

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80645; File No. SR–BatsBYX–2017–12]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

May 10, 2017

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on May 9, 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, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b–4(f)(2) thereunder,⁴ which renders the proposed rule change 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 the fee schedule applicable to Members⁵ and non-Members of the Exchange pursuant to BYX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange’s Web site at www.bats.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 its fee schedule to: (i) Add a new tier under footnote 1, Add/Remove Volume Tiers; and (ii) modify its description of fee code PX.

Proposed New Tier

The Exchange currently offers four tiers under footnote 1, Add/Remove Volume Tiers that offer reduced fees for displayed orders that yield fee codes B,⁶ V⁷ and Y,⁸ and an enhanced rebate for orders that add liquidity yielding fee codes BB,⁹ N¹⁰ and W.¹¹ The Exchange now proposes to add a new tier under footnote 1, to be known as Tier 4, under which a Member would be charged a reduced fee of \$0.0016 per share on orders that yield fee codes B, V and Y, where that Member has an ADAV¹² greater than or equal to 0.25% of the TCV¹³ and a Step-Up ADAV greater than or equal to 0.05% of the TCV from April 2017 baseline.¹⁴

In connection with this change, the Exchange proposes to add a definition of Step-Up ADAV to the “Definitions” section of the fee schedule. As proposed, “Step-Up ADAV” would be defined as “ADAV in the relevant baseline month subtracted from current

⁶ Fee code B is appended to displayed orders that add liquidity to BYX (Tape B) and is assessed a fee of \$0.0018 per share. See the Exchange’s fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.

⁷ Fee code V is appended to displayed orders that add liquidity to BYX (Tape A) and is assessed a fee of \$0.0018 per share. *Id.*

⁸ Fee code Y is appended to displayed orders that add liquidity to BYX (Tape C) and is assessed a fee of \$0.0018 per share. *Id.*

⁹ Fee code BB is appended to orders that remove liquidity from BYX (Tape B) and is assessed a rebate of \$0.0010 per share. *Id.*

¹⁰ Fee code N is appended to orders that remove liquidity from BYX (Tape C) and is assessed a rebate of \$0.0010 per share. *Id.*

¹¹ Fee code W is appended to orders that remove liquidity from BYX (Tape A) and is assessed a rebate of \$0.0010 per share. See the Exchange’s fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.

¹² “ADAV” means average daily volume calculated as the number of shares added per day on a monthly basis. *Id.*

¹³ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. *Id.*

¹⁴ With the addition of proposed Tier 4 under footnote 1, the Exchange proposes to renumber current Tier 4 as Tier 5.

ADAV.” The Exchange proposes to add this definition in connection with the new tier.

Fee Code PX

Fee code PX is appended to orders routed using the RMPL routing strategy¹⁵ to destinations not covered by fee code PL¹⁶ or destinations covered by routing strategy RMPT. Orders appended with fee code PX are charged a fee of \$0.0012 per share. The Exchange proposes to amend the description of fee code PX in order to align it with the description of fee code PX on Bats’ affiliate exchange, Bats EDGA Exchange, Inc. (“EDGA”).¹⁷ As amended, the description of fee code PX would state “[r]outed using RMPL routing strategy to a destination not covered by Fee Code PL, or routed using RMPT routing strategy.” The Exchange notes that this change is purely clerical and does not amend the orders to which fee code PX is appended.

Implementation Date

The Exchange proposes to implement the above changes to its fee schedule immediately.¹⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(4),²⁰ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Proposed New Tier

The Exchange believes that the proposed tier under footnote 1 is equitable and reasonable because such pricing programs reward a Member’s growth pattern on the Exchange and such increased volume will allow the Exchange to continue to provide and potentially expand the its incentive

¹⁵ See Securities Exchange Act Release No. 79603 (December 19, 2016), 81 FR 94440 (December 23, 2016) (SR–BatsBYX–2016–41) (“RMPL Filing”).

¹⁶ Fee code PL is appended to orders routed to Bats BZX Exchange, Inc., Bats EDGX Exchange, Inc., New York Stock Exchange, Inc., NYSE Arca, Inc. and the NASDAQ Stock Market LLC using RMPL routing strategy, and is assessed a fee of \$0.0030 per share. See the Exchange’s fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/byx/.

¹⁷ See EDGA’s fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/edga/.

¹⁸ The Exchange initially filed the proposed fee change on May 1, 2017. (ST–BatsBYX–2017–09) [sic]. On May 9, 2017, the Exchange withdrew the proposed fee change and submitted this filing.

¹⁹ 15 U.S.C. 78f.

²⁰ 15 U.S.C. 78f(b)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b–4(f)(2).

⁵ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

programs. The Exchange believes that providing incentives to Members that demonstrate an increase over their April 2017 Step-Up ADAV through the proposed tier offers an additional, flexible way to encourage Members to add liquidity to the Exchange. The Exchange believes that the proposed tier is reasonable, fair and equitable because the liquidity from the proposed tier also benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The proposed definition of Step-Up Add ADV is also reasonable as it helps to describe the tier's required criteria and is identical to that adopted by other exchanges.²¹ These pricing programs are also not unfairly discriminatory in that it is available to all Members.

In addition, volume-based fees such as that proposed herein have been widely adopted by exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and rebates, because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

Fee Code PX

The Exchange believes that the proposed amendment to the description of fee code PX is reasonable and equitable because this change is purely clerical and does not amend the orders to which fee code PX is appended. The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all Members. The proposed change is intended to align it with the description of an identical fee code on Bats' affiliate exchange, EDGA.²² Therefore, the Exchange believes that the proposed change will make the fee schedule clearer and eliminate potential investor confusion, thereby removing

impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that this change represents a significant departure from previous pricing offered by the Exchange or from pricing offered by the Exchange's competitors. The proposed rates would apply uniformly to all Members, and Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Further, excessive fees would serve to impair an exchange's ability to compete for order flow and members rather than burdening competition. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

B. 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 unsolicited written comments from Members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²³ and paragraph (f) of Rule 19b-4 thereunder.²⁴ 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 email to rule-comments@sec.gov. Please include File No. SR-BatsBYX-2017-12 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-2017-12. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 No. SR-BatsBYX-2017-12, and should be submitted on or before June 6, 2017.

²¹ See the Bats BZX Exchange, Inc., fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/bzx/.

²² See EDGA's fee schedule available at http://www.bats.com/us/equities/membership/fee_schedule/edga/.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f).

²⁵ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80646; File No. SR-FINRA-2017-010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 6191 To Modify the Date of Appendix B Web Site Data Publication Pursuant to the Regulation NMS Plan To Implement a Tick Size Pilot Program

May 10, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² notice is hereby given that on April 28, 2017, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act, ³ which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing to amend Rule 6191 to modify the date of Appendix B Web site data publication pursuant to the Regulation NMS Plan to Implement a Tick Size Pilot Program (“Plan”).

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 6191(b) (Compliance with Data Collection Requirements) ⁴ implements the data collection and Web site publication requirements of the Plan. ⁵ Rule 6191.12 currently provides, among other things, that the requirement that FINRA make certain data for the Pre-Pilot Period and Pilot Period ⁶ publicly available on the FINRA Web site pursuant to Appendix B to the Plan shall commence on April 28, 2017. ⁷ FINRA is proposing to amend Rule 6191.12 to delay the Appendix B data Web site publication date until August 31, 2017. FINRA is proposing to further delay the Web site publication of Appendix B data until August 31, 2017 to permit additional time to consider a methodology to mitigate concerns raised

⁴ See FINRA Rule 6191. See also Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858 (November 25, 2015) (Notice of Filing of File No. SR-FINRA-2015-048); and Securities Exchange Act Release No. 77164 (February 17, 2016), 81 FR 9043 (February 23, 2016) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2015-048).

⁵ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014. See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014 (“SRO Tick Size Plan Proposal”). See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014); see also Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

⁶ Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in Rule 6191.

⁷ See FINRA Rule 6191.12. See also Securities Exchange Act Release No. 80179 (March 8, 2017), 82 FR 13698 (March 14, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2017-005). See also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, dated February 28, 2017.

in connection with the publication of Appendix B data.⁸

Pursuant to this proposed amendment, FINRA would publish the required Appendix B data for the Pre-Pilot Period through April 30, 2017, by August 31, 2017. Thereafter, Appendix B data for a given month would be published within 120 calendar days following month end.⁹ Thus, for example, Appendix B data for May 2017 would be made available on the FINRA Web site by September 28, 2017, and data for the month of June 2017 would be made available on the FINRA Web site by October 28, 2017.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that FINRA rules must 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, and Section 15A(b)(9) of the Act,¹¹ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. FINRA believes that this proposal is consistent with the Act because it is in furtherance of the objectives of Section VII(A) of the Plan in that it is designed to provide FINRA with additional time to consider a methodology to mitigate concerns raised in connection with the publication of Appendix B data.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance

⁸ On March 3, 2017, FINRA filed a proposed rule change to implement an anonymous, grouped masking methodology for Appendix B.I, B.II. and B.IV. data. The comment period ended on April 5, 2017, and the Commission received three comment letters. See Securities Exchange Act Release No. 80193 (March 9, 2017) 82 FR 13901 (March 15, 2017) (Notice of Filing of File No. SR-FINRA-2017-006).

⁹ FINRA also is submitting an exemptive request to the SEC in connection with the instant filing.

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78o-3(b)(9).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).