

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77607; File No. SR-BYX-2016-03)

April 13, 2016

Self-Regulatory Organizations; BATS-Y Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 thereto, to Adopt an Early Trading Session and Three New Time-in-Force Instructions

I. Introduction

On February 16, 2016, BATS-Y Exchange, Inc. (n/k/a Bats BYX Exchange, Inc.) (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to amend its rules to: (i) create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new Time-in-Force (“TIF”) instructions. The proposed rule change was published for comment in the Federal Register on February 29, 2016.⁴ On April 11, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 77213 (February 23, 2016), 81 FR 10310 (“Notice”).

⁵ Amendment No. 1 amended and replaced the proposed rule change in its entirety. In Amendment No. 1, the Exchange made technical, non-substantive changes to the proposed rule text to replace references to “BATS” with “BYX,” and otherwise revised Exhibit 5, so that the proposed rule text therein is consistent with the Exchange’s current rule text. See Securities Exchange Act Release No. 77308 (March 7, 2016) 81 FR 12975 (March 11, 2016) (SR-BYX-2016-07). In Amendment No. 1, the Exchange also proposes a non-substantive change to Exchange Rule 14.1 to correct an inaccurate description of the start time for the Pre-Opening Session. Because Amendment No. 1 adds clarification and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend its rules to: (i) create a new trading session, the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new TIF instructions.

A. Early Trading Session

The Exchange trading day is currently divided into three sessions: (i) the Pre-Opening Session, which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; (ii) Regular Trading Hours, which run from 9:30 a.m. to 4:00 p.m. Eastern Time; and (iii) the After Hours Session, which runs from 4:00 p.m. to 5:00 p.m. Eastern Time.⁶ The Exchange proposes to amend its rules to create the Early Trading Session. Exchange Rule 1.5 would be amended to add a new term, “Early Trading Session,” under proposed paragraph (ee). “Early Trading Session” would be defined as “the time between 7:00 a.m. and 8:00 a.m. Eastern Time.”

The Exchange also proposes to amend Exchange Rule 11.1(a) to state that orders may be entered or executed on, or routed away from, the Exchange during the Early Trading Session and to reflect the start time of the Early Trading Session as 7:00 a.m. Eastern Time. Other than the proposal to adopt an Early Trading Session, the Exchange does not propose to amend the substance or operation of Exchange Rule 11.1(a).⁷

⁶ See Notice, supra note 4, at 10310.

⁷ See id.

Users⁸ currently designate when their orders are eligible for execution by selecting a desired TIF instruction. Orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session or Regular Trading Hours, depending on the TIF selected by the User. A User may enter orders in advance of the trading session for which its orders are eligible. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only (“RHO”), which designates that the order only be eligible for execution during Regular Trading Hours.⁹ Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. According to the Exchange, some Users have requested the ability for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Therefore, the Exchange is proposing to adopt the Early Trading Session.¹⁰

As amended, Exchange Rule 11.1(a) would state that orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Early Trading Session, Pre-Opening Session, or Regular Trading Hours, depending on the TIF selected by the User. Exchange Rule 11.1(a) would also be amended to state that the Exchange would not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: (i) BYX Post Only Orders;¹¹ (ii) Partial Post Only

⁸ “User” is defined as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” See Exchange Rule 1.5(cc).

⁹ See Exchange Rule 11.9(b)(7).

¹⁰ See Notice, supra note 4, at 10310.

¹¹ See Exchange Rule 11.9(c)(6).

at Limit Orders;¹² (iii) Intermarket Sweep Orders (“ISOs”);¹³ (iv) BYX Market Orders¹⁴ with a TIF other than RHO; (v) Minimum Quantity Orders¹⁵ that also include a TIF of RHO; (vi) Retail Price Improvement Orders;¹⁶ and (vii) all orders with a TIF instruction of Immediate-or-Cancel (“IOC”)¹⁷ or Fill-or-Kill (“FOK”).¹⁸ At the commencement of the Early Trading Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would be handled in time sequence, beginning with the order with the oldest time stamp, and would be placed on the BYX Book,¹⁹ routed, cancelled, or executed in accordance with the terms of the order. As amended, Exchange Rule 11.1(a) would state that orders may be executed on the Exchange or routed away from the Exchange during Regular Trading Hours and during the Early Trading, Pre-Opening, and After Hours Trading Sessions.²⁰

The Exchange also proposes to make the changes described below to Exchange Rules 3.21, 11.9, 11.13, 11.17, and 14.1 to reflect the adoption of the Early Trading Session:

¹² See Exchange Rule 11.9(c)(7).

¹³ See Exchange Rule 11.9(d).

¹⁴ See Exchange Rule 11.9(a)(2).

¹⁵ See Exchange Rule 11.9(c)(5).

¹⁶ See Exchange Rule 11.24(a)(3).

¹⁷ See Exchange Rule 11.9(b)(1).

¹⁸ See Exchange Rule 11.9(b)(6).

¹⁹ See Exchange Rule 1.5(e).

²⁰ See Notice, supra note 4, at 10310-11. Amendment No. 1 updated Exhibit 5 so that the names of orders, order modifiers, and the Exchange’s book stated therein conform with those used in the current Exchange Rules. See supra, note 5. The Exchange also describes how the Early Trading Session will affect its Members’ operations and the Exchange’s opening process, order types, routing services, order processing, data feeds, trade reporting, market surveillance, and clearly erroneous trade processing. The Exchange clarifies that these processes would operate in the same manner with the exception of changes in time to reflect the adoption of the Early Trading Session. See Notice, supra note 4, at 10311.

- Exchange Rule 3.21, Customer Disclosures. Exchange Rule 3.21 prohibits Members from accepting an order from a customer for execution in the Pre-Opening or After Hours Trading Session without disclosing to their customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The Exchange proposes to amend Exchange Rule 3.21 to also require such disclosures for customer orders that are to be executed during the Early Trading Session.²¹
- Exchange Rule 11.9, Orders and Modifiers. The Exchange proposes to amend the description of BYX Market Orders under Exchange Rule 11.9(a)(2), Market Maker Peg Orders under Rule 11.9(c)(16), and Supplementary Peg Orders under Rule 11.9(c)(19) to account for the Early Trading Session. Every order type that is currently available beginning at 8:00 a.m. would be available beginning at 7:00 a.m. for inclusion in the Early Trading Session. All other order types, and all order type behaviors, would otherwise remain unchanged. Therefore, each of the above rules for BYX Market Orders, Market Maker Peg Orders, and Supplemental Peg Orders would be amended to account for the Early Trading Session.²²
- Exchange Rule 11.13, Order Execution and Routing. Exchange Rule 11.13(a)(2)(B) discusses compliance with Regulation NMS and Trade Through

²¹ See id.

²² See id. at 10311-12. Amendment No. 1 updated Exhibit 5 so that the names of orders and order modifiers stated therein conform with those used in the current Exchange Rules. See supra, note 5.

Protections and states that the price of any execution occurring during the Pre-Opening Session or the After Hours Trading Session must be equal to or better than the highest Protected Bid or lowest Protected Offer, unless the order is marked ISO or a Protected Bid is crossing a Protected Offer. The Exchange proposes to amend Exchange Rule 11.13(a)(2)(B) to expand the Exchange Rule's requirements to the Early Trading Session.²³

- Exchange Rule 11.17, Clearly Erroneous Executions. Exchange Rule 11.17 outlines under which conditions the Exchange may determine that an execution is clearly erroneous. The Exchange proposes to amend Exchange Rule 11.17 to include executions that occur during the Early Trading Session. Exchange Rule 11.17(c)(1) sets forth the numerical guidelines the Exchange is to follow when determining whether an execution was clearly erroneous during Regular Trading Hours or the Pre-Opening or After Hours Trading Session. Exchange Rule 11.17(c)(3) sets forth additional factors the Exchange may consider in determining whether a transaction is clearly erroneous. These factors include whether the transaction was executed during the Pre-Opening or After Hours Trading Sessions. The Exchange proposes to amend Exchange Rule 11.17(c)(1) and (3) to include executions occurring during the Early Trading Session.²⁴
- Rule 14.1, Unlisted Trading Privileges. The Exchange proposes to amend Rules 14.1(c)(2), and Interpretation and Policies .01(a) and (b) to account for the

²³ See Notice, supra note 4, at 10312.

²⁴ See id. The Exchange also proposes technical amendments to Exchange Rules 11.17(c)(1) and (3) to delete the letter “s” from the word “Trading Sessions” and the letter “s” from the word “tapes,” respectively.

proposed Early Trading Session. Specifically, the Exchange proposes to amend paragraph (c)(2) to state that an information circular distributed by the Exchange prior to the commencement of trading of a UTP Derivative Security will include the risk of trading during the Early Trading Session, in addition to the Pre-Opening Session and After Hours Trading Session.²⁵ In addition, the Exchange proposes to amend Interpretation and Policies .01(a) to add Early Trading Session to the paragraph's title and to state that if a UTP Derivative Security begins trading on the Exchange in the Early Trading Session or Pre-Opening Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of the Intraday Indicative Value ("IIV") or the value of the underlying index, as applicable, to such UTP Derivative Security, by a major market data vendor, the Exchange may continue to trade the UTP Derivative Security for the remainder of the Early Trading Session and Pre-Opening Session. Lastly, the Exchange proposes to amend Interpretation and Policies .01(b) to add Early Trading Session to the paragraph's title and to amend subparagraph (ii) of that section to state that if the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of the Early Trading Session or Pre-Opening Session on the next business day, the Exchange shall not commence trading of the UTP Derivative Security in the Early Trading Session or Pre-Opening Session that day.²⁶

²⁵ In Amendment No. 1, the Exchange also proposes to amend Rule 14.1(c)(2) to correct an inaccurate description of the Pre-Opening Session, which currently reads as 9:00 a.m. to 9:30 a.m. rather than 8:00 a.m. to 9:30 a.m. as is set forth throughout Exchange Rules.

²⁶ See Notice, supra note 4, at 10312.

B. TIF Instructions

The Exchange proposes to adopt three new TIF instructions under Exchange Rule 11.9(b). As discussed above, a User may designate when its order is eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b).²⁷

Although the Exchange states that the proposal to adopt an Early Trading Session is in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time, the Exchange states that some Users have requested that their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposes to adopt the following three new TIF instructions under Exchange Rule 11.9(b):²⁸

- Pre-Opening Session Plus (“PRE”). A limit order that is designated for execution during the Pre-Opening Session and Regular Trading Hours. Like the current Good ‘til Cancel TIF instruction,²⁹ any portion not executed would expire at the end of Regular Trading Hours.
- Pre-Opening Session ‘til Extended Day (“PTX”). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good ‘til Extended Day TIF instruction,³⁰ any portion not executed would expire at the end of the After Hours Session.
- Pre-Opening Session ‘til Day (“PTD”). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After

²⁷ See Exchange Rule 11.1(a).

²⁸ See Notice, supra note 4, at 10312.

²⁹ See Exchange Rule 11.9(b)(3).

³⁰ See Exchange Rule 11.9(b)(5).

Hours Session. Like the current Good 'til Day TIF instruction,³¹ any portion not executed would be cancelled at the expiration time assigned to the order, which can be no later than the close of the After Hours Trading Session.

Under each proposed TIF instruction, Users may designate that their orders only be eligible for execution starting with the Pre-Opening Session. Users may continue to enter orders as early as 6:00 a.m., but orders with the proposed TIF instructions would not be eligible for execution until 8:00 a.m. Eastern Time, which is the start of the Pre-Opening Session. At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time with one of the proposed TIF instructions would be handled in time sequence, beginning with the order with the oldest time stamp, and would be placed on the BYX Book, routed, cancelled, or executed in accordance with the terms of the order.³²

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.³³ The Commission believes that the proposed rule change is consistent with Section 6(b)(5)³⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

³¹ See Exchange Rule 11.9(b)(4).

³² See Notice, supra note 4, at 10312. Amendment No. 1 updated Exhibit 5 so that the name of the Exchange's book stated therein conforms with the name used in the current Exchange Rules. See supra, note 5. Orders utilizing one of the proposed TIF instructions would not be eligible for execution during the Early Trading Session. See Notice, supra note 4, at 10312, n.32.

³³ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁴ 15 U.S.C. 78f(b)(5).

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 Exchange proposes to adopt an Early Trading Session and three new TIF instructions and to make related changes to its rules as discussed above.³⁵ The Commission believes that the proposed rules would provide Users with additional options for trading on the Exchange. The Commission notes that the proposed Early Trading Session hours are similar to those of other exchanges,³⁶ and that the proposed TIF instructions would offer functionality similar to existing functionality available on the Exchange and other exchanges that allows Members to select when their orders become eligible for execution.³⁷

The Commission notes that the Exchange has represented that it would subject orders that are eligible for execution as of the start of the Pre-Opening Session to all of the Exchange's standard regulatory checks, as it currently does with all orders upon entry.³⁸ Specifically, the Exchange would subject such orders to checks for compliance with, including but not limited to,

³⁵ See supra section II.

³⁶ For example, NYSE Arca, Inc. operates an Opening Session that starts at 4:00 a.m. Eastern Time and ends at 9:30 a.m. Eastern Time, and Nasdaq Stock Market LLC operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See NYSE Arca Rule 7.34(a)(1); Nasdaq Rule 4701(g). See also Securities Exchange Act Release No. 60605 (September 1, 2009), 74 FR 46277 (September 8, 2009) (SR-CHX-2009-13) (adopting bifurcated post-trading session on the Chicago Stock Exchange, Inc.).

³⁷ Specifically, on the Exchange, Users may enter an order starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours, which begin at 9:30 a.m. Eastern Time. See Exchange Rule 11.9(b)(7); see also NASDAQ Rule 4703(a)(7).

³⁸ See Notice, supra note 4, at 10314.

Regulation NMS,³⁹ Regulation SHO,⁴⁰ and relevant Exchange rules.⁴¹ Moreover, the Exchange reminds its Members of their regulatory obligations when submitting an order with one of the proposed TIF instructions.⁴² In particular, the Exchange states that Members must comply with the Market Access Rule,⁴³ which requires, among other things, pre-trade controls and procedures that are reasonably designed to assure compliance with Exchange trading rules and Commission rules pursuant to Regulation SHO and Regulation NMS. The Exchange also notes that a Member's procedures must be reasonably designed to ensure compliance with the applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.⁴⁴

The Commission further notes the Exchange's discussion of the best execution obligations of Members utilizing the proposed TIF instructions.⁴⁵ Specifically, the Exchange states that a Member's best execution obligations may include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers when the execution of their order may be delayed intentionally while the Member utilizes reasonable diligence to ascertain the best market for the security.⁴⁶ The Exchange further notes that Members will maintain the ability to cancel or modify the terms of an order utilizing any of the proposed TIF instructions at any time, including during the time from when the order is routed to

³⁹ See 17 CFR 242.600-613.

⁴⁰ See 17 CFR 242.200-204.

⁴¹ See Notice, supra note 4, at 10314.

⁴² See id.

⁴³ See 17 CFR 240.15c3-5.

⁴⁴ See Notice, supra note 4, at 10314.

⁴⁵ See id. at 10314.

⁴⁶ See id. at n.41.

the Exchange until the start of the Pre-Opening Session.⁴⁷ As a result, the Exchange states that a Member who utilizes the proposed TIF instructions, but later determines that market conditions favor execution during Early Trading Session, can cancel the order residing at the Exchange and enter a separate order to execute during the Early Trading Session.⁴⁸

Furthermore, the Exchange proposes technical amendments to its Rules to correct erroneous plural words and an inaccurate description of the Pre-Opening Session times in Exchange Rules 11.17 and 14.1, respectively. The Commission believes these proposed amendments would help alleviate potential confusion among Users and Members regarding the operation of the Exchange's rules and are, therefore, consistent with the Act.

⁴⁷ See id. at 10313.

⁴⁸ See id. at 10313-14.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁴⁹ that the proposed rule change (SR-BYX-2016-03), as modified by Amendment No.1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁰

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Deputy Secretary

⁴⁹ 15 U.S.C. 78s(b)(2).

⁵⁰ 17 CFR 200.30-3(a)(12).