

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-MIAX-2017-39 and should be submitted on or before September 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81368; File No. SR-BatsBYX-2017-18]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Retail Price Improvement Program, To Extend the Pilot Period

August 10, 2017.

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 8, 2017, 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)(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 filed a proposal to extend the pilot period for the Exchange's Retail Price Improvement ("RPI") Program (the "Program"), which was set to expire on July 31, 2017, for 12 months, to expire on July 31, 2018.

The text of the proposed rule change is available at the Exchange's Web site at www.bats.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

In November 2012, the Commission approved the RPI Program on a pilot basis.⁵ The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, all Exchange Users⁶ are permitted to provide potential price improvement for Retail Orders⁷ in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation ("Protected NBB") or the national best offer that is a Protected Quotation ("Protected

NBO", and together with the Protected NBB, the "Protected NBBO").⁸

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.⁹ The Commission approved the Program on November 27, 2012.¹⁰ The Exchange implemented the Program on January 11, 2013, and has extended the pilot period four times.¹¹ The pilot period for the Program expired on July 31, 2017. The lapse of the pilot was inadvertent and this filing seeks to reinstate the pilot under the same terms as the original pilot.

Proposal To Extend the Operation of the Program

The Exchange established the RPI Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit Retail Price Improvement Orders ("RPI Orders")¹² to interact with Retail Orders. Such competition has the ability

⁸ The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO", together with the NBB, the "NBBO") will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

⁹ See RPI Approval Order, *supra* note 5 at 71652.

¹⁰ *Id.*

¹¹ See Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR-BYX-2014-001) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the Retail Price Improvement Program); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR-BYX-2015-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for BATS Y-Exchange, Inc.'s Retail Price Improvement ("RPI") Program for 12 Months, To Expire on January 31, 2016); 76965 (January 22, 2016), 81 FR 4682 (January 27, 2016) (SR-BYX-2016-01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Retail Price Improvement Program, To Extend the Pilot Period); 78180 (June 28, 2016), 81 FR 43306 (July 1, 2016) (SR-BYX-2016-15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Retail Price Improvement Program, To Extend the Pilot Period).

¹² A "Retail Price Improvement Order" is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least \$0.001 and that is identified as such. See Rule 11.24(a)(3).

⁵⁵ 17 CFR 200.30-3(a)(12).

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).

⁵ See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) ("RPI Approval Order") (SR-BYX-2012-019).

⁶ A "User" is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

⁷ A "Retail Order" is defined in Rule 11.24(a)(2) as an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology. See Rule 11.24(a)(2).

to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to gather and analyze data regarding the Program that the Exchange has committed to provide.¹³ As such, the Exchange believes that it is appropriate to extend the current operation of the Program.¹⁴ Through this filing, the Exchange seeks to extend the current pilot period of the Program until July 31, 2018.

2. Statutory Basis

The Exchange believes that its proposal 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.¹⁵ In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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 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 extending the pilot period for the RPI Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price

discovery, and on the broader market structure.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change extends an established pilot program for 12 months, thus allowing the RPI Program to enhance competition for retail order flow and contribute to the public price discovery process.

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 written comments from Members or other interested parties.

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

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f)(6) of Rule 19b-4 thereunder,¹⁸ the Exchange has designated this rule filing as non-controversial.

The Exchange has requested the Commission waive the standard five-day pre-filing and 30-day operative delay requirements as specified in Rule 19b-4(f)(6)(iii)¹⁹ so that BatsBYX's RPI Program can continue to operate with limited interruption. The Commission waives the 5-day pre-filing requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to reinstate the RPI Program on a pilot basis immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.²⁰

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4.

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR-BatsBYX-2017-18 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-2017-18. 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 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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-2017-18 and should be submitted on or before September 6, 2017

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ See RPI Approval Order, *supra* note 5 at 71655.

¹⁴ Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the RPI orders in sub-penny increments. See Letter from Anders Franzon, SVP, Associate General Counsel, Bats BYX Exchange, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission dated August 7, 2017.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81370; File No. SR-Phlx-2017-64]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule

August 10, 2017.

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 July 31, 2017 NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 proposes to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY," and Section IV, Part A entitled "PIXL Pricing" to amend pricing related to PIXL³ executions.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 1, 2017.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PIXL™ is the Exchange's price improvement mechanism known as Price Improvement XL or PIXL. A member or member organization may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent ("Initiating Order"), provided it submits the PIXL order for electronic execution into the PIXL Auction pursuant to Rule 1080. See Exchange Rule 1080(n).

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY" and specifically, the section that pertains to PIXL Executions in Standard and Poor's Depository Receipts/SPDRs ("SPY").⁴ The Exchange also proposes to amend PIXL Pricing in Section IV, Part A, entitled "PIXL Pricing" for all other Multiply-Listed options symbols.

First, the Exchange proposes to increase the SPY Complex PIXL rebate it offers Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers⁵ 2 through 6 or qualify for the Monthly Firm Fee Cap. Presently, the Exchange offers a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The Exchange proposes to increase that rebate to \$0.12 per contract. In doing so, the Exchange desires to incentivize members or member organizations to

⁴ Options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY") are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

⁵ Section B of the Pricing Schedule contains Customer Rebate Tiers which are calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o). Rebates are paid on Customer Rebate Tiers according to certain categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Affiliated Entities may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. See Section B of the Pricing Schedule.

transact a greater number of SPY Complex PIXL Orders while also incentivizing members or member organizations to submit Customer order flow on Phlx.

Second, the Exchange proposes to increase the Complex PIXL (excluding SPY Options) rebate it offers to Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap. Presently, the Exchange offers a rebate of \$0.10 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of Complex SPY PIXL Orders in a month. The Exchange proposes to increase that rebate to \$0.12 per contract. In doing so, the Exchange desires to incentivize members and member organizations to transact a greater number of Complex PIXL Orders while also incentivizing members and member organizations to submit Customer order flow on Phlx to obtain the \$0.12 rebate on all Complex PIXL Orders (excluding SPY Options).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁸

Likewise, in *NetCoalition v. Securities and Exchange Commission*⁹ ("NetCoalition") the D.C. Circuit upheld

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

⁹ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).