

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64055; File No. SR-BYX-2011-005)

March 8, 2011

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

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> notice is hereby given that on February 28, 2011, 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members<sup>5</sup> of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on March 1, 2011.

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

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 proposes to modify its fee schedule applicable to use of the Exchange effective March 1, 2011, in order to: (i) amend the liquidity fees for adding liquidity, including increased fees to add non-displayed liquidity and adoption of a fee to add displayed liquidity unless a Member has an average daily volume of 10 million shares or more added per day in a given month; (ii) reduce certain standard routing fees; and (iii) expand the Exchange's Discounted Destination Specific Routing program to include a rebate for Destination Specific Orders<sup>6</sup> routed to EDGA Exchange.

(i) Amending the Liquidity Fees for Adding Liquidity

The Exchange has not previously provided any rebate or imposed any charge for adding displayed liquidity to the BYX order book in securities priced \$1.00 and above. The Exchange

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<sup>6</sup> As defined in BYX Rule 11.9(c)(12).

proposes to introduce a tiered pricing structure applicable to added displayed liquidity in securities priced \$1.00 and above, under which Members adding a daily average of 10 million shares or more of liquidity (including displayed and non-displayed liquidity) during a month will continue to be able to add displayed liquidity without charge, while Members adding a daily average of less than 10 million shares of liquidity during a month will be charged \$0.0002 per share. Thus, while the fee change will result in a small fee increase for Members providing low volumes of liquidity on BYX, it will remain unchanged for Members providing higher volumes of liquidity.

The Exchange also proposes to increase its fee to add non-displayed liquidity to the BYX order book in securities priced \$1.00 and above from a charge of \$0.0005 per share to a charge of \$0.0010 per share. As defined on the BYX fee schedule, the reference to “non-displayed liquidity” for purposes of the fee schedule includes liquidity resulting from all forms of Pegged Orders,<sup>7</sup> Mid-Point Peg Orders,<sup>8</sup> and Non-Displayed Orders,<sup>9</sup> but does not include liquidity resulting from Reserve Orders<sup>10</sup> or Discretionary Orders.<sup>11</sup>

The Exchange does not propose to change its pricing structure for added liquidity in securities priced below \$1.00.

(ii) Reduced Standard Routing Fees

The Exchange proposes to reduce the fee that it charges for certain of its standard best execution routing strategies. The Exchange currently offers the Parallel D, Parallel 2D, CYCLE

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<sup>7</sup> As defined in BYX Rule 11.9(c)(8).

<sup>8</sup> As defined in BYX Rule 11.9(c)(9).

<sup>9</sup> As defined in BYX Rule 11.9(c)(11).

<sup>10</sup> As defined in BYX Rule 11.9(c)(1).

<sup>11</sup> As defined in BYX Rule 11.9(c)(10).

and RECYCLE routing strategies at a charge of \$0.0028 per share for executions that occur at other trading venues as a result of such strategies in securities priced \$1.00 and above.<sup>12</sup> The Exchange proposes to reduce the fee for use of such strategies to a charge of \$0.0026 per share to in order to encourage use of these strategies. To be consistent with this change, the Exchange proposes to charge 0.26%, rather than 0.28%, of the total dollar value of the executions at other trading venues as a result of Parallel D, Parallel 2D, CYCLE and RECYCLE in securities priced under \$1.00 per share.

(iii) Destination Specific Routing to EDGA Exchange

The Exchange currently provides a discounted fee for Destination Specific Orders routed to certain market centers (NYSE, NYSE Arca and NASDAQ), which, in each instance is \$0.0001 less per share for orders routed to such market centers by the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as “One Under” pricing). Consistent with this program, the Exchange proposes to adopt pricing for Destination Specific Orders routed to EDGA Exchange. Specifically, the Exchange proposes to provide a rebate of \$0.00025 per share for BYX + EDGA Destination Specific Orders executed at EDGA, which is \$0.0001 higher per share than the \$0.00015 per share rebate provided by EDGA for orders that remove liquidity.

The Exchange imposes a charge of \$0.0030 per share for Destination Specific Orders sent to and executed by any market center for which it does not have any separately identified pricing. Based on the change described above, the Exchange proposes to add EDGA to the list of market centers to which this charge does not apply.

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<sup>12</sup> The Exchange’s routing strategies are described in Rule 11.13(a)(3).

Consistent with the changes described above, the Exchange proposes to change the title of its Discounted Destination Specific Routing section to refer to the program as “One Under/Better,” rather than “One Under,” and to add reference to EDGA.

## 2. Statutory Basis

The Exchange believes that the proposed rule change 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 of the Act.<sup>13</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>14</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues.

While the establishment of tiered pricing for adding displayed liquidity to the Exchange’s order book will result in a small increase in fees for some Members, this fee still remains lower than other markets that impose a fee to add liquidity, such as EDGA Exchange and NASDAQ OMX BX. Similarly, while the Exchange’s proposal to increase the fee to add non-displayed liquidity to the Exchange will result in an increase in fees for Members that add non-displayed liquidity, this fee is lower than the fee to add liquidity (whether displayed or non-displayed) to NASDAQ OMX BX. As it relates to its differentiation between displayed and non-displayed liquidity, the Exchange believes that a fee structure that provides greater incentives to add

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<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

displayed liquidity than incentives to add non-displayed liquidity is fair and reasonable. In addition, to the extent the proposed changes will result in increased fees charged to Members, the Exchange believes that any additional revenue it receives will allow the Exchange to devote additional capital to its operations and to continue to offer competitive pricing, which, in turn, will benefit Members of the Exchange.

The reduction of the routing fee for several of the BYX standard routing options and the adoption of new pricing for a Destination Specific Order that offers improvement of the execution rebate offered by another market center are changes intended to attract order flow to BYX by offering competitive rates to Exchange Members for strategies that first check the BYX order book before routing to away venues. Accordingly, the Exchange's proposal will result in reduced fees that will benefit Members due to the obvious economic savings those Members will receive and the potential of increased available liquidity at the Exchange.

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

No written comments were solicited or received.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>15</sup> and Rule 19b-4(f)(2) thereunder,<sup>16</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to its members, which renders the proposed rule change effective upon filing.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2011-005 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-2011-005. 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 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 the principal offices 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-2011-005, 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.<sup>17</sup>

Cathy H. Ahn  
Deputy Secretary

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