

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79148; File No. SR-BatsBYX-2016-27)

October 25, 2016

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend BYX Rule 11.13, Order Execution and Routing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 12, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Exchange Rule 11.13(b)(1) to describe when an order marked as “short” may be eligible for routing when a short sale price test restriction is in effect.

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

The text of the proposed rule change is available at the Exchange's website at [www.batstrading.com](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 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

The Exchange proposes to amend Exchange Rule 11.13(b)(1) to describe when an order to sell marked<sup>5</sup> as "short"<sup>6</sup> may be eligible for routing when a short sale price test restriction is in effect. Under Rule 201 of Regulation SHO,<sup>7</sup> short sale orders in a covered security<sup>8</sup> generally

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<sup>5</sup> 17 CFR 242.200(g).

<sup>6</sup> The term "short sale" is defined as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." 17 CFR 242.200(a).

<sup>7</sup> See 17 CFR 242.201; Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

<sup>8</sup> Rule 201(a)(1) of Regulation SHO 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).

cannot be executed or displayed by a Trading Center,<sup>9</sup> such as the Exchange, at a price that is at or below the current national best bid (“NBB”)<sup>10</sup> when a short sale circuit breaker is in effect for the covered security (the “short sale price test restriction”).<sup>11</sup>

Under Rule 11.13(b)(1), an order marked “short” when a short sale price test restriction is in effect is not eligible for routing by the Exchange. If an order is ineligible for routing due to a short sale price test restriction and such order is an Immediate or Cancel (“IOC”) Order<sup>12</sup> or a BYX Market Order,<sup>13</sup> then the order will be cancelled. If an order is ineligible for routing due to a short sale price test restriction and such order is a Limit Order,<sup>14</sup> the Exchange will post the unfilled balance of the order to the BYX Book,<sup>15</sup> subject to the price sliding process as defined in paragraph (g) of Exchange Rule 11.9.<sup>16</sup>

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<sup>9</sup> Rule 201(a)(9) of Regulation SHO states that the term “Trading Center” shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) of 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.” 17 CFR 242.200(a)(9); 17 CFR 242.600(b)(78).

<sup>10</sup> 17 CFR 242.201(a)(4); 17 CFR 242.600(b)(42).

<sup>11</sup> 17 CFR 242.201(b)(1).

<sup>12</sup> See Exchange Rule 11.9(b)(1).

<sup>13</sup> See Exchange Rule 11.9(a)(2). The Exchange also proposes to remove the reference to BYX Market Orders in Rule 11.13(b)(1) as BYX Market Orders with a time-in-force of Day that are ineligible for routing due to a short sale price test restriction pursuant to Rule 201 of Regulation SHO are not cancelled, but rather posted to the BYX Book pursuant to Exchange Rule 11.9(a)(2). All other BYX Market Orders are handled in accordance with Exchange Rule 11.13(a).

<sup>14</sup> See Exchange Rule 11.9(a)(1).

<sup>15</sup> See Exchange Rule 1.5(e).

<sup>16</sup> In sum, under Exchange Rule 11.9(g), a short sale order that, at the time of entry, could not be executed or displayed in compliance with Rule 201 of Regulation SHO will be re-priced by the System at one minimum price variation above the current NBB (“Permitted

The Exchange proposes to specify in Rule 11.13 that orders marked “short” may be eligible for routing by the Exchange when a short sale price test restriction is in effect where the User<sup>17</sup> selects the Post to Away<sup>18</sup> routing option.<sup>19</sup> In contrast to all other routing strategies, which are routed to other Trading Centers for immediate execution, the Post to Away routing option is an order that is sent to other Trading Centers for posting and/or later execution as further described below. Under the Post to Away routing option, the remainder of a routed order is routed to and posted to the order book of a destination on the System routing table,<sup>20</sup> as specified by the User. Orders routed pursuant to the Post to Away routing option that are identified as “short” are subject to the receiving Trading Center’s processes for handling short sale orders in compliance with Rule 201 of Regulation SHO.<sup>21</sup>

Under Exchange Rule 11.13(b)(1), IOC Orders marked “short” that are not eligible for routing during a short sale price test restriction will continue to be cancelled.<sup>22</sup> The unfilled portions of Limit Orders marked “short” that are ineligible for routing due to a short sale price

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Price”). See Exchange Rule 11.9(g) for a full description of the Exchange’s Short Sale Price Sliding Process.

<sup>17</sup> See Exchange Rule 1.5(cc).

<sup>18</sup> See 11.13(b)(3)(H).

<sup>19</sup> The Exchange also proposes to specify within Rule 11.13(b)(1) that the short sale price test restriction is declared pursuant to Rule 201 of Regulation SHO.

<sup>20</sup> The term “System routing table” is defined as the “the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them.” See Exchange Rule 11.13(b)(3).

<sup>21</sup> See, e.g., Nasdaq Stock Market LLC (“Nasdaq”) Rule 4763; New York Stock Exchange, Inc. (“NYSE”) Rule 440B; and Nasdaq’s Regulation SHO Frequently Asked Questions (updated March 10, 2011), available at <https://nasdaqtrader.com/content/marketregulation/regsho/regshoFAQs.pdf>.

<sup>22</sup> See supra note 13.

test restriction Exchange will continue to be posted to the BYX Book subject to the price sliding process as defined in paragraph (g) of Exchange Rule 11.9.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>23</sup> and furthers the objectives of Section 6(b)(5) of the Act<sup>24</sup> because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, protect investors and the public interest. Specifically, the proposed changes are designed to ensure clarity in the Exchange's rulebook with respect to the routing of orders in compliance with Rule 201 of Regulation SHO. In addition, providing Users the ability to send short sale orders that are routable pursuant to the Post to Away routing option provides them additional flexibility with regard to the handling of their orders. The Exchange notes that short sale orders routed pursuant to the Post to Away routing option are identified as "short" and, therefore, subject to the receiving Trading Center's processes for handling short sale orders in compliance with Rule 201 of Regulation SHO.<sup>25</sup> The Exchange also notes that other national securities exchanges do not expressly prohibit the routing of short sale orders. For example, Nasdaq and NYSE Arca, Inc. ("NYSE Arca") allow for the routing of short sale orders generally, and do not limit a short sale order's ability to route to certain routing options.<sup>26</sup> Thus, the proposal is

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<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> See supra note 21.

<sup>26</sup> See e.g., Nasdaq Rules 4702(a) (stating generally that an "[o]rder may . . . may be routed to other market centers for potential execution if designated as 'Routable'") and 4763 (not prohibiting the routing of a short sale order during a short sale price test). See also

directly targeted at removing impediments to and perfecting the mechanism of a free and open market and national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>27</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

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

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 is simply proposing to reflect in its rules that orders marked “short” may be routed to an away market for execution under one specific routing strategy offered by the Exchange.

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.

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

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, 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>28</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>29</sup> the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written

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e.g., NYSE Arca Rule 7.6P (not prohibiting the routing of a short sale order during a short sale price test).

<sup>27</sup> 15 U.S.C. 78k-1(a)(1).

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4.

notice of its 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.

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: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### 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-BatsBYX-2016-27 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-2016-27. 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 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 available publicly. All submissions should refer to File Number SR-BatsBYX-2016-27, 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>30</sup>

Brent J. Fields  
Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).