would enable Benchmark Orders and Child Orders generated by the Application to receive unfair or unreasonable preferential treatment by NASDAQ (such as through more effective access to the matching engine) as compared to orders generated by market participants that may choose to use a competing algorithm.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any others they may have identified with the Exchange's proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8) under the Act, or any other provision of the Act or rule or regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[21]

The Commission is asking that commenters address the merit of NASDAQ's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Specifically, the Commission is requesting comment on the following:

• What are commenters' views as to whether NASDAQ has adequately addressed the potential risks to the market related to the handling of Child Orders by NASDAQ's Application? How could such risks be addressed and mitigated by NASDAQ?

• What are commenters' views with regard to whether NASDAQ's proposal to offer trading algorithms that would compete with other market participants would impose an undue burden on competition or result in unfair discrimination? In this regard, has NASDAQ provided adequate assurances and information regarding whether or not it would offer preferential treatment to its service as compared to similar competing services offered by other market participants? For example, what are commenters' views regarding whether NASDAQ's proposal could allow for more effective access to the matching engine that could confer advantages related to timing, priority, or otherwise?

Interested persons are invited to submit written data, views and arguments regarding whether the proposal should be approved or disapproved by October 4, 2012. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 19, 2012. 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–NASDAQ–2012–059 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–NASDAQ–2012–059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NASDAQ. 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–NASDAQ–2012–059 and should be submitted on or before October 4, 2012. Rebuttal comments should be submitted by October 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20318 Filed 8–17–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67656; File No. SR–BYX–2012–018]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Y–Exchange, Inc. To Amend BYX Rules Related to Price Sliding Functionality

August 14, 2012.

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 August 3, 2012, BATS Y–Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I 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 Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] 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 amend Rule 11.9, entitled "Orders and Modifiers" to modify the operation of the Exchange's price sliding functionality described in Rule 11.9. The Exchange also proposes other minor changes, including changes to the terms used to describe price sliding and a cross-reference contained in Rule 11.13.

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[21] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[22] 17 CFR 200.30–3(a)(57).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

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

Background

The Exchange currently offers various forms of sliding which, in all cases, result in the re-pricing of an order to, or ranking and/or display of an order at, a price other than an order's limit price in order to comply with applicable securities laws and/or Exchange rules. Specifically, the Exchange currently offers price sliding to ensure compliance with Regulation NMS and Regulation SHO. Price sliding currently offered by the Exchange re-prices and displays an order upon entry and in certain cases again re-prices and re-displays an order at a more aggressive price one time if and when permissible, but does not continually re-price an order based on changes in the national best bid (''NBB'') or national best offer (''NBO'', and together with the NBB, the ''NBBO''). The Exchange proposes to modify both forms of price sliding in order to create an optional order handling behavior functionality that will continue to re-price, re-rank and/or re-display an order based on changes to the NBBO (''multiple price sliding''), as further described below. Multiple price sliding in the contexts for which it is being proposed will have to be elected by a User [5] in order to be applied by the Exchange. If a User elects to apply multiple price sliding to an order submitted to the Exchange, multiple price sliding will apply with respect to both display-price sliding and short sale price sliding in connection with the handling of the order by the Exchange. The Exchange also proposes to add language to make clear that display-price sliding is based on Protected Quotations [6] at equities exchanges other than the Exchange. If the Exchange has a Protected Quotation that an incoming order to the Exchange locks or crosses then such order either executes against the resting order, or, if the incoming order is a BATS Post Only Order or Partial Post Only at Limit Order, such order is executed in accordance with Rules 11.9(c)(6) and (c)(7), respectively, or cancelled back to the entering User, as described in further detail below.

Display-Price Sliding

With respect to price sliding offered to ensure compliance with Regulation NMS (''display-price sliding''),[7] under the Exchange's current rules, if, at the time of entry, a non-routable order would cross a Protected Quotation displayed by another trading center the Exchange re-prices and ranks such order at the locking price, and displays such order at one minimum price variation below the NBO for bids and above the NBB for offers. Similarly, in the event a non-routable order that, at the time of entry, would lock a Protected Quotation displayed by another trading center, the Exchange displays such order at one minimum price variation below the NBO for bids and above the NBB for offers.

As an example of display-price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable bid to buy 100 shares at $10.12 per share the Exchange will rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.12 would lock an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy and display it at its ranked price (and limit price) of $10.12.

The Exchange proposes to modify the description of price sliding to make clear that price sliding is generally applied to orders that are eligible for display, as such orders would violate Rule 610(d) of Regulation NMS if they were displayed by the Exchange at a price that locked or crossed a Protected Quotation. As described in further detail below, certain price sliding is also applied to Non-Displayed Orders, and the Exchange has proposed certain changes intended to clarify the application of such price sliding.

The Exchange currently permits Users to instruct the Exchange not to apply price sliding functionality to their orders. As one variation of this instruction, the Exchange currently allows Users to elect to apply display-price sliding only to the extent a display-eligible order at the time of entry would create a violation of Rule 610(d) of Regulation NMS by *locking* a Protected Quotation of an external market (''lock-only display-price sliding''). For Users that select this order handling, price sliding is not applied and any display-eligible order is instead cancelled if, upon entry, such order would create a violation of Rule 610(d) of Regulation NMS by *crossing* a Protected Quotation of an external market. The lock-only display-price sliding option is a variation of display-price sliding that is intended to allow Users to re-evaluate their orders and/or strategies in the event they are submitting orders to the Exchange that are crossing the market. Consistent with the goal of increasing the clarity of its price sliding rule, the Exchange proposes to modify its description of display-price sliding to clearly define the lock-only display-price sliding option.

As an example of lock-only display-price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.14 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable bid to buy 100 shares at $10.13 per share and the User has elected lock-only display-price sliding, the Exchange will cancel the order back to the User. To reiterate a basic example of display-price sliding, if instead the User applied display-price sliding (and not lock-only display-price sliding), the Exchange would rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.13 would cross an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy and display it at $10.12.

The Exchange proposes to modify the description of display-price sliding so that any order subject to display-price sliding will retain its original limit price irrespective of the prices at which such

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

[6] As defined in BYX Rule 1.5(t), a ''Protected Quotation'' is ''a quotation that is a Protected Bid or Protected Offer.'' In turn, the term ''Protected Bid'' or ''Protected Offer'' means ''a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.''

[7] The Exchange's Rules currently describe this functionality as ''NMS price sliding'' but the Exchange proposes to rename such functionality ''display-price sliding.''

order is ranked and displayed. Accordingly, the Exchange also proposes to clarify language throughout its descriptions of display-price sliding to refer to the ranking and display of an order rather than using the term re-price. In order to ensure compliance with Regulation NMS, as it does today, the Exchange will rank orders subject to display-price sliding at the locking price and will display such orders at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers).

The Exchange also proposes to amend its existing description of display-price sliding to state that when an order is displayed by the Exchange through the display-price sliding process the Exchange will display such order at the most aggressive permissible price. The Exchange's current description of display-price sliding states that orders that are re-displayed by the Exchange receive new timestamps when this new display price is established. The Exchange proposes to retain this language but also to make clear that all orders that are re-ranked and re-displayed pursuant to display-price sliding will retain their priority as compared to other orders subject to display-price sliding based upon the time such orders were initially received by the Exchange. Finally, the proposed description of price sliding also states that following the initial ranking and display of an order subject to display-price sliding, an order will only be re-ranked and re-displayed to the extent it achieves a more aggressive price.

In order to offer multiple price sliding to Exchange Users, the Exchange proposes to make clear that the ranked and displayed prices of an order subject to display-price sliding may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO. As noted above, multiple price sliding is optional and must be explicitly selected by a User before it will be applied. The Exchange proposes to make clear that the default display-price sliding process will only adjust the ranked and displayed prices of an order upon entry and then the displayed price one time following a change to the prevailing NBBO. As explained throughout this filing, orders subject to multiple price sliding will be permitted to move all the way back to their most aggressive price, whereas orders subject to the current handling may not be adjusted to their most aggressive price, depending upon market conditions.

As an example of multiple price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.14 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable bid to buy 100 shares at $10.13 per share, the Exchange would rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.13 would cross an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy, rank it at $10.13 and display it at $10.12. Under current price sliding functionality, the Exchange would not further adjust the ranked or displayed price following this un-slide. However, under multiple price sliding, if the NBO then moved to $10.14, the Exchange would un-slide the bid to buy and display it at its full limit price of $10.13.

The Exchange offers display-price sliding functionality to avoid locking or crossing other markets' Protected Quotations, but does not price slide to avoid executions on the Exchange's order book (''BATS Book'').[8] Specifically, when the Exchange receives an incoming order that could execute against resting displayed liquidity but an execution does not occur because such incoming order is designated as an order that will not remove liquidity (i.e., a BATS Post Only Order),[9] then the Exchange will cancel the incoming order. The Exchange proposes to make clear in the description of display-price sliding that any display-eligible BATS Post Only Order that locks or crosses a Protected Quotation displayed by the Exchange upon entry will not be price slid upon entry but will be executed as set forth in Rule 11.9(c)(6) or cancelled. Similarly, the Exchange proposes to make clear that any display-eligible Partial Post Only at Limit Order that locks or crosses a Protected Quotation displayed by the Exchange upon entry will be executed as set forth in Rule 11.9(c)(7) or cancelled. The Exchange also proposes to make clear that any display-eligible BATS Post Only Order or Partial Post Only at Limit Order that locks or crosses a Protected Quotation displayed by an external market upon entry will be subject to the display-price sliding process. Consistent with the principal of not price sliding to avoid executions, in the event the NBBO changes such that a BATS Post Only Order subject to display-price sliding would un-slide and would be ranked at a price at which it could remove displayed liquidity from the BATS Book (i.e., when the Exchange is at the NBB or NBO) the Exchange proposes to execute[10] or cancel such order.

The Exchange previously proposed changes to its existing order handling procedures to permit BATS Post Only Orders to be posted to the BATS Book to join the NBB or NBO, as applicable, even when such orders would be posted at prices equal to opposite-side orders ranked at the same price.[11] Consistent with this previously adopted change, the Exchange proposes to add language stating that BATS Post Only Orders will be permitted to post and be displayed opposite the ranked price of orders subject to display-price sliding. As is the case today, in the event an order subject to display-price sliding is ranked on the BATS Book with a price equal to an opposite side order displayed by the Exchange, it will be subject to processing as set forth in Rule 11.13(a)(1).

As an example of the Exchange's handling of BATS Post Only Orders in the context of price sliding, assume the Exchange has a posted and displayed

[8] The Exchange notes that it inadvertently constructed an example in a previous rule filing that contradicts this statement. Specifically, in Example 5 of SR–BYX–2011–009, in order to establish the possibility of an order that has been price slid and has a working price ranked at the same price as an order displayed by the Exchange on the opposite side of the market, the Exchange explained that an incoming BATS Post Only bid at $10.11 would price slide if it locked an offer displayed by the Exchange at $10.11. *See* Securities Exchange Act Release No. 64476 (May 12, 2011), 76 FR 28826, 28828 (May 18, 2011) (SR–BYX–2011–009) (the ''Order Handling Filing''). However, at the time of the Order Handling Filing, under the current behavior, and as proposed, the Exchange would not price slide a BATS Post Only order to avoid an execution against an order displayed by the Exchange. The Exchange notes that Example 5 from the Order Handling Filing would be accurate if instead the incoming bid at $10.11 locked a protected offer *displayed by an external market and not also displayed by the Exchange,* was price slid and displayed at $10.10, ranked at $10.11, and BATS subsequently received a BATS Post Only offer at $10.11. In other words, the outcome would be the same as set forth in Example 5, insofar as the price slid order could ultimately have a ranked price that locks the contra-side, however the sequence leading up to that outcome neither is nor was possible as described because the Exchange does not price slide to avoid executions against the BATS Book.

[9] The Exchange notes that it recently proposed and implemented a change to Rule 11.9(c)(6) regarding the Exchange's handling of BATS Post Only Orders to permit such orders to 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. *See* Securities Exchange Act Release No. 67092 (June 1, 2012), 77 FR 33800 (June 7, 2012) (SR–BYX–2012–009).

[10] As noted above, the Exchange will execute a BATS Post Only Order in certain circumstances where it would receive price improvement. *See id.*

[11] *See* Order Handling Filing, *supra* note 8.

bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.12 per share. Assume the NBBO (including Protected Quotations of other external markets) is also $10.10 by $10.12. If the Exchange receives a BATS Post Only Order bid to buy 100 shares at $10.12 per share, unless executed pursuant to Rule 11.9(c)(6),[12] the Exchange would cancel the order back to the User because absent the BATS Post Only designation the $10.12 bid would be able to remove the $10.12 offer, and, as explained above, the Exchange does not offer price sliding to avoid executions against orders displayed by the Exchange.

If the Exchange did not have a displayed offer to sell at $10.12 in the example above, but instead the best offer on the Exchange's book was $10.13, the Exchange would apply price sliding to the incoming bid by ranking such order at $10.12 and displaying the order at $10.11. The Exchange's order book would now be displayed as $10.11 by $10.13. Assume, however, that after price sliding the incoming bid from $10.12 to a display price of $10.11, the Exchange received a BATS Post Only offer to sell for $10.12, thus joining the NBO. As noted above, pursuant to previously adopted changes, BATS Post Only Orders are permitted to post and be displayed opposite the ranked price of orders subject to display-price sliding. Accordingly, the Exchange would allow such the incoming BATS Post Only offer at $10.12 to post and display on the Exchange's order book, as described above, with an opposite side price slid order ranked at $10.12 but displayed at $10.11. Assume that next the Protected Offers displayed by all external markets other than the Exchange moved to $10.13. In this situation the Exchange would un-slide but then cancel the bid at $10.12 because, as proposed, in the event the NBBO changes such that a BATS Post Only Order subject to display-price sliding would un-slide and would be ranked at a price at which it could remove displayed liquidity from the BATS Book (i.e., when the Exchange is at the NBB or NBO) the Exchange proposes to execute[13] or cancel such order.

The Exchange currently applies display-price sliding to Non-Displayed Orders that cross Protected Quotations of external markets as well. The Exchange proposes language that makes clear that this functionality is offered both upon entry and once an order has been posted to the Exchange's order book in order to avoid potentially trading through Protected Quotations of external markets. The proposed rule states that Non-Displayed Orders that are subject to display-price sliding are ranked at the locking price on entry. The proposed description also makes clear that display-price sliding for Non-Displayed Orders is functionally equivalent to the handling of displayable orders except that such orders will not have a displayed price and will not be re-priced again unless such orders cross a Protected Quotation of an external market (i.e., such orders are not unslid).

As an example of the Exchange's handling of Non-Displayed Orders in the context of price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share. Assume the NBBO is $10.10 by $10.11. If the Exchange receives a Non-Displayed Order bid to buy 100 shares at $10.12 per share, the Exchange would re-price the order to a $10.11 bid to buy to avoid potentially trading through the $10.11 offer displayed as the NBO (i.e., to ensure the Exchange will not allow the bid to trade at $10.12 per share). In the event the NBBO moved to $10.09 by $10.10, the Exchange would again re-price the Non-Displayed bid to buy 100 shares to $10.10 per share. If the NBBO then moved to $10.10 by $10.11, the Non-Displayed bid would not be re-priced to $10.11, but would remain on the Exchange's order book at $10.10.

As described above, the Exchange has proposed to offer multiple price sliding to Exchange Users that opt-in to the functionality. The remaining changes described above are intended to clarify and expand upon the written description of display-price sliding, but do not represent changes to the existing functionality offered by the Exchange. Consistent with achieving better clarity, the Exchange has proposed structural changes to the description of display-price sliding by separating the description into several sub-paragraphs.

Short Sale Price Sliding

With respect to price sliding offered to ensure compliance with Regulation SHO (''short sale price sliding''), when an order cannot be executed or displayed in compliance with Rule 201 of Regulation SHO,[14] the Exchange currently re-prices short sale orders to one minimum price variation above the current NBB (''Permitted Price''). In order to describe this re-pricing, the Exchange proposes to add the term ''Permitted Price'' to its description of short sale price sliding. In order to offer multiple price sliding in the short sale price sliding context, the Exchange proposes to amend its rules to state that depending upon the instructions of a User, to reflect declines in the NBB the System will continue to re-price a short sale order at the Permitted Price down to the order's original limit price. Accordingly, short sale orders subject to multiple price sliding that are adjusted to lower price levels due to a decline to the NBB will be priced at one minimum price variation above the current NBB. As is true for display-price sliding, multiple price sliding is optional and must be explicitly selected by a User before it will be applied. The Exchange's default short sale sliding process will only re-price an order upon entry. Accordingly, there will be no change to existing Users of short sale price sliding due to the proposed introduction of multiple price sliding unless such Users opt-in to the functionality.

As an example of the Exchange's current short sale price sliding, which adjusts the price of an order only upon entry, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share.[15] Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable offer to sell 100 shares at $10.10 per share and the order is marked ''short'' the Exchange will rank and display the order to sell at $10.11 because executing the short sale at $10.10, the NBB, would be in contravention of Regulation SHO. The result would be the same if the Exchange had no bids at $10.10 because the Exchange cannot display an order marked ''short'' at the current NBB (such display would also lock the protected quote of an external market). If the NBB then moved to $10.09, under existing handling, the Exchange would not re-price or re-display the order, but instead would leave it as a displayed offer to sell 100 shares at $10.11. Under multiple price sliding, however, the Exchange would re-price and display the offer at $10.10 if the NBB moved to $10.09. If, in the example above, the NBB instead moved upwards to $10.11, the Exchange would not re-price or

[12] *See supra* note 9.

[13] As noted above, the Exchange will execute a BATS Post Only Order in certain circumstances where it would receive price improvement. *See supra* note 9.

[14] 17 CFR 242.201.

[15] For purposes of these examples, Rule 201's short sale price test is assumed to be in effect for the security at the time.

restrict execution of the resting $10.11 offer under either type of short sale price sliding. The Exchange notes that if this were the case, its quotation would be locked.

In addition to changes to the description of short sale price sliding to add the option of multiple price sliding, the Exchange proposes various changes to improve the accuracy and the clarity of the description of short sale price sliding. For instance, the Exchange proposes to make clear that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the System may execute a displayed short sale order at a price below the Permitted Price if, at the time of initial display of the short sale order, the order was at a price above the then current NBB. The Exchange also proposes to make clear that orders marked ''short exempt'' will not be subject to short sale price sliding.

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.[16] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[17] 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 facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange believes that the proposed changes to price sliding are consistent with Section 6(b)(5) of the Act,[18] as well as Rule 610 of Regulation NMS [19] and Rule 201 of Regulation SHO.[20] The Exchange is not modifying the overall functionality of price sliding, which, to avoid locking or crossing quotations of other market centers or to comply with applicable short sale restrictions, displays orders at permissible prices while retaining a price at which the User is willing to buy or sell, in the event display at such price or an execution at such price becomes possible. Instead, the Exchange is making changes to adopt an optional form of price sliding, multiple price sliding, and to clarify portions of its Rules that describe price sliding.

Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid ''[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.'' [21] Such rules must be ''reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock,'' and must ''prohibit * * * members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock.'' [22] Thus, display-price sliding offered by the Exchange, assists Users by displaying orders at permissible prices. Similarly, Rule 201 of Regulation SHO [23] requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a price at or below the current NBB under certain circumstances. The Exchange's short sale price sliding will continue to operate consistent with this rule, however, if a User opts-in to multiple price sliding, the Exchange will re-price a short sale order based on declines to the NBB. If, instead, a User maintains the default form of price sliding, the Exchange will only re-price and display an order subject to short sale price sliding upon entry but will not update the order to reflect declines to the NBB. The Exchange notes that the proposed descriptions of price sliding will also more closely mirror the description used by at least one of its competitors, the Nasdaq Stock Market LLC (''Nasdaq''), and thus will help to avoid confusion amongst Exchange Users that also utilize analogous functionality at Nasdaq.

(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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6)(iii) thereunder.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2012–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2012–018. 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

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] 17 CFR 242.610.

[20] 17 CFR 242.201.

[21] 17 CFR 242.610(d).

[22] *Id.*

[23] 17 CFR 242.201.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the 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.

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2012–018 and should be submitted on or before September 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20319 Filed 8–17–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67653; File No. SR–FICC–2012–06]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing Proposed Change To Move the Time at Which the Mortgage-Backed Securities Division Runs Its Daily Morning Pass

August 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 6, 2012, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed change described in Items I, II and III, below, which Items have been prepared primarily by FICC. The Commission is publishing this Notice to solicit comments on the proposed change from interested persons.

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

FICC proposes to move the time at which its Mortgage-Backed Securities Division (''MBSD'') runs its first processing pass of the day from 2 p.m. to 4 p.m. Eastern Standard Time. The proposed change does not require revisions to MBSD's rules because those rules do not address the times of MBSD's processing passes. Even so, FICC is notifying its members and the public of the proposed change via this filing in an effort to provide them with adequate notice.

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

In its filing with the Commission, FICC included statements concerning the purpose and basis for the proposed change and discussed any comments it received on the proposed change. The text of these statements and comments may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.[3]

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

The purpose of this filing is to notify members that MBSD intends to move the time at which it runs its first processing pass of the day (historically referred to as the ''AM Pass'') from 2 p.m. to 4 p.m. Eastern Standard Time. MBSD also executes an evening pass (referred to as the ''PM Pass'') at 8 p.m. Eastern Standard Time, which will remain unchanged. On days when MBSD executes its To-Be-Announced Netting cycle, this cycle immediately follows the completion of the first pass of the day. The proposed change to 4 p.m. for the first pass of the day will allow more trades to be included into the To-Be-Announced Net, which will assist in reducing both the amount of fails in the market and the related operational risk. The above change is being made at the request of the Securities Industry and Financial Markets Association (''SIFMA'') MBS Operations Committee. MBSD advised members of the proposed change via Important Notice dated August 1, 2012.

The proposed change does not require amendments to the text of the Rules of the MBSD. The effective date of this change will be announced to MBSD members via Important Notice, and is anticipated to be November 2, 2012, subject to the Commission's approval.

FICC believes the proposed change is consistent with the requirements of the Act, including Section 17A,[4] and the rules and regulations thereunder applicable to FICC. Specifically, FICC believes the proposed change will foster the prompt and accurate clearance and settlement of securities transactions because a greater proportion of transactions will be included in the net, fewer fails will result, and operational risk will therefore be reduced.

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

FICC does not believe that the proposed change will have any impact, or impose any burden, on competition.

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

FICC will notify the Commission of any written comments received by FICC.

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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed change, or

(B) Institute proceedings to determine whether the proposed 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 change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or by sending an email to *rule-comments@sec.gov*. Please include File No. SR–FICC–2012–06 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange

[26] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries provided by FICC.

[4] 15 U.S.C. 78q–1.