

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78631; File No. SR-BatsBYX-2016-21)

August 22, 2016

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.22, Data Products, to Adopt a New Market Data Product known as BYX Summary Depth

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 11, 2016, Bats BYX 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 Act³ and Rule 19b-4(f)(6) 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 filed a proposal to amend Rule 11.22 to adopt a new market data product known as BYX Summary Depth.

The text of the proposed rule change is available at the Exchange’s website at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.22 to adopt a new market data product known as BYX Summary Depth.⁵ BYX Summary Depth would be a data feed that offers aggregated two-sided quotations for all displayed orders entered into the System⁶ for up to five (5) price levels for securities traded on the Exchange and for which the Exchange reports quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan. BYX Summary Depth also contains the individual last sale information, Market Status, Retail Liquidity Identifier, Trading Status, and Trade Break messages. The individual last sale information will include the price, size, and time of execution. The last sale message will also include the cumulative number of shares executed on the Exchange for that trading day. The Exchange will disseminate the aggregate Best Bid and Offer (“BBO”) and last sale information through BYX Summary Depth

⁵ Currently, the paragraphs within Rule 11.22 skip from paragraph (i) to paragraph (k). The Exchange now proposes to renumber current paragraph (k) to Rule 11.22 to as paragraph (j) to ensure the paragraphs within the rule are consecutively numbered.

⁶ “System” is defined as the “the electronic communications and trading facility designated by the Board through which securities orders of Users Are consolidated for ranking, execution and, when applicable, routing away.” See Exchange Rule 1.5(aa).

no earlier than it provides its BBO and last sale information to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The Market Status message will reflect a change in the status of the Exchange. For example, the Market Status message would indicate whether the Exchange is experiencing a systems issue or disruption resulting in quotation or trade information not currently being disseminated as part of the aggregated BBO. The Market Status message will also indicate when Exchange has resolved a systems issue or disruption and is properly reflecting the status of the aggregated BBO. The Retail Liquidity Identifier indicator message will be disseminated pursuant to the Exchange's Retail Price Improvement ("RPI") Program.⁷ The Retail Liquidity Identifier indicates when RPI interest priced at least \$0.001 better than BYX's Protected Bid or Protected Offer for a particular security is available. The Exchange proposes to disseminate the Retail Liquidity Indicator via the BYX Summary Feed in the same manner as it is currently disseminated through consolidated data streams (i.e., pursuant to the Consolidated Tape Association Plan/Consolidated Quotation Plan, or CTA/CQ, for Tape A and Tape B securities, and the Nasdaq UTP Plan for Tape C securities) as well as through other proprietary data feeds. The Retail Liquidity Identifier will reflect the symbol and the side (buy or sell) of the RPI interest, but does not include the price or size of the RPI interest. In particular, like CQ and UTP quoting outputs, the BYX Summary Feed will include a field for codes related to the Retail Price Improvement Identifier. The codes indicate RPI interest that is priced better than Exchange's

⁷ For a description of the RPI Program, see BYX Rule 11.24. See also Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 2, to Adopt a Retail Price Improvement Program); Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (August 31, 2012) (SR-BYX-2012-019) (Notice of Filing of Proposed Rule Change to Adopt a Retail Price Improvement Program).

Protected Bid or Protected Offer by at least the minimum level of price improvement required by the Program. The Trade Break message will indicate when an execution is broken in accordance with Exchange rules.⁸ The Trading Status message will indicate the current trading status of a security on the Exchange. For example, a Trading Status message will be sent when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (“Short Sale Circuit Breaker”),⁹ or when the security is subject to a trading halt, suspension or pause declared by the listing market. A Trading Status message will be sent whenever a security’s trading status changes.

The Exchange intends to offer BYX Summary Depth as of January 3, 2017. Prior to January 3, 2017, the Exchange will file a separate rule change with the Commission proposing fees to be charged for BYX Summary Depth.¹⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and

⁸ See, e.g., Exchange Rule 11.17, Clearly Erroneous Executions.

⁹ 17 CFR 242.200(g); 17 CFR 242.201

¹⁰ The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt rules and fees for the Book Viewer data feed with the Commission. The Exchange’s affiliates are Bats EDGA Exchange, Inc., (“EDGA”), Bats EDGX Exchange, Inc. (“EDGX”), and Bats BZX Exchange, Inc. (“BZX”) (“collectively, the “Bats Exchanges”).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of BYX Summary Depth. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time depth-of-book information contained in BYX Summary Depth.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act¹³ in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability of information with respect to quotations for and transactions in securities to brokers, dealers, and investors. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁴ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. BYX Summary Depth would be accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue their use at any time and for any reason.

¹³ 15 U.S.C. 78k-1.

¹⁴ See 17 CFR 242.603.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS – by lessening regulation of the market in proprietary data – would itself further the Act’s goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.¹⁵

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

In addition, BYX Summary Depth removes impediments to and perfects the mechanism of a free and open market and a national market system by providing investors with alternative market data and competing with similar market data products currently offered by the New York Stock Exchange, Inc. (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”).¹⁶ The provision

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04) (“Regulation NMS Adopting Release”).

¹⁶ See Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView as a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). See NYSE

of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.¹⁷

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.¹⁸ The Exchange believes that the proposal will promote competition by enabling the Exchange to offer

OpenBook available at <http://www.nyxdata.com/openbook> (last visited July 5, 2016) (providing real-time view of the NYSE limit order book including the aggregated size at each price level). See Securities Exchange Act Release Nos. 46843 (November 18, 2002), 67 FR 70471 (November 22, 2002) (SR-NASD-2002-33) (order approving fees for Nasdaq TotalView); and 45138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR-NYSE-2001-42) (order approving fees for NYSE OpenBook).

¹⁷ See Regulation NMS Adopting Release, supra note 14.

¹⁸ The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on each of the Bats Exchanges and for the Bats Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the "Bats One Summary Feed"). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels ("Bats One Premium Feed"). See Exchange Rule 11.22(i). See also Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order"). The Exchange uses the following data feeds to create the Bats One Feed, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX PITCH Feed, and the BZX PITCH Feed. The Exchange notes that a vendor could utilize the proposed BYX Summary Depth Feed, as well as the summarized depth feeds to be proposed by BZX, EDGA, and EDGX to create a competing product to the Bats One Feed. Supra note 10. The Exchange represents that a competing vendor could obtain these data feeds from each Bats Exchange on the same latency basis as the system that performs the aggregation and consolidation of the Bats One Feed. See Bats One Approval Order. While the proposed BYX Summary Depth Feed does not contain the symbol summary or consolidated volume data included in the Bats One Feed, a vendor could include this information in a competing product as this information is easily derivable from the proposed feeds or can be obtained from the securities information processors on the same terms as the Exchange.

a market data product similar to that currently offered by the NYSE and Nasdaq.¹⁹ Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges.

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 Change and Timing for Commission Action

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 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 Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

¹⁹ See supra note 16.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 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.

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. Please include File No. SR-BatsBYX-2016-21 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-BatsBYX-2016-21. 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 website (<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 10:00 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 No. SR-BatsBYX-2016-21, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Robert W. Errett
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).