

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66722; File No. SR-BYX-2012-007)

April 3, 2012

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Certificate of Incorporation of BATS Global Markets, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 19, 2012, BATS Y-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 is filing with the Commission a proposal to amend the certificate of incorporation of BATS Global Markets, Inc. (the “Corporation”).

The text of the proposed rule change is available at the Exchange’s website at <http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

On May 13, 2011, the Corporation, the sole stockholder of the Exchange, filed a registration statement on Form S-1 with the Commission seeking to register shares of Class A common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the “IPO”). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation (the “New Certificate of Incorporation”). The Exchange previously received Commission approval of certain substantive amendments to the certificate of incorporation of the Corporation that comprise changes included in the New Certificate of Incorporation.<sup>3</sup> Since that date, the Corporation has determined it to be necessary to further amend its certificate of incorporation to achieve the final, pre-IPO version of the New Certificate of Incorporation. These additional amendments will be achieved through the filing with the State of Delaware of an Amended and Restated Certificate of Incorporation as well as a certificate of amendment to the Amended and Restated Certificate of Incorporation. The additional amendments are described in further detail below.

First, to avoid confusion in the numbering of its certificate of incorporation, rather than re-naming the New Certificate of Incorporation the “Third Amended and Restated Certificate of Incorporation,” the Corporation intends to simply name the New Certificate of Incorporation the “Amended and Restated Certificate of Incorporation.” Accordingly, the Exchange proposes to

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<sup>3</sup> See Securities Exchange Act Release No. 65647 (October 27, 2011), 76 FR 67784 (November 2, 2011) (SR-BYX-2011-021).

change certain references throughout the New Certificate of Incorporation to delete all references to the “Second” and “Third” Amended and Restated Certificate of Incorporation.

Second, the Exchange, on behalf of the Corporation, proposes changes to the New Certificate of Incorporation in connection with a 4.75-for-1 reverse stock split (the “Reverse Stock Split”) of the outstanding shares of common stock of the Corporation (“Common Stock”). Accordingly, the number of authorized shares of the Corporation’s, both in the aggregate and as set forth by class, as codified in Section 4.01 of the New Certificate of Incorporation, will be adjusted. The Corporation also plans to adjust the preferred stock of the Corporation consistent with the Reverse Stock Split. In light of the Reverse Stock Split, the proposed amendment also recalculates the share holding threshold below which a holder of Class B shares loses the right to hold Class B shares, resulting in those shares automatically converting into Class A shares, as set forth in Section 4.04(c)(v)(B) of the New Certificate of Incorporation. The par value of the Corporation’s Common Stock will remain \$0.01 per share.

Finally, the Exchange, on behalf of the Corporation, proposes to correct certain cross-referencing errors in Sections 5.01(c) and 5.01(d) of the certificate of incorporation.

The purpose of this rule filing is to permit the Corporation, the sole stockholder of the Exchange, to adopt the New Certificate of Incorporation, as modified by this proposal. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and by-laws. The stock in, and voting power of, the Exchange will continue to be directly and solely held solely by the Corporation. The governance of the Exchange will continue under its existing structure, which provides for a ten member board of directors reflecting diverse representation of industry, non-industry and exchange members,

currently including (i) the chief executive officer of the Exchange, (ii) two industry directors, (iii) two Exchange member directors, and (iv) five non-industry directors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>4</sup> In particular, the proposal is consistent with Section 6(b)(1) of the Act, because it retains, without modification, the existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is making certain administrative and structural changes to the Corporation's certificate of incorporation. These changes, however, do not impact the governance of the Exchange nor do they modify the relative ownership of the shareholders of the Corporation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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<sup>4</sup> 15 U.S.C. 78f(b).

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange has argued that the proposed rule change is consistent with the protection of investors and the public interest because it would permit the Corporation to immediately amend its certificate of incorporation to facilitate the Corporation's IPO, and because the proposed amendments would not impact the ownership or governance of the Exchange.<sup>7</sup> The Exchange has stated that the Corporation's IPO may occur in the near future, and that the changes described in this proposal are a critical component of such IPO. The Exchange has represented that a waiver of the operative waiting period will allow the Corporation to promptly move forward with the IPO without delay. The Commission notes that the Exchange has also represented that the proposed amendments to the Corporation's certificate of incorporation would not impact the Corporation's existing governance structure or ownership and voting limitations or the Exchange's self-regulatory functions. Therefore, the Commission believes that

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>7</sup> See SR-BATS-2012-014, Item 7.

a waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2012-007 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-BYX-2012-007. 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

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<sup>8</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 a.m. and 3:00 p.m. Copies of such filing also will 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 publicly available. All submissions should refer

to File Number SR-BYX-2012-007 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Elizabeth M. Murphy  
Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).