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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65647, File No. SR-BYX-2011-021)

October 27, 2011

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Approving Proposed Rule Change to Amend and Restate the Second Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc.

## I. Introduction

On August 29, 2011, BATS Y-Exchange, Inc. (“BYX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the certificate of incorporation (“Certificate of Incorporation”) of BATS Global Markets, Inc. (“Corporation”) in connection with its anticipated initial public offering of shares of its Class A Common Stock (the “IPO”). The proposed rule change was published for comment in the Federal Register on September 14, 2011.<sup>3</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

On May 13, 2011, the Corporation filed a registration statement on Form S-1 with the Commission to register shares of Class A Common Stock (as defined below) and disclose its intention to conduct its IPO and to list those shares for trading on the Exchange. In connection with its IPO, the Exchange filed this proposed rule change to amend and restate the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Securities Exchange Act Release No. 65299 (September 8, 2011), 76 FR 56833 (September 14, 2011) (“Notice”).

Corporation's current Second Amended and Restated Certificate of Incorporation and adopt a Third Amended and Restated Certificate of Incorporation ("New Certificate of Incorporation").

A. Reclassification of Common Stock and Additional  
Authorized Shares

The Exchange has proposed to revise the Certificate of Incorporation to reclassify the Corporation's existing common stock, "Voting Common Stock" and "Non-Voting Common Stock." This reclassification will result in two classes of common stock, Class A and Class B. Class A will be designated as either "Class A Common Stock" or "Non-Voting Class A Common Stock." Class B will be designated as either "Class B Common Stock" or "Non-Voting Class B Common Stock." In connection with this reclassification, the Exchange has proposed certain voting rights,<sup>4</sup> transfer restrictions<sup>5</sup> and conversion features<sup>6</sup> for each class. The Class A Common Stock will have the right to one vote per share, while the Class B Common Stock will have the right to 2 ½ votes per share.

The Exchange notes that the purpose of the reclassification of the Corporation's common stock is to encourage the Corporation's existing strategic investors to remain strategic investors of the Corporation after the IPO.<sup>7</sup> In its proposal, BYX states that the Class B holders will in aggregate control a meaningful, but less than majority, percentage of the vote on matters coming

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<sup>4</sup> See generally proposed Section 4.04(a) of the New Certificate of Incorporation.

<sup>5</sup> See generally proposed Section 4.04(b) of the New Certificate of Incorporation.

<sup>6</sup> See generally proposed Section 4.04(c) of the New Certificate of Incorporation. Among the conversion features proposed, the Corporation proposes to have Class B shares automatically convert into Class A shares upon a Class B holder owning less than a 4,960,491 (approximately 2%) of the Corporation's outstanding common stock. See proposed Section 4.04(c)(v)(B) of the New Certificate of Incorporation.

<sup>7</sup> See Notice supra note 3, at 76 FR at 56835.

before the stockholders.<sup>8</sup> The Exchange also notes that the transfer restrictions balance the ability of existing strategic investors to orderly sell shares in the open market, while at the same time retaining strategic benefits to the Corporation of their significant ownership for a certain period of time, through their holdings of Class B shares.<sup>9</sup> Finally, the Exchange notes that its automatic conversion features are intended to ensure that only those investors with a significant economic investment in the company (approximately 2%) will own the Class B Common Stock.<sup>10</sup>

The proposed New Certificate of Incorporation would increase the number of shares the Corporation would be authorized to issue and would also give the Corporation the authority to issue 40 million shares of Preferred Stock, par value \$0.01 per share.<sup>11</sup>

B. Limitations on Ownership and Voting Power

As noted by the Exchange, the proposal maintains and enhances the limitations on aggregate ownership and total voting power that exist under the current Certificate of Incorporation.<sup>12</sup> The Exchange has also proposed to aggregate all shares of Class A Common Stock, Non-Voting Class A Common Stock, Class B Common Stock, Non-Voting Class B

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<sup>8</sup> See id.

<sup>9</sup> See id.

<sup>10</sup> See id.

<sup>11</sup> See proposed Section 4.01 of the proposed New Certificate of Incorporation. The total number of authorized shares the Corporation has authority to issue is 614,607,649.

<sup>12</sup> The relevant provisions of the Certificate of Incorporation impose a 40% ownership limit on the amount of capital stock of the Corporation that any person, either alone or together with its related persons, may own, directly or indirectly, of record or beneficially; a 20% ownership limit on the amount of capital stock of the Corporation that any member of the Exchange, either alone, or together with its related persons, may own directly or indirectly, of record or beneficially, and prohibit any person, either alone or together with its related persons, from having or exercising more than 20% of the voting power of the capital stock of the Corporation. See proposed Section 5.01(a)(i)-(iii) of the New Certificate of Incorporation.

Common Stock, and any series of Preferred Stock of the Corporation as a single class of capital stock of the Corporation for purposes of determining compliance with the ownership and voting limitations. The proposed New Certificate of Incorporation would explicitly include non-voting stock in the calculation of ownership applicable to non-Member shareholders.<sup>13</sup>

#### C. Bylaws and Future Amendments to the Certificate of Incorporation

Currently, the Certificate of Incorporation provides that either the Board of Directors or shareholders may adopt, amend, or repeal the Bylaws of the Corporation. The proposal would modify this provision so that, upon the change in ownership,<sup>14</sup> stockholders may only adopt, amend, or repeal the Bylaws upon the affirmative vote of at least 70% of the total voting power of all outstanding shares of the Corporation.<sup>15</sup>

#### D. Other Amendments

The proposal will amend and restate various other provisions of the current Certificate of Incorporation in a manner that the Exchange believes are intended to reflect provisions that are more customary for publicly-owned companies (such as those relating to the indemnification of directors and business combinations, among others).

### III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable

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<sup>13</sup> See proposed Section 5.01(b)(1) of the New Certificate of Incorporation.

<sup>14</sup> “Change of Ownership” would be defined as a transaction or series of transactions which results in the beneficial owners of the Class B Common Stock and Non-Voting Class B Common Stock owning in the aggregate less than a majority of the total voting power of all outstanding securities of the Corporation then entitled to vote generally in the election of directors, voting together as a single class. See proposed Section 6.01(b) of the New Certificate of Incorporation.

<sup>15</sup> See proposed Section 9.02(b) of the New Certificate of Incorporation.

to a national securities exchange.<sup>16</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,<sup>17</sup> which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with the provisions of the Act.

The Commission notes that the Exchange has represented that the proposed rule change relates solely to the Certificate of the Incorporation of the Corporation and that the Exchange will continue to be governed by its existing certificate of incorporation and by-laws.<sup>18</sup> The Exchange has also represented that the Corporation will continue to directly and solely hold all the stock in, and voting power of, the Exchange and that the Exchange will continue to operate pursuant to its existing governance structure.<sup>19</sup>

The Commission further notes that the Exchange has represented that the proposed rule change will maintain and enhance the existing ownership and voting limitations in the Certificate of Incorporation.<sup>20</sup> To this end, the Exchange has proposed to aggregate all classes of Common Stock and any Preferred Stock (if issued) of the Corporation for purposes of determining stockholder compliance with its ownership and voting limitations.<sup>21</sup> The proposed rule change would also include non-voting common stock in the calculations of such ownership limitations. As a result, the Commission believes that the proposed rule change should effectively maintain

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<sup>16</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78f(b)(1).

<sup>18</sup> See Notice, supra note 3, 76 FR at 56834.

<sup>19</sup> See id.

<sup>20</sup> See supra note 12 (discussing the limitations of ownership of capital stock of the Corporation to 40% for any Person and 20% for any member and voting power of capital stock of the Corporation to 20% for any Person).

<sup>21</sup> See proposed Section 5.01(b)(i) of the New Certificate of Incorporation.

and bolster the ownership and voting limits currently in place for the Corporation consistent with Section 6(b)(1) of the Exchange Act.

The Commission believes that the enhanced ownership and voting limitations should minimize the potential that a person, including members, could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Exchange Act. In addition, these limitations should protect against the instance whereby a member's interest in an exchange or an entity controlling the exchange becomes so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.

### III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-BYX-2011-021) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).