

free 1G physical ports that can be established to access the Exchange's primary data center. Finally, the Exchange believes that the fees proposed for physical ports to access the secondary data center are not unfairly discriminatory, in that they are uniform in application to all Members and non-Members, and are based on each Member's or non-Member's individual capacity needs and needs for redundancy.

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, as amended. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. The proposed change is designed to ensure that the TRIM routing strategy efficiently focuses on low cost execution venues, thereby allowing it to remain competitive. Similarly, the Exchange believes that its proposed physical access fees are similar to and, in some cases, less than, the fees imposed by competitors to the Exchange. The Exchange does not believe that the imposition of physical port fees to connect to the Exchange's secondary data center will burden competition, but, to the contrary, the Exchange believes that the proposal will help the Exchange to recoup some of its infrastructure costs and, in turn, compete with other venues that charge fees to access their markets, including their back-up data centers.

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

No written comments were solicited or received.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and Rule 19b-4(f)(2) thereunder,¹⁴ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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 Number SR-BATS-2012-034 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-BATS-2012-034. 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 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 Number SR-BATS-2012-034 and should be submitted on or before September 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-19861 Filed 8-13-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67622; File No. SR-BYX-2012-017]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

August 8, 2012.

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 July 31, 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, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site

¹⁵ 17 CFR 200.30-3(a)(12).

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 A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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 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 modify its fee schedule in order to remove a venue currently included as part of the Exchange's "TRIM" routing strategy, as described in further detail below.

The Exchange proposes to modify its fee schedule in order to remove a specific venue from the Exchange's "TRIM" routing strategy. As defined in BYX Rule 11.13(a)(3)(G), TRIM is a routing option under which an order checks the System⁶ for available shares and then is sent to destinations on the System routing table. The TRIM routing strategy is focused on seeking execution of orders while minimizing execution costs by routing to certain low cost execution venues on the Exchange's routing table. Accordingly, the Exchange's current TRIM routing strategy will check the Exchange's order book and then route to various venues on the Exchange's routing table, including NASDAQ OMX BX, Inc. ("NASDAQ BX"), EDGA EXCHANGE, Inc. ("EDGA"), the New York Stock Exchange LLC ("NYSE"), BATS Exchange, Inc. ("BZX Exchange") and certain alternative trading systems available through the Exchange's "DRT" strategy ("DRT Venues").⁷ Effective July

2, 2012, NASDAQ OMX PSX ("NASDAQ PSX"), began to provide free executions to participants that met certain volume criteria. The Exchange, in turn, added NASDAQ PSX to the TRIM routing strategy as a low cost execution venue beginning July 2, 2012. According to a recently announced change, as of August 1, 2012, NASDAQ PSX will charge participants \$0.0019 per share to remove liquidity from its order book in Tape A securities and \$0.0027 per share to remove liquidity from its order book in Tape B and C securities, rather than continuing to provide executions free of charge.⁸ Based on this fee increase, the Exchange no longer believes that NASDAQ PSX should be included in the TRIM routing strategy.

2. Statutory Basis

The Exchange believes that the proposed rule change 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 of the Act.⁹ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange also notes that with respect to the routing changes proposed in this filing, although routing options are available to all Users,¹¹ Users are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different venues or can utilize a myriad of other routing solutions that are available to market participants.

The Exchange believes that removing NASDAQ PSX from the TRIM routing option is reasonable in that NASDAQ PSX will no longer provide executions free of charge, as described above. As

such, the Exchange believes that the proposed change to remove NASDAQ PSX from the TRIM routing option is a fair and reasonable and equitable allocation of fees in that it is consistent with the goal of routing to low cost execution venues. The Exchange also believes that the proposed change to the TRIM routing strategy is fair and equitable and not unreasonably discriminatory in that it will apply equally to all Exchange Users.

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, as amended. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. The proposed change is designed to ensure that the TRIM routing strategy efficiently focuses on low cost execution venues, thereby allowing it to remain competitive.

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

No written comments were solicited or received.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹² and Rule 19b-4(f)(2) thereunder,¹³ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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.

⁶ As defined in BYX Rule 1.5(aa), the System is 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.

⁷ As set forth in BYX Rule 11.13(a)(3)(E), DRT is a routing option in which the entering firm instructs the System to route to alternative trading systems included in the System routing table. Unless otherwise specified, DRT can be combined with and function consistent with all other routing options.

⁸ See Equity Trader Alert #2012-31 (July 30, 2012). This change was recently announced and will become operative on August 1, 2012.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ As defined in BYX Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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 Number SR-BYX-2012-017 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-2012-017. 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 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 Number SR-BYX-2012-017 and should be submitted on or before September 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-19860 Filed 8-13-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67624; File No. SR-CBOE-2012-040]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Related to Permanent Approval of Its Pilot on FLEX Minimum Value Sizes

August 8, 2012.

I. Introduction

On April 25, 2012, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to permanent approval of its pilot program eliminating Flexible Exchange Option ("FLEX Option") minimum value sizes. The proposed rule change was published for comment in the **Federal Register** on May 11, 2012.³ The Commission received no comments on the proposal. The Exchange consented to an extension of the time period for the Commission to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved, to August 9, 2012. CBOE filed Amendment No. 1 to the proposed rule change, in order to transmit a pilot report, on August 6, 2012.⁴ This order approves the proposed rule change.

II. Description of the Proposal

FLEX Options, unlike traditional standardized options, allow investors to customize basic option terms, including size, expiration date, exercise style, and certain exercise style prices within certain parameters as set forth in CBOE's rules.⁵ CBOE currently has in place a pilot program under which there is no minimum value size requirement

for FLEX Option transactions ("Pilot Program") which, practically, allows FLEX Option trades to be initiated at levels as low as one contract.⁶ CBOE is proposing to make the Pilot Program permanent.

Prior to the Pilot Program, the minimum value size for an opening transaction in any FLEX series without open interest was: (1) For FLEX Equity Options,⁷ the lesser of 250 contracts or the number of contracts overlying \$1 million in the underlying securities;⁸ and (2) for FLEX Index Options,⁹ \$10 million Underlying Equivalent Value.¹⁰ Additionally, the minimum value size for a transaction in any currently-opened FLEX series was: (1) For FLEX Equity Options, the lesser of 100 contracts or the number of contracts overlying \$1 million in the underlying securities, and 25 contracts in the case of closing transactions; (2) for FLEX Index Options, \$1 million Underlying Equivalent Value in the case of both opening and closing transactions; or (3) in either case, the remaining underlying size or Underlying Equivalent Value on a closing transaction, whichever is less.¹¹ There were also, prior to the Pilot Program, minimum value size requirements applicable to FLEX Quotes¹² responsive to a Request for Quotes,¹³ including certain minimum

⁶ See CBOE Rules 24A.4.01(b), 24B.4.01(b); Securities Exchange Act Release Nos. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087) (approving establishment of pilot program); 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR-CBOE-2010-026) (technical rule change to include original pilots' conclusion date of March 28, 2011 in the rule text); 64110 (March 24, 2011), 76 FR 17463 (March 29, 2011) (SR-CBOE-2011-024) (extending the pilots through March 30, 2012); and 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR-CBOE-2012-027) (extending the pilots through the earlier of November 2, 2012 or the date on which the respective pilot program is approved on a permanent basis). There is also a CBOE pilot program currently in place that eliminates certain restrictions on the exercise settlement values for FLEX index options. Although that exercise settlement value pilot was originally approved along with the Pilot Program, it is not part of this proposal.

⁷ See CBOE Rules 24A.1(e) and 24B.1(f) (defining "FLEX Equity Option").

⁸ Under a different pilot program, superseded by the pilot that CBOE now seeks to make permanent, the 250-contract minimum for Flex Equity Options was reduced to 150 contracts. See Securities Exchange Act Release No. 57429 (March 4, 2008), 73 FR 13058 (March 11, 2008) (order approving SR-CBOE-2006-36).

⁹ See CBOE Rules 24A.1(f) and 24B.1(g) (defining "FLEX Index Option").

¹⁰ See CBOE Rules 24A.4(a)(4)(ii) and 24B.4(a)(5)(ii); see also CBOE Rules 24A.1(q) and 24B.1(z) (defining "Underlying Equivalent Value").

¹¹ See CBOE Rules 24A.4(a)(4)(iii) and 24B.4(a)(5)(iii).

¹² See CBOE Rules 24A.1(h) and 24B.1(k) (defining "FLEX Quote").

¹³ See CBOE Rules 24A.1(n) and 24B.1(r) (defining "Request for Quotes").

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 66934 (May 7, 2012), 77 FR 27822 (May 11, 2012) ("Notice").

⁴ In Amendment No. 1, CBOE submitted as Exhibit 3 to its proposal an annual report summarizing pilot data collected for the year 2011, the most recent complete year of the pilot program ("Pilot Report"). Specifically, the Pilot Report summarizes the open interest and trading volume in FLEX Option transactions opened during the year 2011 with a size below the minimum value thresholds in force before the pilot, as well as the types of customers initiating such transactions.

⁵ See Notice, *supra* note 3; see also CBOE Rules 24A.1(d) and 24B.1(d).

¹⁴ 17 CFR 200.30-3(a)(12).