

filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2012-051 and should be submitted on or before December 27, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68324; File No. SR-ISE-2012-89]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Gateway Fees

November 30, 2012.

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 November 20, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 ISE proposes to adopt gateway fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.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 self-regulatory organization 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 self-regulatory organization 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

Prior to the launch of the Optimise trading system, ISE Members were able to lease "gateway" equipment, i.e., Routers, Switches and Servers, through ISE to connect to the Exchange. Members also were able to use their own equipment, which ISE managed. With the launch of the Optimise trading system, ISE began to maintain shared gateways at its datacenters without charging any fees to Members and removed the gateway fees it previously charged from its Schedule of Fees.<sup>3</sup>

The Exchange now proposes to adopt monthly gateway fees. Specifically, the Exchange proposes to adopt a monthly fee of \$250 per shared gateway. Also, some Members have requested their own dedicated gateways as an alternative to using the shared gateways. While the shared gateways provide for full redundancy and the same latency, these Members nevertheless desire their own dedicated gateways as a risk management alternative. To accommodate these Members, the Exchange proposes to adopt an optional dedicated gateway offering for a monthly fee of \$2,000 per dedicated gateway pair.<sup>4</sup>

ISE has expended significant amount of resources in developing this infrastructure and the proposed gateway fees will be used to recover the costs the Exchange incurs in providing and maintaining this infrastructure. With this proposed rule change, Members will have the ability to utilize a shared gateway or, if they have [sic] choose,

utilize a dedicated gateway. The use of the dedicated gateway is voluntary and therefore, Members who do not opt for a dedicated gateway will be able to connect to the Exchange through a shared gateway.

The Exchange has designated this proposal to be operative on December 3, 2012.

###### 2. Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 ("Act"),<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. In particular, the proposed rule change will provide greater transparency into the connectivity options available to Members.

The Exchange believes that the proposed rule change constitutes an equitable allocation of fees because all similarly situated Members would be charged the same amount, based on their preference for either a shared gateway or a dedicated gateway. While Members may opt for a dedicated gateway, those that do not will continue to be able to access the Exchange via a shared gateway. And both gateway options provide full redundancy and the same latency. Thus, access to the Exchange would continue to be offered on fair and non-discriminatory terms.

The Exchange also believes the proposed fee for a dedicated gateway is equitably allocated in that all Exchange Members that opt for a dedicated gateway will be charged the same amount. All Exchange Members have the option to select a dedicated gateway connection and those that choose not to will continue to access the Exchange via a shared gateway.

With respect to the increase in fees, the proposed fee change for gateways is expected to offset increasing connectivity costs, including costs for gateway software and hardware enhancements and resources dedicated to gateways development, quality assurance, and support.

The Exchange believes the proposed fees are not unfairly discriminatory in that all Exchange Members have the option of accessing the Exchange via shared gateways or dedicated gateways, and there is no differentiation among Members with regard to the fees charged for either option.

<sup>3</sup> See Securities Exchange Act Release No. 65861 (December 1, 2011), 76 FR 76463 (December 7, 2011) (SR-ISE-2011-77).

<sup>4</sup> For redundancy and load balancing purposes, Members that choose the dedicated gateway option would be connected to a pair of dedicated gateways for which the Exchange would charge one fee.

<sup>5</sup> 15 U.S.C. 78f.

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

<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.

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

The proposed rule change does not 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>7</sup> 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2012-89 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-ISE-2012-89. 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 20549-1090, 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 ISE's principal office and on its Internet Web site. 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-ISE-2012-89, and should be submitted on or before December 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-68329; File No. SR-BYX-2012-022]**

### **Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Availability of Risk Management Tools**

November 30, 2012.

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 November 19, 2012, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

III below, which Items have been prepared by the Exchange. The 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 with the Commission a proposal [sic] codify the availability of a Risk Management Tool (the "Tool") currently made available in connection with sponsored access and to expand the availability of the Tool to all Exchange Members.<sup>3</sup> The Tool is currently available only to Members that provide sponsored access to other market participants, as described below.

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 defines a "Sponsored Participant" as a person who has entered into a sponsorship arrangement with a Sponsoring Member.<sup>4</sup> A "Sponsoring Member" is defined as a broker-dealer that is a Member of the Exchange and has been designated by a Sponsored Participant to execute, clear and settle transactions occurring on the Exchange.<sup>5</sup> Under BYX Rule 11.3(b), a Sponsoring Member may allow its customers to enter orders directly into the trading systems of the Exchange as Sponsored Participants, without the

<sup>3</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

<sup>4</sup> See BYX Rule 1.5(w).

<sup>5</sup> See BYX Rule 1.5(x).

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

<sup>8</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.