

the close in violation of the Short Sale Price Test established in that rule. To that end, the proposed rule change will, among other things, amend the Exchange's procedures for determining the closing price by treating short sale orders as orders subject to tick restrictions during a period when a Short Sale Price Test is in effect.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *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 with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>30</sup> and Rule 19b-4(f)(6) thereunder.<sup>31</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>32</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>33</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>34</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>35</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day

operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.<sup>36</sup> Waiving the 30-day operative delay will allow the Exchange to implement the proposed amendments by February 28, 2011, which, as noted by the Exchange, is the compliance date for amendments to Regulation SHO under the Act. By waiving the operative delay, the Exchange will be able to comply with the amendments to Regulation SHO by February 28, 2011. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.

At any time within 60 days of the filing of such 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMEX-2011-09 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-NYSEAMEX-2011-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 20549-1090. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at <http://www.nyse.com>. 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-NYSEAMEX-2011-09 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Cathy H. Ahn,**  
Deputy Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63970; File No. SR-BYX-2011-004]

### **Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. To Adopt BYX Rule 11.21, entitled "Input of Accurate Information"**

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 18, 2011, BATS Y-Exchange, Inc. ("Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>31</sup> 17 CFR 240.19b-4(f)(6).

<sup>32</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>33</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>34</sup> 17 CFR 240.19b-4(f)(6).

<sup>35</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>36</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>37</sup> 17 CFR 200.30-3(a)(12).

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

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

Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to adopt new BYX Rule 11.21 to require Members to identify each order accurately as a Principal, Agency, or Riskless Principal Order.

### **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 add new BYX Rule 11.21 for the purpose of increasing transparency and to enhance the surveillance database and audit trail of transaction data used by the Exchange in surveillance of its market. The proposed rule change would require Members to identify the capacity of each order accurately as a Principal, Agency, or Riskless Principal Order. For purposes of surveillance, the Exchange currently identifies the capacity of each order as Principal, Agency, or Riskless Principal; however, several other capacities are accepted upon order entry, including no response, which are thereafter mapped to one of the above-listed order capacities. By limiting the order capacity upon entry to Principal, Agency, or Riskless Principal and requiring Members to accurately submit an order capacity for each order, the Exchange will be able to more precisely identify the type of order received and more effectively surveil for abusive trading.

BYX does not have a rule that makes an explicit statement regarding a

Member's obligation to input accurate information into the System. Notwithstanding, BYX believes that disciplinary cases against Members entering inaccurate or incomplete information may be brought appropriately under BYX Rule 3.1, which requires Members to observe high standards of commercial honor and just and equitable principles of trade. Rule 3.1 protects the investing public and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. Because of the regulatory importance of accurate information input in the System, BYX believes a rule that directly addresses Members' obligation to provide accurate information is warranted. The proposed rule makes clear Members' obligation to input accurate information into the System and that failure to do so would be considered a violation of BYX Rules.

BYX notes that the Commission has previously approved rules proposed by the Nasdaq Stock Market LLC ("Nasdaq") requiring participants to ensure that accurate information is entered into Nasdaq's system, including but not limited to the capacity of the participant.<sup>5</sup> Thus, the proposed rule change would bring BYX Rules in line with those of other self-regulatory organizations.

In order to allow Members sufficient time to review and complete any systems changes necessitated by this filing, the Exchange has proposed an operative date of April 4, 2011.

##### **2. Statutory Basis**

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

open market and a national market system, and to protect investors and the public interest. Specifically, the changes proposed herein will serve to promote the accuracy of information input into the Exchange. Accurate information is necessary for the efficient and fair operation of the Exchange, and will assist the Exchange in surveilling the markets for fraudulent activity.

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>10</sup>

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.<sup>11</sup>

### **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.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>5</sup> See Securities Exchange Act Release 59547 (March 10, 2009), 74 FR 11386 (March 17, 2009).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

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

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2011-004 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-2011-004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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-2011-004 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63967; File No. SR-Phlx-2011-27]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Amendments to Rules 200(g) and 201 of Regulation SHO Applicable to Complex Orders**

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 23, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") 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 substantially 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 Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 1080.08 respecting complex orders to reflect the marking requirements of Regulation SHO and to address the handling of certain orders marked "short" in compliance with Rule 201 of Regulation SHO, as explained further below.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 aspects of such statements.

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

1. Purpose

Recently, the Exchange received approval from the Commission to make various enhancements to its complex orders system, including to accept complex orders where one component is the underlying security of the options components.<sup>3</sup> Specifically, the underlying stock or ETF can now be one component of a complex order.<sup>4</sup> Nasdaq Options Services LLC ("NOS"), a registered broker-dealer and member of Financial Industry Regulatory Authority, is responsible for the execution of the stock or ETF component of a complex order as agent of the stock or ETF component.<sup>5</sup> This is described in Rule 1080.08(h). A complex order with one component that is a stock or ETF is received by the Exchange with a net debit or credit price. The individual option leg(s) and stock/ETF component prices are not specified; rather, there is a single net debit or credit price on the order which is used by Phlx and NOS to determine the price of each component, including the stock/ETF. Specifically, although Phlx is calculating the price of the options components, a sophisticated algorithm is simultaneously causing NOS to calculate and execute the stock or ETF component of the Complex Order, which has been electronically communicated to NOS by the Exchange. Thus, because the execution of one component is contingent upon the execution of all others, the entire package is processed as a single transaction and both the option leg and stock/ETF components are simultaneously processed.

In the Complex Order rule filing, the Exchange explained that with respect to short sale regulation, the proposed handling of the stock/ETF component of a complex order did not raise any issues of compliance with the currently operative provisions of Regulation SHO.<sup>6</sup> When a complex order has a

<sup>3</sup> See Securities Exchange Act Release No. 63777 (January 26, 2011), 76 FR 5630 (February 1, 2011) (SR-Phlx-2010-157) ("Complex Order rule filing").

<sup>4</sup> A complex order is an order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security or a stock-option order, priced as a net debit or credit, based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. See Rule 1080.08(a).

<sup>5</sup> The NASDAQ OMX Group, Inc. owns both the Exchange and NOS; therefore, the Exchange and NOS are affiliates.

<sup>6</sup> 17 CFR 242.200 *et seq.*

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

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

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