

transition the Board of Directors to three equally sized classes.

The proposed rule change would make changes to the Articles of Incorporation as are necessary and appropriate in order to comply with Section 15B of the Exchange Act, 15 U.S.C. 78o-4, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, § 975, 124 Stat. 1376 (2010) (the “Dodd-Frank Act”), and conform the Articles of Incorporation to amended MSRB Rule A-3.

## 2. Statutory Basis

Sections 15B(b)(1) and (2) of the Exchange Act,<sup>6</sup> as amended by the Dodd-Frank Act, require, among other things, that the rules of the Board establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker-dealer representatives, bank representatives, and advisor representatives and the terms that shall be served by such members. The MSRB believes that the proposed rule change is consistent with Section 15B(b)(1) and (2) of the Exchange Act, in that it conforms the Articles of Incorporation of the Board to the requirements of the Dodd-Frank Act and amended MSRB Rule A-3.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since the proposed rule change simply amends the Articles of Incorporation of the Board to comply with the requirements of the Dodd-Frank Act and MSRB Rule A-3, and solely concerns the administration of the organization.

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

Written comments were neither solicited nor received on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Exchange Act<sup>7</sup> and Rule 19b-4(f)(3) thereunder<sup>8</sup> because it

is concerned solely with the operation and administration of the MSRB. 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 Exchange Act.<sup>9</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 Exchange 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-MSRB-2011-18 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-MSRB-2011-18. 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, 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 MSRB's offices. 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-MSRB-2011-18 and should be submitted on or before November 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65493; File No. SR-BYX-2011-028]

### 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.

October 6, 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 September 30, 2011, 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 Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 Members<sup>5</sup> of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee

<sup>10</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.

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

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

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

<sup>6</sup> 15 U.S.C. 78o-4(b).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(3).

<sup>9</sup> See Section 19(b)(3)(C) of the Exchange Act, 15 U.S.C. 78s(b)(3)(C).

schedule pursuant to this proposal will be effective upon filing, the changes will become operative on October 3, 2011.

The text of the proposed rule change is available at the Exchange's Web site 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 applicable to use of the Exchange effective October 3, 2011, in order to modify pricing related to executions that occur on EDGA EXCHANGE, Inc. ("EDGA") through either a BYX + EDGA Destination Specific Order<sup>6</sup> or through the Exchange's TRIM routing strategy.<sup>7</sup> EDGA is implementing certain pricing changes effective October 3, 2011, including modification of the fee to remove liquidity from \$0.0006 per share to \$0.0007 per share. To maintain a direct pass through of the applicable cost to execute at EDGA, the Exchange proposes to charge \$0.0007 per share for an order routed through its TRIM routing strategy and executed on EDGA. Similarly, because EDGA is part of the Exchange's "One Under" pricing program for Destination Specific Orders, the Exchange intends to continue to charge \$0.0001 per share less than if a Member executed an order directly on EDGA. Accordingly, the Exchange proposes to charge \$0.0006 per share for an order routed as a Destination Specific Order to EDGA and executed on EDGA, which is \$0.0001 per share less than EDGA charges directly. The Exchange's "One Under" pricing does not apply to securities priced below \$1.00. In addition, the Exchange will maintain

the pricing currently charged by the Exchange for all other Destination Specific Orders.

#### 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.<sup>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</sup> 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 believes that the proposed changes to certain of the Exchange's non-standard routing fees and strategies are competitive, fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror or provide a discount to the cost applicable to the execution if such routed orders were executed directly by the Member at EDGA Exchange.

### 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

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 Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder,<sup>11</sup> 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2011-028 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-2011-028. 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 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-2011-028 and should

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> As defined in BYX Rule 11.9(c)(12).

<sup>7</sup> As defined in BYX Rule 11.13(a)(3)(G).

be submitted on or before November 3, 2011.

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

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65497; File No. SR-BATS-2011-042]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Revenue Sharing Program With Correlix and a Free Trial Period for New Users of the Correlix Service

October 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or the "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 30, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Substance of the Proposed Rule Change

The Exchange is proposing to establish a revenue sharing program with Correlix, Inc. ("Correlix") and a free trial period for new subscribers to the Correlix service.

The text of the proposed rule change is available at the Exchange's Web site 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 purpose of the proposed rule change is to establish a revenue sharing program with Correlix. The Exchange has entered into an agreement with Correlix to provide to Users<sup>3</sup> of the Exchange real-time analytical tools to measure the latency of orders to and from the Exchange's system as well as the latency of market data updates transmitted from the Exchange systems to the User. Under the agreement, the Exchange will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Fees will apply separately for Users of the Exchange's cash equities platform and the Exchange's equity options platform. Pricing for the Correlix RaceTeam product for Users of the Exchange will be based on the number of ports requested by the User for monitoring by Correlix; each "port" is a FIX or binary order entry ("BOE") protocol connection to the Exchange. The fee for equities Users of the Exchange will be an initial \$2,500 monthly base fee for the first 25 ports requested by the User for latency monitoring, and an additional \$1,000 per month for each additional 25 ports (or portion thereof) requested by the User for latency monitoring. The fee for options Users of the Exchange will be an initial \$1,500 monthly fee for the first 25 ports requested by the User for latency monitoring, and an additional \$1,000 per month for each additional 25 ports (or portion thereof).

The use of ports as the basis of charging will permit order-related messages transmitted to the Exchange's cash equities platform and the Exchange's equity options platform to be differentiated and kept separate. For these purposes, the combination of port and User ID provides the mechanism for Users to receive latency data for their transactions on each particular

Exchange market. The Correlix RaceTeam product will include controls such that Users will not be able to obtain latency information about options orders through an equities port connection and vice versa.

Under the program, the Correlix data collector<sup>4</sup> will see an individualized unique identifier that will allow Correlix RaceTeam to determine round trip order time,<sup>5</sup> from the time the order reaches the Exchange, through the Exchange matching engine, and back out of the Exchange. The RaceTeam product offering does not measure latency outside of the Exchange. The unique identifier serves as a technological information barrier so that the Correlix data collector will only be able to view data for Correlix RaceTeam subscribers related to latency. The Correlix data collector will not see subscriber's individual order detail such as security, price or size. Individual RaceTeam subscribers' logins will restrict access to only their own latency data. The Correlix data collector will see no specific information regarding the trading activity of non-subscribers. The Exchange believes that the above arrangement will provide Users of the Exchange with greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

In addition, the Exchange proposes to establish a flexible 60-day free trial so parties will be eligible for one free 60-day trial period of Correlix services whenever they initially elect to sign-up for the service, now or in the future. The Exchange is proposing the flexible trial to ensure that all Correlix subscribers have an equal opportunity to take advantage of an initial free trial period.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that 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

<sup>4</sup> The Correlix data collector is a Correlix process that receives information from the Exchange that is subsequently taken into Correlix's systems for latency monitoring purposes.

<sup>5</sup> The product measures latency of orders whether the orders are rejected, executed, or partially executed.

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

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

<sup>12</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.

<sup>3</sup> A "User" is defined in BATS Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.