sliding. Certain displayed short sale orders will not be repriced by the System after entry because under Rule 201(b)(1)(iii)(A) a trading center's policies and procedures must be reasonably designed to permit the execution of short sale orders of covered securities that were displayed at a price above the current NBB at the time of initial display. "Short exempt" orders will not be repriced by the System, but instead, the Exchange will execute, display and/or route such orders without regard to the NBB or any short sale price test restriction in effect under Regulation SHO, as described below.

The Exchange currently offers a process called "displayed price sliding process," as defined in current Rule 11.9(c)(4), which re-prices and/or displays orders at permissible prices when such orders would lock or cross Protected Quotations[13] in a manner inconsistent with Rule 610(d) of Regulation NMS.[14] The Exchange proposes to rename the "displayed price sliding process" as "NMS price sliding," to be included in

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12 See Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 4.1 (concerning un-displayed orders).

13 As defined in BYX Rule 1.5(t), the term "Protected Quotation" means a quotation that is a Protected Bid or Protected Offer. In turn, a "Protected Bid" or "Protected Offer" shall mean a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.

14 17 CFR 242.610(d).

new paragraph (g) of Rule 11.9, and to define the "price sliding process" as inclusive of both NMS price sliding and short sale price sliding.[15] Also, consistent with the changes described above, the Exchange proposes to replace the term "displayed price sliding process" throughout its trading rules with the term "price sliding process." As is true for displayed price sliding today and short sale price sliding as proposed, if a User chooses to opt-out of the price sliding process, the order will not be subject to NMS price sliding, and thus, the Exchange will cancel back their orders when display or execution of such orders contradict the provisions of Regulation NMS.

The Exchange also proposes a substantive change to NMS price sliding (today known as the displayed price sliding process). Under current System behavior, the Exchange cancels all non-displayed orders when the national best bid or offer ("NBBO") changes such that the non-displayed order would cross a Protected Quotation, regardless of whether the order is subject to the displayed price sliding process. Under the proposed amendment, instead of cancelling such orders, unless a User has opted out of the price sliding process, the Exchange proposes to allow a resting non-displayed order to receive a new timestamp and be repriced at the locking price in the event that the NBBO changes such that the order would cross a Protected Quotation.

The Exchange also proposes to amend its Rule 11.13 to make clear that it will execute, display and route an order consistent with Rule 201 of Regulation SHO, and that if it cannot do so, orders will be cancelled back to the applicable Exchange User. In addition, the Exchange proposes to make clear that it will not route orders away from the

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15 The Exchange acknowledges that potential differences can exist between Protected Bids, as defined above (see supra note 13), and the NBB, upon which the requirements of Regulation SHO, as amended, are based.

Exchange that are marked "short" if a short sale price test restriction is in effect. Instead, such orders, if immediate-or-cancel ("IOC") or market orders, will be cancelled, and if limit orders, will be posted to the BATS Book,[16] subject to the price sliding process.

Finally, current Rule 11.19 requires Exchange Users to identify short sale orders as "short" when entered into the Exchange's System. The Exchange proposes to add the term "short exempt" to Rule 11.19 because pursuant to amended Rule 200(g) of Regulation SHO, a broker-dealer can mark a short sale order as either "short" or "short exempt."[17] The Exchange also proposes to make clear in Rule 11.19 that if an order it received is marked "short exempt," the Exchange will execute, display and/or route the order without regard to the NBB or any short sale price test restriction in effect under Regulation SHO.[18] The Exchange also proposes to make clear, as it does in Rule 11.9(d)(1) with respect to intermarket sweep orders, that it relies on a Member's[19] marking of an order, in this case the "short exempt" marking, when handling such order. Accordingly, proposed Rule 11.19 states that it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as "short exempt."[20]

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[16] As defined in BYX Rule 1.5(e).

[17] 17 CFR 242.200(g). Rule 200(g)(2) provides that a sale order shall be marked "short exempt" only if the provisions of paragraphs (c) or (d) of Rule 201 of Regulation SHO are met. See also Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 5.4 and 5.5.

[18] 17 CFR 242.201(b)(1)(iii)(B).

[19] A "Member" is defined in BYX Rule 1.5(n) as any registered broker or dealer that has been admitted to membership in the Exchange.

[20] 17 CFR 242.200(g)(2). See also 17 CFR 242.201(c); 17 CFR 242.201(d).

III. Commission Findings

The Commission finds that the proposed rule change to amend BYX Rules 11.9, 11.13 and 11.19 to make certain changes consistent with the upcoming implementation of amendments to Regulation SHO is consistent with the Act and the rules and regulations thereunder applicable to national securities exchanges and national securities associations.[21] In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b) of the Act[22] and with Section 6(b)(5) of the Act,[23] which, among other things, requires that rules of national securities exchanges be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will provide clarity on the short sale order handling procedures employed by the Exchange and certain obligations of its Members when sending short sale orders to the Exchange consistent with Regulation SHO, as amended. The Commission also believes that the proposed short sale price sliding functionality and amendments to the existing displayed price sliding process should assist Users in executing or displaying their orders consistent with Regulation SHO and Regulation NMS.

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

22 15 U.S.C. 78f(b).

23 15 U.S.C. 78f(b)(5).

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[24] for approving the proposed rule change on an accelerated basis. The proposed rule change makes changes consistent with the amendments to Regulation SHO. The Commission believes that accelerating approval of the proposed rule change is appropriate as it will allow the proposed amendments to be implemented by the compliance date for the amendments to Regulation SHO. In addition, the Commission believes that the proposed rule change should further the goals of investor protection and fair and orderly markets.

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[24] 15 U.S.C. 78s(b)(2).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (File No. SR-BYX-2011-002) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Cathy H. Ahn
Deputy Secretary

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[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30-3(a)(12).