SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74250; File No. SR–BYX–2015–07)

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Rules 11.9 of BATS Y–Exchange, Inc.

February 11, 2015.

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 January 30, 2015, 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 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 Rules 11.9, 11.12, and 11.13 to clarify and to include additional specificity regarding the current functionality of the Exchange's System,[3] including the operation of its order types and order instructions, as further described below.

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

On June 5, 2014, Chair Mary Jo White asked all national securities exchanges to conduct a comprehensive review of each order type offered to members and how it operates.[4] The proposals set forth below, therefore, are the product of a comprehensive review of Exchange system functionality conducted by the Exchange and are intended to add additional clarity and specificity regarding the current functionality of the Exchange's System,[5] including the operation of its order types and order instructions. The Exchange is not proposing any substantive modifications to the System.

The changes proposed below are designed to update the rulebook to reflect current System functionality and include: (i) Making clear that orders with a Time-in-Force (''TIF'') of Immediate-or-Cancel (''IOC'') can be routed away from the Exchange; (ii) specifying the methodology used by the Exchange to determine whether BATS Post Only Orders[6] will remove liquidity from the BATS Book;[7] (iii) adding additional detail to and re-structuring the description of Pegged Orders; (iv) adding additional detail to the description of Mid-Point Peg Orders; (v) adding additional detail to the description of Discretionary Orders; (vi) amending Rule 11.12, Priority of Orders, and Rule 11.13, Order Execution, to provide additional specificity and enhance the structure of Exchange rules describing the process for ranking, executing and routing orders; (vii) adding additional detail to the description of orders subject to Re-Route functionality; and (viii) making a series of conforming changes to Rules 11.9, 11.12 and 11.13 to update cross-references.

Routable Orders With Time in Force of Immediate-or-Cancel

The Exchange proposes to modify Rule 11.9(b)(1) to update the description of the TIF of IOC to make clear that orders with a TIF of IOC are routable even though such TIF indicates an instruction to execute an order immediately in whole or in part and/or cancel it back. Under current rules, the TIF of IOC indicates that an order is to be executed in whole or in part as soon as such order is received and the portion not executed is to be cancelled. The Exchange proposes to expand upon the description of IOC to specify that an order with such TIF may be routed away from the Exchange but that in no event will an order with such TIF be posted to the BATS Book. The Exchange notes that IOC orders routed away from the Exchange are in turn routed as IOC orders. The Exchange also notes that current Rule 11.13(a)(2) already includes reference to routable IOCs, and the proposed modifications to the rule text are intended to add further specificity that IOCs are routable.

In addition to the change described above, the Exchange proposes to make clear in Rule 11.9(b)(6) that an order with a TIF of FOK is not eligible for routing. Although orders with a TIF of FOK are generally treated the same as IOCs, the Exchange does not permit routing of orders with a FOK because the Exchange is unable to ensure the instruction of FOK (*i.e.,* execution of an order in its entirety) through the routing process.

Finally, in connection with these changes, the Exchange also proposes to modify current Rule 11.13(a)(2) (to be re-numbered as Rule 11.13(b)(2)) to add the cancellation of an unfilled balance of an order as one possible outcome after an order has been routed away. Rule 11.13(a)(2) currently describes other variations of how the Exchange handles an order after it has been routed away, but does not specifically state that it may be cancelled after the routing process, which would be the case with an order submitted to the Exchange with a TIF of IOC.

Computation of Economic Best Interest for BATS Post Only Orders

The Exchange proposes to modify Rule 11.9(c)(6) to specify the methodology used by the Exchange to determine whether BATS Post Only Orders will remove liquidity from the Exchange's order book. Under the Exchange's current rules, a BATS Post Only Order is an order that an entering User[8] intends to be posted to the BATS Book, and thus will not ordinarily remove liquidity from the Exchange. However, BATS Post Only Orders will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5(aa) defines ''System'' 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.''

[4] *See* Mary Jo White, Chair, Commission, Speech at the Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference, (June 5, 2014) (*available at http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610w6Y*).

[5] Exchange Rule 1.5(aa) defines ''System'' 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.''

[6] *See* Rule 11.9(c)(6).

[7] As defined in Rule 1.5(e).

[8] As defined in Exchange 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.''

remove liquidity from the BATS Book if such execution is in the economic best interests of the User entering the BATS Post Only Order, taking into account applicable fees and rebates.[9] Specifically, as set forth in Rule 11.9(c)(6), BATS Post Only Orders remove liquidity from the BATS Book if the value of ''price improvement'' associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity. The Exchange proposes three changes to the description of BATS Post Only Orders to make clear the methodology used in calculating whether a BATS Post Only Order should remove liquidity on entry. The Exchange notes that each of these changes will conform the Exchange's rule governing BATS Post Only Orders with Rule 11.6(n)(4) of the Exchange's affiliate, EDGX Exchange, Inc. (''EDGX'').

First, the Exchange proposes to clarify that rather than requiring price improvement, which indicates an execution at a better price level than an order's limit price, the Exchange calculates the value of the overall execution taking into account applicable fees and rebates. Accordingly, to the extent the fee and rebate structure on its own (*i.e.,* even at the limit price) makes it economically advantageous to remove liquidity rather than post to the BATS Book and subsequently provide liquidity, the Exchange will allow a BATS Post Only Order to remove liquidity. The Exchange notes that under its current fee structure, which provides a rebate for orders that remove liquidity and a fee for orders that add liquidity, this, in turn, results in an execution of a BATS Post Only Order upon entry any time that there is contra-side liquidity. The Exchange proposes the changes herein and to generally maintain BATS Post Only Orders, however, to reflect the actual functionality of the System, which does perform the specified economic best interest analysis and also in the event the Exchange's fees change.

Second, the Exchange proposes to make clear that this methodology is applied only to securities priced at $1.00 and above, and thus, that all BATS Post Only Orders in securities priced below $1.00 remove contra-side liquidity. The Exchange believes it is reasonable to allow BATS Post Only Orders to remove liquidity in lower priced securities because the Exchange's fee structure never has provided a significant rebate or charged a significant fee for such orders. Because the execution cost economics are relatively flat, the Exchange believes it is more efficient to simply allow all orders in such securities to remove liquidity.

Third, the Exchange proposes to make clear its methodology for determining the applicable fees and rebates given the fact that the Exchange maintains a tiered pricing structure. Under the Exchange's current tiered pricing structure, an entering User may receive a variable rebate for adding liquidity depending on the User's volume during the month in question. The Exchange determines whether Users qualify for higher rebates at the end of the month, looking back at the User's activity during the month. To account for this variable rebate structure and to ensure that the Exchange does not determine that an execution is in an entering User's economic best interests when, in fact, it is not due to a different rebate or fee[10] ultimately achieved by the User, the Exchange applies the highest possible rebate provided and highest possible fee charged for such executions on the Exchange. The Exchange proposes to make this rebate and fee assumption clear in the Exchange's rule text.

Pegged Orders

The Exchange proposes to restructure Rule 11.9(c)(8), related to Pegged Orders, and to add additional detail to such Rule regarding the handling of such orders. With respect to restructuring, the Exchange currently offers two types of Pegged Orders pursuant to Rule 11.9(c)(8), Primary Pegged Orders and Market Pegged Orders, and believes that each types of Pegged Order would be easier to understand if described in separate paragraphs. Given the proposal to split the Rule to address Primary Pegged Orders and Market Pegged Orders separately, the Exchange also proposes to add an additional lead-in sentence that summarizes the operation of Pegged Orders generally.

Mid-Point Peg Orders

The Exchange proposes to add additional specificity regarding Mid-Point Peg Orders and the handling of such orders when the market is locked or crossed. Specifically, the Exchange proposes to add language stating that upon instruction from a User Mid-Point Peg Orders will not execute when the market is locked. The Exchange makes this feature optional because while some Users may prefer not to execute in a locked market given that there is no real mid-point in such a situation and it might be evidence of a pricing disparity in a security, other Users may prefer an execution. The Exchange also proposes to state that Mid-Point Peg Orders are not eligible to execute when the NBBO is crossed. The Exchange does not execute Mid-Point Peg Orders in a crossed market because the pricing of the mid-point, and the security generally, is uncertain in such a situation.

Discretionary Orders

The Exchange proposes to amend the description of Discretionary Orders contained in Rule 11.9(c)(10) and to add additional detail regarding the execution of such orders, as set forth below. First, the current description indicates that a Discretionary Order has a displayed price and size and a non-displayed ''discretionary price.'' The Exchange proposes to make clear that although a Discretionary Order may have a displayed price and size as well as a discretionary price, a Discretionary Order may also be fully non-displayed, and thus, will have a non-displayed ranked price as well as a discretionary price. In addition to reflecting the ability to have a non-displayed Discretionary Order, the Exchange proposes various minor wording changes to improve the description of Discretionary Orders to make clear that such orders use the minimum amount of discretion when executing against incoming orders.

The Exchange also proposes to make clear how a Discretionary Order interacts with a BATS Post Only Order or Partial Post Only at Limit Order entered at the displayed or non-displayed ranked price of such Discretionary Order that does not remove liquidity on entry pursuant to Rule 11.9(c)(6) or Rule 11.9(c)(7), respectively, by stating that the Discretionary Order is converted to an executable order and will remove liquidity against such incoming order. Similar to the Re-Route functionality described below, due to the fact that Discretionary Orders contain more aggressive prices at which they are willing to execute, the Exchange treats Discretionary Orders as aggressive orders that would prefer to execute at their displayed or non-displayed ranked price than to forgo an execution due to

[9] *See* Securities Exchange Act Release No. 67092 (June 1, 2012), 77 FR 33800 (June 7, 2012) (SR–BYX–2012–009) (notice of filing and immediate effectiveness of rule change to amend the operation of BATS Post Only Orders).

[10] The Exchange notes that its current fee structure does not have a variable fee depending on trading activity during the month. If, in the future, the Exchange implements such a fee structure the Exchange will use the highest possible fee for purposes of Rule 11.9(c)(6).

applicable fees or rebates. Accordingly, in order to facilitate transactions consistent with the instructions of its Users, the Exchange executes resting Discretionary Orders (and certain orders with a Re-Route instruction, as described below) against incoming orders, when such incoming orders would otherwise forego an execution. The Exchange notes that the determination of whether an order should execute on entry against resting interest, including against resting Discretionary Orders, is made prior to determining whether the price of such an incoming order should be adjusted pursuant to the Exchange's price sliding functionality pursuant to Rule 11.9(g). In other words, an execution will have already occurred as set forth above before the Exchange would consider whether an order could be displayed and/or posted to the BATS Book, and if so, at what price.

Examples—Discretionary Order Executes Against BATS Post Only Orders

Assume that the NBBO is $10.00 by $10.05, and the Exchange's BBO is $9.99 by $10.06. Assume that the Exchange receives a non-routable order to buy 100 shares of a security at $10.00 per share designated with discretion to pay up to an additional $0.05 per share.

- Assume that the next order received by the Exchange is a BATS Post Only Order to sell 100 shares of the security at priced at $10.03 per share. The BATS Post Only Order would not remove any liquidity upon entry pursuant to the Exchange's economic best interest functionality, and would post to the BATS Book at $10.03. This would, in turn, trigger the discretion of the resting buy order and an execution would occur at $10.03. The BATS Post Only Order to sell would be treated as the adder of liquidity and the buy order with discretion would be treated as the remover of liquidity.
- Assume the same facts as above, but that the incoming BATS Post Only Order is priced at $10.00 instead of $10.03. As described above, under the Exchange's current fee structure, which provides a rebate for orders that remove liquidity and a fee for orders that add liquidity, the BATS Post Only Order would execute on entry at $10.00 against the buy order with discretion pursuant to the Exchange's best interest functionality. The buy order with discretion would be treated as the adder of liquidity and the BATS Post Only Order to sell would be treated as the remover of liquidity. Assume, however, for purposes of this example that the BATS Post Only Order would not remove any liquidity upon entry pursuant to the Exchange's economic best interest functionality. Rather than cancelling the incoming BATS Post Only Order to sell back to the User, particularly when the resting order is willing to buy the security for up to $10.05 per share, the Exchange executes at $10.00 the BATS Post Only Order against the resting buy order with discretion. As is true in the example above, the BATS Post Only Order to sell would be treated as the liquidity adder and the buy order with discretion would be treated as the liquidity remover. As set forth in more detail below, if the incoming order was not a BATS Post Only Order to sell, the incoming order could be executed at the ranked price of the Discretionary Order without restriction and would therefore be treated as the liquidity remover.

Additionally, the Exchange proposes to codify the process by which it handles all incoming orders that interact with Discretionary Orders. First, the Exchange proposes to codify its handling of a contra-side order that executes against a resting Discretionary Order at its displayed or non-displayed ranked price or that contains a time-in-force of IOC or FOK and a price in the discretionary range by expressly stating that such an incoming order will remove liquidity against the Discretionary Order. Second, the Exchange proposes to codify its handling of orders that are intended to post to the BATS Book at a price within a Discretionary Order's discretionary range. This includes, but is not limited to, BATS Post Only Orders and Partial Post Only at Limit Orders. Specifically, the Exchange proposes to codify current System functionality whereby any contra-side order with a time-in-force other than IOC or FOK and a price within the discretionary range but not at the displayed or non-displayed ranked price of a Discretionary Order will be posted to the BATS Book and then the Discretionary Order will remove liquidity against such posted order.

Examples—Discretionary Order Executes Against Non-Post Only Orders

Assume that the NBBO is $10.00 by $10.05, and the Exchange's BBO is $9.99 by $10.06. Assume that the Exchange receives an order to buy 100 shares of a security at $10.00 per share designated with discretion to pay up to an additional $0.05 per share.

- Assume that the next order received by the Exchange is a BATS Only Order to sell 100 shares of the security with a TIF other than IOC or FOK priced at $10.03 per share. The BATS Only Order would not remove any liquidity upon entry and would post to the BATS Book at $10.03. This would, in turn, trigger the discretion of the resting buy order and an execution would occur at $10.03. The BATS Only Order to sell would be treated as the adder of liquidity and the buy order with discretion would be treated as the remover of liquidity.
- Assume the same facts as above, but that the incoming BATS Only Order is priced at $10.00 instead of $10.03. The BATS Only Order would remove liquidity upon entry at $10.00 per share pursuant to the Exchange's order execution rules, as described in detail below. Contrary to the examples set forth above, the BATS Only Order to sell would be treated as the liquidity remover and the resting buy order with discretion would be treated as the liquidity adder. The Exchange notes that this example operates the same whether an order contains a TIF of IOC, FOK or any other TIF.

The Exchange also proposes to modify the current description of the Discretionary Order by eliminating language stating, ''[i]f a Discretionary Order is not executed in full, the unexecuted portion of the order is automatically re-posted and displayed in the BATS Book with a new timestamp, at its original displayed price, and with its non-displayed discretionary price offset.'' The Exchange believes this language is unnecessarily confusing because the unexecuted portion of Discretionary Orders does not actually re-post solely because part of the order was executed. Rather, the remaining portion will remain resting on the BATS Book without being removed from the BATS Book.

Finally, because Discretionary Orders have both a price at which they will be ranked and an additional discretionary price, the Exchange proposes to expressly state how the Exchange handles a routable Discretionary Order by stating that such an order will be routed away from the Exchange at its full discretionary price. As an example, assume the NBBO is $10.00 by $10.05 and the Exchange's BBO is $9.99 by $10.06. If the Exchange receives a routable Discretionary Order to buy at $10.00 with discretion to pay up to an additional $0.05 per share, the Exchange would route the order as a limit order to buy at $10.05. Any unexecuted portion of the order would be posted to the BATS Book with a ranked price of $10.00 and discretion to pay up to $10.05.

Priority and Execution Algorithm

With respect to the Exchange's priority and execution algorithm, the

Exchange is proposing various minor and structural changes that are intended to emphasize the processes by which orders are accepted, priced, ranked and executed, as well as a new provision related to the ability of orders to rest at locking prices that is consistent with the changes to provisions related to the operation of Discretionary Orders described above. First, the Exchange proposes to modify Rule 11.12, Priority of Orders, to make clear that the ranking of orders described in such rule is in turn dependent on Exchange Rule 11.13(a) which discusses the pricing and execution of orders. The Exchange believes that this has always been the case under Exchange rules based on the reference to the ''Execution Process'' in Rule 11.12; however, this reference did not include a cross-reference to Rule 11.13. The Exchange also proposes to change the reference within Rule 11.12 to refer to ranking rather than executing equally priced trading interest, as the Rule as a whole is intended to describe the manner in which resting orders are ranked and maintained, specifically in price and time priority, while awaiting execution against incoming orders. The Exchange does not believe that the proposed modifications substantively modify the operation of the rules; however, the Exchange believes that it is important to clarify that the ranking of orders is a separate process from the execution of orders.

The Exchange also proposes to specify in Rule 11.12(a)(2)(C) that the priority afforded to Pegged Orders is applicable to all non-displayed Pegged Orders. The Exchange recently began accepting Primary Pegged Orders that can be displayed, and if so displayed, the Exchange ranks such orders with all other displayed orders. Thus, the Exchange proposes to clarify that reference to Pegged Orders in 11.12(a)(2)(C), which have lower priority than the displayed size of limit orders and non-displayed orders, is a reference specifically to non-displayed Pegged Orders.

Further, the Exchange proposes to adopt new Rule 11.12(a)(3), which recognizes existing match trade prevention rules that optionally prevent the execution of orders from the same User (*i.e.,* based on the User's ''Unique Identifier'', as set forth in Rule 11.9(f)) by stating that in such a case the System will not permit such orders to execute against one another regardless of priority ranking. Proposed Rule 11.12(a)(3) is based on EDGX Rule 11.9(a)(3). The Exchange also proposes changes to current Rule 11.9(a)(3) and (a)(4) to re-number such rules as (a)(4) and (a)(5) as well as to clarify that orders retain and lose ''time'' priority under certain circumstances, as opposed to priority generally, because retaining or losing price priority does not require the same descriptions, as price priority will always be retained unless the price of an order changes.

Next, the Exchange proposes to re-structure Rule 11.13, which currently governs both execution and routing logic on the Exchange, by more clearly delineating between execution (to be contained in new paragraph (a)) and routing (to be contained in new paragraph (b)) and by adding additional sub-headings to the execution section. In this connection, the Exchange proposes to move language contained within Rule 11.13 to the beginning of new paragraph (a) such that the language is more generally applicable to the rules governing execution. Specifically, the Exchange proposes to relocate language stating that any order falling within the parameters of this paragraph shall be referred to as ''executable'' and that an order will be cancelled back to the User if, based on market conditions, User instructions, applicable Exchange Rules and/or the Act and the rules and regulations thereunder, such order is not executable, cannot be routed to another Trading Center pursuant to Rule 11.13(b) (as proposed to be re-numbered) or cannot be posted to the BATS Book. The proposed sub-headings for paragraph (a) regarding order execution are intended to delineate between the various rules and National Market System (''NMS'') plans that may render an order executable or not, including Regulation NMS and Regulation SHO. The Exchange is proposing to add a cross-reference in Rule 11.13(a)(3) to its rules related to the Limit Up-Limit Down Plan, which is contained in Rule 11.18(e).

The Exchange proposes to adopt paragraph (C) of Rule 11.13(a)(4) to provide further clarity regarding the situations where orders are not executable, which although covered in other existing rules, would focus on the incoming order on the same side of a displayed order rather than the resting order that is rendered not executable because it is opposite such displayed order. The proposed provision would replace existing text set forth in Rule 11.13(a)(1) to acknowledge that, under certain circumstances, there can be locking interest on the Exchange but that such interest will not be displayed by the System as a locked market. Proposed paragraph (C) would further state that if an incoming order is on the same side of the market as an order displayed on the BATS Book and upon entry would execute against contra-side interest at the same price as such displayed order, such incoming order will be cancelled or posted to the BATS Book and ranked in accordance with Rule 11.12. The Exchange does not allow non-displayed interest that locks a contra-side displayed order to execute at such price to avoid an apparent priority issue.

To demonstrate the functionality in place on the Exchange described above, assume the NBBO is $10.10 by $10.11. Assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a resting non-displayed bid to buy 100 shares of a security priced at $10.11 per share. For purposes of this example, assume the resting non-displayed bid has not selected the Re-Route functionality, which, as described in further detail below, could make a resting order executable against an incoming BATS Post Only Order under certain circumstances.

- Assume that the next order received by the Exchange is a BATS Post Only Order to sell 100 shares of the security priced at $10.11 per share. As described above, under the Exchange's current fee structure, which provides a rebate for orders that remove liquidity and a fee for orders that add liquidity, the BATS Post Only Order would execute on entry at $10.11 against the resting non-displayed bid pursuant to the Exchange's best interest functionality. The non-displayed bid would be treated as the adder of liquidity and the BATS Post Only Order to sell would be treated as the remover of liquidity. Assume, however, for purposes of this example that the BATS Post Only Order would not remove any liquidity upon entry pursuant to the Exchange's economic best interest functionality. With that assumption, the BATS Post Only Order would instead post to the BATS Book, and would be displayed at $10.11. The display of this order would, in turn, make the resting non-displayed bid not executable at $10.11.
- Assume the next order received by the Exchange is an order to sell 100 shares of the security priced at $10.11 per share. The order would not remove any liquidity upon entry because there is a displayed order to sell at $10.11 posted on the BATS Book and thus, by rule, the Exchange does not maintain any executable buy interest priced at $10.11. If the later arriving order to sell at $10.11 contained a TIF other than IOC or FOK, it would be posted to the BATS Book and displayed at $10.11. If the later arriving order to sell at $10.11 contained a TIF of IOC or FOK, it would be cancelled back to the User.

• To the extent the BATS Book is in the state set forth to conclude the examples above, with a non-executable bid to buy at $10.11 and one or more offers to sell displayed by the Exchange at $10.11; there are several potential outcomes. For instance, any incoming order to buy at $10.11 or higher [11] will execute against the displayed order(s) to sell, as such resting orders are fully executable and displayed as available offers on the BATS Book. Once all displayed liquidity to sell at $10.11 has been executed on the Exchange, the resting non-displayed bid to buy at $10.11 will again be fully executable. Similarly, if the resting displayed orders to sell that are priced at $10.11 are cancelled then the resting non-displayed bid to buy at $10.11 will again be fully executable at that price. As described in the text and examples below, an incoming sell order priced at $10.10 or better will execute against the resting bid at $10.105. Finally, the User representing the non-displayed bid to buy at $10.11 could cancel the order.

The Exchange is also proposing to modify and place in new paragraph (D) rule language contained in current Rule 11.13(a)(1) that governs the price at which non-displayed locking interest is executable in order to further clarify such rule text. Specifically, for bids or offers equal to or greater than $1.00 per share, in the event that an incoming order is a market order or is a limit order priced more aggressively than an order displayed on the Exchange, the Exchange will execute the incoming order at, in the case of an incoming sell order, one-half minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one-half minimum price variation more than the price of the displayed order. As is true under existing functionality, this order handling is inapplicable for bids or offers under $1.00 per share. Proposed paragraph (D) does not substantively modify the existing operation of the System but is intended to better describe in rule text the process for matching an incoming order against an order on the BATS Book when there is a displayed order on the same side of the market as the incoming order.

To demonstrate the operation of this provision, again assume the NBBO is $10.10 by $10.11. Assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a resting non-displayed bid to buy 100 shares of a security priced at $10.11 per share.

• Assume that the next order received by the Exchange is a BATS Post Only Order to sell 100 shares of the security priced at $10.11 per share. As described above, under the Exchange's current fee structure, which provides a rebate for orders that remove liquidity and a fee for orders that add liquidity, the BATS Post Only Order would execute on entry at $10.11 against the resting non-displayed bid pursuant to the Exchange's best interest functionality. The non-displayed bid would be treated as the adder of liquidity and the BATS Post Only Order to sell would be treated as the remover of liquidity. Assume, however, for purposes of this example that the BATS Post Only Order would not remove any liquidity upon entry pursuant to the Exchange's economic best interest functionality. With that assumption, the BATS Post Only Order to sell would post to the BATS Book and would be displayed at $10.11. The display of this order would, in turn, make the resting non-displayed bid not executable at $10.11.

• If an incoming offer to sell 100 shares at $10.10 is entered into the BATS Book, the resting non-displayed bid originally priced at $10.11 will be executed at $10.105 per share, thus providing a half-penny of price improvement as compared to the order's limit price of $10.11. The execution at $10.105 per share also provides the incoming offer with a half-penny of price improvement as compared to its limit price of $10.10. The result would be the same for an incoming market order to sell or any other incoming limit order offer priced at $10.10 or below, which would execute against the non-displayed bid at a price of $10.105 per share. As above, an offer at the full price of the resting and displayed $10.11 offer would not execute against the resting non-displayed bid, but would instead either cancel or post to the BATS Book behind the original $10.11 offer in priority.

The Exchange notes that it is proposing to add descriptive titles to paragraphs (A) and (B) of Rule 11.13(a)(4), which describe the process by which executable orders are matched within the System. Specifically, so long as it is otherwise executable, an incoming order to buy will be automatically executed to the extent that it is priced at an amount that equals or exceeds any order to sell in the BATS Book and an incoming order to sell will be automatically executed to the extent that it is priced at an amount that equals or is less than any order to buy in the BATS Book. These rules further state that an order to buy shall be executed at the price(s) of the lowest order(s) to sell having priority in the BATS Book and an order to sell shall be executed at the price(s) of the highest order(s) to buy having priority in the BATS Book. The Exchange emphasizes these current rules only insofar as to highlight the interconnected nature of the priority rule.

The Exchange also proposes to modify existing paragraph (b) of Rule 11.13 to re-number it as paragraph (b)(5) and to clarify the Exchange's rule regarding the priority of routed orders. Paragraph (b) currently sets forth the proposition that a routed order does not retain priority on the Exchange while it is being routed to other markets. The Exchange believes that its proposed clarification to paragraph (b) is appropriate because it more clearly states that a routed order is not ranked and maintained in the BATS Book pursuant to Rule 11.12(a), and therefore is not available to execute against incoming orders pursuant to Rule 11.13.

Re-Route Functionality

The Exchange currently allows Users to submit various types of limit orders to the Exchange that are processed pursuant to current Exchange Rule 11.13, as described elsewhere in this proposal. To the extent an order has not been executed in its entirety against the BATS Book, Rule 11.13 describes the process of routing marketable limit orders [12] to one or more Trading Centers, including a description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. If not filled through routing, and based on the order instructions, the unfilled balance of the order may be posted to the BATS Book.

Pursuant to Exchange Rule 11.13(a)(4) (to be re-numbered as Rule 11.13(b)(4) pursuant to this proposal), under certain circumstances the Exchange will re-route an order that has been posted to the BATS Book if subsequently locked or crossed by another accessible Trading Center. The Exchange offers two

[11] The Exchange notes that an incoming order for purposes of comparison to a resting order can be any incoming order unless the terms of that incoming order itself preclude execution. For instance, in this example, an incoming buy order could be routable or non-routable, the order could be selected for potential display or could include instructions not to display the order, the order could have a discretionary price, or several other characteristics. Upon entry, unless the terms of the order preclude removing liquidity, such as a BATS Post Only order, the characteristics that govern the way that the order may be handled once posted to the Exchange's order book are irrelevant and any incoming buy order priced at $10.11 or higher will execute against the resting offers.

[12] Market orders are also routed away pursuant to Rule 11.13, however the Exchange is not proposing any changes to the treatment of routed market orders at this time.

optional Re-Route instructions, the Super Aggressive Re-Route instruction and the Aggressive Re-Route instruction. The Super Aggressive Re-Route instruction reflects the willingness of the sender of the routable order posted to the BATS Book to route to away Trading Centers and to remove liquidity from such Trading Centers any time such order is locked or crossed (*i.e.,* rather than passively waiting for an execution on the BATS Book). The Aggressive Re-Route instruction subjects an order to the routing process after being posted to the BATS Book only if the order is subsequently crossed by an accessible Trading Center (rather than if the order is locked or crossed). The Exchange proposes two changes to its rules to reflect current operation of the System in connection with Re-Route functionality, as described below.

Non-Displayed Routable Orders

First, the Exchange proposes to add language to the Aggressive Re-Route instruction that makes clear that any routable non-displayed limit order posted to the BATS Book that is crossed by another accessible Trading Center will be automatically routed to that Trading Center. As described in Rule 11.9(g)(4), the Exchange re-prices non-displayed orders to the extent they are crossed by another Trading Center to avoid trading-through Protected Quotations displayed by such Trading Center. In the process of such price sliding, to the extent a non-displayed order is routable, the Exchange will attempt to route the order to the Trading Center displaying the crossing quotation that prompted the price sliding process.

As an example of a routable non-displayed order that is handled consistent with the Aggressive Re-Route instruction, assume the Exchange receives a non-displayed order to buy 300 shares of a security at $10.10 per share. Assume further that the NBBO is $10.09 by $10.10 when the order is received, and the Exchange's lowest priced offer is priced at $10.11. The Exchange will route the order away from the Exchange as a bid to buy 300 shares at $10.10. Assume that the order obtains one 100 share execution through the routing process and then returns to the Exchange. The Exchange will post the order as a non-displayed bid to buy 200 shares at $10.10. If displayed liquidity then appears at one or more Trading Centers priced at $10.09 or lower (*i.e.,* crossing the posted bid to buy at $10.10), the Exchange will take the non-displayed bid off of the BATS Book and again route such order to the displayed liquidity at other Trading Centers.

Second, the Exchange proposes to codify existing System functionality by adding rule text to state that, consistent with the Super Aggressive Re-Route instruction described in Rule 11.13(b)(4)(B), when any order with a Super Aggressive Re-Route instruction is locked by an incoming BATS Post Only Order or Partial Post Only at Limit Order that does not remove liquidity pursuant to Rule 11.9(c)(6) or Rule 11.9(c)(7), respectively,[13] the Re-Route order is converted to an executable order and will remove liquidity against such incoming order. The Exchange applies this logic in order to facilitate executions that would otherwise not occur due to the instruction of a BATS Post Only Order or Partial Post Only at Limit Order to not remove liquidity. Because a Super Aggressive Re-Route eligible order is willing to route to an away Trading Center and remove liquidity (*i.e.,* pay a fee at such Trading Center) when locked or crossed, the Exchange believes it is reasonable and consistent with the instruction to force an execution between an incoming BATS Post Only Order and an order that has been posted to the BATS Book with the Super Aggressive Re-Route instruction. The Exchange notes that the determination of whether an order should execute on entry against resting interest, including against resting orders with a Super Aggressive Re-Route instruction, is made prior to determining whether the price of such an incoming order should be adjusted pursuant to the Exchange's price sliding functionality pursuant to Rule 11.9(g). The Exchange has limited the proposed language to BATS Post Only Orders that lock orders with a Super Aggressive Re-Route instruction because BATS Post Only Orders that cross resting orders will always remove liquidity because it is in their economic best interest to do so.[14] Similarly, Partial Post Only Limit Orders execute against crossing interest as set forth in Rule 11.9(c)(7)(A). The Exchange also proposes to make clear that although it will execute an order with a Super Aggressive Re-Route instruction against a BATS Post Only Order that would lock it, if an order that does not contain a Super Aggressive Re-Route instruction maintains higher priority than one or more Super Aggressive Re-Route eligible orders, the Super Aggressive Re-Route eligible order(s) with lower priority will not be converted, as described above, and the incoming BATS Post Only Order or Partial Post Only at Limit Order will be posted or cancelled in accordance with Rule 11.9(c)(6) or Rule 11.9(c)(7), respectively. The Exchange believes it is necessary to avoid applying the Re-Route functionality to Re-Route eligible orders that are resting behind orders that are not Re-Route eligible orders to avoid violating the Exchange's priority rule, Rule 11.12.

Example—Super Aggressive Re-Route and BATS Post Only Orders

Assume that the Exchange receives an order to buy 300 shares of a security at $10.10 per share designated with a Super Aggressive Re-Route instruction. Assume further that the NBBO is $10.09 by $10.10 when the order is received, and the Exchange's lowest offer is priced at $10.11. The Exchange will route the order away from the Exchange as a bid to buy 300 shares at $10.10. Assume that the order obtains one 100 share execution through the routing process and then returns to the Exchange. The Exchange will post the order as a bid to buy 200 shares at $10.10. If the Exchange subsequently receives a BATS Post Only Order to sell priced at $10.09 per share, such order will execute against the posted order to buy with an execution price of $10.10. The posted buy order will be treated as the liquidity provider and the incoming BATS Post Only Order to sell will be treated as the liquidity remover, based on the Exchange's rules that execute BATS Post Only Orders on entry if such execution is in their economic interest.

However, assuming the same facts as above, if the incoming BATS Post Only Order to sell is priced at $10.10 and also assuming that the incoming BATS Post Only Order does not remove liquidity pursuant to the economic best interest functionality,[15] the posted order with a Super Aggressive Re-Route instruction will execute against such order at $10.10. In this scenario, the posted order to buy will be treated as the liquidity remover and the incoming BATS Post Only Order to sell will be treated as the liquidity provider.

Finally, assume that the NBBO is $10.10 by $10.11 and that the Exchange has a displayed bid to buy 100 shares

[13] The Exchange notes that pursuant to Rule 11.9(c)(6), BATS Post Only Orders remove liquidity in certain circumstances based on an economic analysis that takes into account applicable fees and rebates. The Exchange has proposed clarifications to this economic analysis as described above. Similarly, Partial Post Only at Limit Orders are permitted to remove price improving liquidity as well as a User-selected percentage of the remaining order at the limit price if, following such removal, the order can post at its limit price. *See* Rule 11.9(c)(7).

[14] *See id.*

[15] As described above, an incoming BATS Post Only Order to sell would in fact remove on entry at $10.10 based on the Exchange's current fee structure and economic best interest functionality.

of a security at $10.10 and a displayed offer to sell 100 shares of a security at $10.11. Assume that the displayed bid has not been designated with the Super Aggressive Re-Route instruction. Assume next that the Exchange receives a second displayable bid to buy 100 shares of the same security at $10.10 that has been designated as routable and subject to the Super Aggressive Re-Route instruction. Because there is no liquidity to which the Exchange can route the order, the second order will post to the BATS Book as a bid to buy at $10.10 behind the original displayed bid to buy at $10.10. If the Exchange then received a BATS Post Only Order to sell 100 shares at $10.10 then no execution would occur assuming again that the incoming BATS Post Only Order cannot remove liquidity at $10.10 based on the economic best interest analysis,[16] the first order with priority to buy at $10.10 was not designated with the Super Aggressive Re-Route instruction and the second booked order to buy at $10.10 is not permitted to bypass the first order as this would result in a violation of the Exchange's priority rule, Rule 11.12.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[17] and further the objectives of Section 6(b)(5) of the Act[18] because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule changes are also designed to support the principles of Section 11A(a)(1)[19] of the Act in that they seek to assure fair competition among brokers and dealers and among exchange markets.

The modifications related to routable orders with a TIF of IOC, Pegged Orders, Mid-Point Peg Orders, Discretionary Orders, and the Exchange's priority, execution and routing rules are each designed to add clarity and transparency regarding Exchange System functionality without substantively modifying such functionality. Specifically, the Exchange believes that the proposed rule changes will provide additional clarity and specificity regarding the functionality of the System and thus would promote just and equitable principles of trade and remove impediments to a free and open market. The Exchange also believes that the proposed amendments will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand.

With respect to the additional specificity proposed in connection with BATS Post Only Orders, the Exchange believes that the proposed rule change is consistent with the Act in that the change will help to clarify the methodology used by the Exchange to determine whether BATS Post Only Orders will remove liquidity from the BATS Book. The Exchange again notes that any methodology other than using the highest possible rebate and highest possible fee could result in the Exchange determining that an execution was in an entering User's economic best interest when, in fact, it was not. For the reasons articulated above, the Exchange believes that the proposal is consistent with and supports just and equitable principles of trade, removes impediments to, and helps to perfect the mechanism of, a free and open market and a national market system, and, in general, protects investors and the public interest.

The Exchange also believes it is consistent with the Act to execute Discretionary orders and orders with a Super Aggressive Re-Route instruction against marketable liquidity (*i.e.,* BATS Post Only Orders and Partial Post Only Orders) when an execution would not otherwise occur is consistent with both: (i) The Act, by facilitating executions, removing impediments and perfecting the mechanism of a free and open market and national market system; and (ii) a User's instructions, which have evidenced a willingness by the User to pay applicable execution fees and/or execute at more aggressive prices than they are currently ranked in favor of an execution. The Exchange also believes that the proposed rule change provides additional specificity regarding the functionality of the System with regard to routable non-displayed orders that have been crossed by another accessible Trading Center, thereby promoting just and equitable principles of trade and removing impediments to a free and open market.

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

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are not designed to address any competitive issue but rather to add specificity and clarity to Exchange rules, thus providing greater transparency regarding the operation of the System.

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 changes.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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 email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2015–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2015–07. 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

[16] *Id.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S. C. 78k–1(a)(1).

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 at 100 F Street NE., Washington, DC 20549–1090 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–BYX–2015–07, and should be submitted on or before March 11, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2015–03223 Filed 2–17–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74251; File No. SR–FINRA–2015–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Tier Size Pilot of FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)

February 11, 2015.

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 January 29, 2015, the 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. 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

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) to extend the Tier Size Pilot, which currently is scheduled to expire on February 13, 2015, for an additional three months, until May 15, 2015.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the ''Rule'') to extend, until May 15, 2015, the amendments set forth in File No. SR–FINRA–2011–058 (''Tier Size Pilot'' or ''Pilot''), which currently are scheduled to expire on February 13, 2015.[3]

The Tier Size Pilot was filed with the SEC on October 6, 2011,[4] to amend the minimum quotation sizes (or ''tier sizes'') for OTC Equity Securities.[5] The goals of the Pilot were to simplify the tier structure, facilitate the display of customer limit orders, and expand the scope of the Rule to apply to additional quoting participants. During the course of the pilot, FINRA collected and provided to the SEC specified data with which to assess the impact of the Pilot tiers on market quality and limit order display.[6] On September 13, 2013, FINRA provided to the Commission an assessment on the operation of the Tier Size Pilot utilizing data covering the period from November 12, 2012 through June 30, 2013.[7] As noted in the 2013 Assessment, FINRA believed that the analysis of the data generally showed that the Tier Size Pilot had a neutral to positive impact on OTC market quality for the majority of OTC Equity Securities and tiers; and that there was an overall increase of 13% in the number of customer limit orders that met the minimum quotation sizes to be eligible for display under the Pilot tiers. In the 2013 Assessment, FINRA recommended adopting the tiers as permanent, but extended the pilot period to allow more time to gather and analyze data after the November 12, 2012 through June 30, 2013 assessment period.[8] Most recently, on October 9, 2014, FINRA further extended the Pilot period to permit FINRA and the Commission to consider the implications of the data collected since June 30, 2013. FINRA has reviewed this post-June 30, 2013 data, and believes that the impact described in the 2013 Assessment has continued to hold (and has improved in certain areas).

The purpose of this filing is to extend the operation of the Tier Size Pilot for an additional three month period, until May 15, 2015, to provide FINRA with additional time to finalize its recommendation with regard to the Tier Size Pilot.

FINRA has filed the proposed rule change for immediate effectiveness. The effective 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,[9] which requires, among other things, that FINRA rules must be designed to

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73299 (October 3, 2014), 79 FR 61120 (October 9, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2014–041); *see also* Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving File No. SR–FINRA–2011–058, as amended).

[4] *See* Securities Exchange Act Release No. 65568 (October 14, 2011), 76 FR 65307 (October 20, 2011) (Notice of Filing of File No. SR–FINRA–2011–058).

[5] ''OTC Equity Security'' means any equity security that is not an ''NMS stock'' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. *See* FINRA Rule 6420.

[6] FINRA believes that adequate data with which to assess the impact of the Pilot has been collection and analyzed, and, therefore, will cease the collection of Pilot data for submission to the Commission as of February 13, 2015.

[7] The assessment is part of the SEC's comment file for SR–FINRA–2011–058 and also is available on FINRA's Web site at: *http://www.finra.org/Industry/Regulation/RuleFilings/2011/P124615* (''Pilot Assessment'').

[8] *See* Securities Exchange Act Release No. 70839 (November 8, 2013), 78 FR 68893 (November 15, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–049).

[9] 15 U.S.C. 78*o*–3(b)(6).