

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80612; File No. SR-BatsBYX-2017-07)

May 5, 2017

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.15 of Bats BYX Exchange, Inc. to Authorize the Exchange to Share a User's Risk Settings with the Clearing Member that Clears Transactions on Behalf of the User

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 April 24, 2017, 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 and II 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) 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 Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.15 to authorize the Exchange to share a User's<sup>5</sup> risk settings with the Clearing Member that clears transactions on behalf of the User.

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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).

<sup>5</sup> A 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).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to update Rule 11.15, Clearance and Settlement; Anonymity, to authorize the Exchange to share any of the User's risk settings with the Clearing Member that clears transactions on behalf of the User, and to capitalize the term "Clearing Member".

Current Exchange Rule 11.15 requires that all transactions passing through the facilities of the Exchange shall be cleared and settled through a Qualified Clearing Agency<sup>6</sup> using a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another Member that clears trades through a Qualified Clearing Agency ("Clearing Member"). Rule 11.15 provides that if a Member clears transactions through another Member that is a Clearing

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<sup>6</sup> Qualified Clearing Agency is defined as "a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange." See Exchange Rule 1.5(u).

Member,<sup>7</sup> such Clearing Member shall affirm to the Exchange in writing, through letter of authorization, letter of guarantee or other agreement acceptable to the Exchange, its agreement to assume responsibility for clearing and settling any and all trades executed by the Member designating it as its clearing firm. The rules of any such clearing agency shall govern with respect to the clearance and settlement of any transactions executed by the Member on the Exchange.

Thus, while not all Members are Clearing Members, all Members are required to either clear their own transactions or to have in place a relationship with a Clearing Member's that has agreed to clear transactions on their behalf (or on behalf of any Sponsored Participants<sup>8</sup> for which the Member is a Sponsoring Member<sup>9</sup>) in order to conduct business on the Exchange. Each Member that transacts through a Clearing Member on the Exchange is required to execute a Letter of Guarantee which codifies the relationship between the Member and the Clearing Member as it relates to the Exchange, and provides the Exchange with notice of which Clearing Members have relationships with which Members. Because the Clearing Member that guarantees the Member's transactions on the Exchange has a financial interest in understanding

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<sup>7</sup> The Exchange notes that it also proposes to amend Rule 11.15(a) to capitalize the term "Clearing Member" to ensure consistency within Exchange Rules.

<sup>8</sup> A Sponsored Participant is defined as "a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3." See Exchange Rule 1.5(x).

<sup>9</sup> A Sponsoring Member is defined as "a broker-dealer that has been issued a membership by the Exchange who has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System. The Sponsoring Member shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm." See Exchange Rule 1.5(y).

the risk settings utilized within the System<sup>10</sup> by the Member, the Exchange is proposing to amend Rule 11.15 to authorize the Exchange to share any of the User's risk settings (as described below) with the Clearing Member that clears transactions on behalf of the User. The proposal would provide the Exchange with authority to directly provide Clearing Members with information that would otherwise be available to such Clearing Members by virtue of their relationship with the respective Users (i.e., such Clearing Members could instead require each User to provide such information as a condition to continuing to clear transactions for such Users). At this time, the Exchange offers a variety of risk settings related to the size of an order (e.g., maximum notional value per order and maximum shares per order), the order type (e.g., pre-market, post-market, short sales and ISOs), restricted securities, easy to borrow securities, and order cut-off (e.g., block new orders and cancel all open orders).<sup>11</sup> The Exchange proposes to codify these risk settings in proposed Interpretation and Policy .01 to Rule 11.13, as further described below, and to reference such Interpretation and Policy in proposed paragraph (f) of Rule 11.15.

Proposed Interpretation and Policy .01 to Rule 11.13 would state that the risk settings currently offered by the Exchange include:

- controls related to the size of an order (including restrictions on the maximum notional value per order and maximum shares per order);

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<sup>10</sup> System is defined 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.” See Exchange Rule 1.5(aa).

<sup>11</sup> See Securities Exchange Act Release No. 68329 (November 30, 2012), 77 FR 72902 (December 6, 2012) (SR-BYX-2012-022) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand the Availability of Risk Management Tools).

- controls related to the price of an order (including percentage-based and dollar-based controls);
- controls related to the order types or modifiers that can be utilized (including pre-market, post-market, short sales, ISOs and Directed ISOs);
- controls to restrict the types of securities transacted (including restricted securities and easy to borrow securities as well as restricting activity to test symbols only);
- controls to prohibit duplicative orders;
- controls to restrict the overall rate of orders; and
- controls related to the size of an order as compared to the average daily volume of the security (including the ability to specify the minimum average daily volume of the securities for which such controls will be activated); and
- credit controls measuring both gross and net exposure that warn when approached and, when breached, prevent submission of either all new orders or BYX market orders only.

In addition to these controls, the Exchange proposes to codify in proposed Interpretation and Policy .01 other risk functionality that: (i) permits Users to block new orders submitted, to cancel all open orders, or to both block new orders and cancel all open orders; and (ii) that automatically cancels a User's orders to the extent the User loses its connection to the Exchange. As set forth above, the proposal to authorize the Exchange to share any of the User's risk settings with the Clearing Member that clears transactions on behalf of the User would be limited to the risk settings specified in Rule 11.13, Interpretation and Policy .01. The Exchange notes that the use by a User of the risk settings offered by the Exchange is optional.<sup>12</sup> By using these optional

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<sup>12</sup> The Exchange does set a maximum allowable order rate threshold in order to ensure the

risk settings, following this proposed rule change a User therefore also opts-in to the Exchange sharing its designated risk settings with its Clearing Member. The Exchange also notes that any Member that does not wish to share its designated risk settings with its Clearing Member could avoid sharing such settings by becoming a Clearing Member.

The Exchange believes that its proposal to share a User's risk settings directly with Clearing Members reduces the administrative burden on participants on the Exchange, including both Clearing Members and Users, and ensures that Clearing Members are receiving information that is up to date and conforms to the settings active in the System. Further, the Exchange believes that the proposal will help such Clearing Members to better monitor and manage the potential risks that they assume when clearing for Users of the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the 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>13</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act<sup>14</sup> because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable 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.

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integrity of the System. A User may optionally set a more restrictive order rate threshold but cannot override the Exchange's maximum threshold.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

As set forth above, the proposed change to Rule 11.15 will allow the Exchange to directly provide a Member's designated risk settings to the Clearing Member that clears trades on behalf of the Member. Because a Clearing Member that executes a clearing Letter of Guarantee on behalf of a Member guarantees all transactions of that Member, and therefore bears the risk associated with those transactions, the Exchange believes that it is appropriate for the Clearing Member to have knowledge of what risk settings the Member may utilize within the System. The proposal will permit Clearing Members who have a financial interest in the risk settings of Members with whom the Clearing Participant has entered into a Letter of Guarantee to better monitor and manage the potential risks assumed by Clearing Members, thereby providing Clearing Members with greater control and flexibility over setting their own risk tolerance and exposure and aiding Clearing Members in complying with the Act. To the extent a Clearing Member might reasonably require a Member to provide access to its risk setting as a prerequisite to continuing to clear trades on the Member's behalf, the Exchange's proposal to share those risk settings directly reduces the administrative burden on participants on the Exchange, including both Clearing Members and Users. The proposal also ensures that Clearing Members are receiving information that is up to date and conforms to the settings active in the System. The Exchange believes that the proposal is consistent with the Act, particularly Section 6(b)(5),<sup>15</sup> because it will foster cooperation and coordination with persons engaged in facilitating transactions in securities and more generally, will protect investors and the public interest, by reducing administrative burden on both Clearing Members and other Users and by allowing Clearing Members to better monitor their risk exposure.

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

The Exchange notes that the rule change to adopt paragraph (f) to Rule 11.15 is based on and substantively identical to Bats BZX Exchange Rule 21.17 (“BZX”) and Bats EDGX Exchange (“EDGX”) Rule 21.17, each of which is applicable to options participants of such exchanges. The Exchange also notes that other equities exchanges offer functionality that allows clearing firms to not only directly monitor but also to set certain risk settings in connection with the activities of the firms for which they clear.<sup>16</sup>

The Exchange further believes that codifying the risk settings described above in Interpretation and Policy .01 to Rule 11.13 is consistent with the Act as it will provide additional transparency to Exchange Users regarding the optional risk settings offered by the Exchange. As noted above, these settings have been described by the Exchange in prior filings<sup>17</sup> and further information regarding such settings is available in technical specifications made available by the Exchange. However, the Exchange believes it is appropriate to provide additional details regarding these risk settings in Exchange rules. As such, the Exchange believes that the proposal is consistent with the Act, particularly Section 6(b)(5),<sup>18</sup> because it will foster cooperation and coordination with persons engaged in facilitating transactions in securities and more generally, will protect investors and the public interest, by providing additional transparency regarding optional risk settings offered by the Exchange.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues and does not pose an

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<sup>16</sup> See, e.g., Nasdaq Rules 6110 and 6120 relating to the Nasdaq Risk Management Service.

<sup>17</sup> See supra note 11.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

undue burden on non-Clearing Members because, unlike Clearing Members, non-Clearing Members do not guarantee the execution of a Member's transactions on the Exchange. The proposal is structured to offer the same enhancement to all Clearing Members, regardless of size, and would not impose a competitive burden on any Member. Any Member that does not wish to share its designated risk settings with its Clearing Member could avoid sharing such settings by becoming a Clearing Member.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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 necessary or appropriate in the public interest, for the protection of investors, or 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 change 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 No. SR-BatsBYX-2017-07 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 No. SR-BatsBYX-2017-07. 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 the 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 No. SR-BatsBYX-2017-07, 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>21</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).