

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69317; File No. SR-BYX-2013-012)

April 5, 2013

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 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 27, 2013, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members<sup>5</sup> and non-members 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 April 1, 2013.

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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 website 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule effective April 1, 2013, in order to amend the rebates that it provides for removing liquidity and to amend the fees that it charges for adding liquidity, as described in further detail below.

Rebates to Remove Liquidity

The Exchange currently offers a tiered pricing structure for executions that remove liquidity. Under the tiered pricing structure, a Member must add a daily average of at least 50,000 shares of liquidity on BYX Exchange in order to receive a rebate to remove liquidity. For Members that meet this requirement, the Exchange provides three different rebates, as described below.

The Exchange currently provides a rebate of \$0.0004 per share to remove liquidity for Members that have an average daily volume ("ADV") on the Exchange of at least 0.5% of the

total consolidated volume (“TCV”), a rebate of \$0.0003 per share to remove liquidity for Members that have an ADV on the Exchange of at least 0.25% but less than 0.5% of TCV, and a rebate of \$0.0002 per share to remove liquidity for Members that add the requisite number of shares of liquidity on BYX Exchange but do not qualify for a rebate based on TCV as set forth above. As with its other current tiered pricing, the daily average in order to receive the liquidity removal rebate is calculated based on a Member’s activity in the month for which the rebates would apply. For Members that do not reach a tier to receive the liquidity removal rebate, the Exchange does not currently provide rebate. The Exchange does not, however, charge such Members, but rather, provides such executions free of charge. The Exchange does not propose modifying the existing rebate structure for Members that do not achieve one of the three enhanced rebate tiers.

The Exchange does not propose to change the requirement that a Member add a daily average of at least 50,000 shares of liquidity on BYX Exchange in order to receive a rebate to remove liquidity. The Exchange proposes to increase by \$0.0003 per share the rebates provided to all Members that qualify for a liquidity removal tier. Specifically, the Exchange proposes to provide a rebate of \$0.0007 per share to remove liquidity for Members that have an ADV on the Exchange of at least 0.5% of TCV, a rebate of \$0.0006 per share to remove liquidity for Members that have an ADV on the Exchange of at least 0.25% but less than 0.5% of TCV, and a rebate of \$0.0005 per share to remove liquidity that add the requisite number of shares of liquidity on BYX Exchange but do not qualify for a rebate based on TCV as set forth above.

Consistent with the current fee structure, the fee structure for executions that remove liquidity from the Exchange described above will not apply to executions that remove liquidity in securities priced under \$1.00 per share. The fee for such executions will remain at 0.10% of the

total dollar value of the execution. Similarly, as is currently the case for adding liquidity to the Exchange, there will be no liquidity rebate for adding liquidity in securities priced under \$1.00 per share.

#### Fees to Add Liquidity

The Exchange currently maintains a tiered pricing structure for adding displayed liquidity in securities priced \$1.00 and above that allows Members to add liquidity at a reduced fee if they reach certain volume thresholds. The tiered pricing structure allows Members that qualify for reduced fees to add liquidity at a further reduced fee to the extent such liquidity sets the national best bid or offer (the “NBBO Setter Program”). The Exchange charges Members that maintain ADV on the Exchange of at least 0.5% of the total TCV during the month a liquidity adding fee of \$0.00025 per share on orders that set the NBBO and \$0.0003 per share on orders that do not set the NBBO. The Exchange charges Members that maintain ADV on the Exchange of at least 0.25% but less than 0.5% of the total TCV during the month a liquidity adding fee of \$0.00035 per share on orders that set the NBBO and \$0.0004 per share for orders that do not set the NBBO. The Exchange charges a liquidity adding fee of \$0.0005 per share to Members that do not qualify for a reduced fee based on their volume on the Exchange.

The Exchange proposes to increase its fees to add displayed liquidity for all Members by \$0.0002 per share. Specifically, the Exchange proposes to charge Members that maintain ADV on the Exchange of at least 0.5% of the total TCV during the month a liquidity adding fee of \$0.00045 per share on orders that set the NBBO and \$0.0005 per share on orders that do not set the NBBO. The Exchange proposes to charge Members that maintain ADV on the Exchange of at least 0.25% but less than 0.5% of the total TCV during the month a liquidity adding fee of \$0.00055 per share on orders that set the NBBO and \$0.0006 per share for orders that do not set

the NBBO. The Exchange proposes to charge Members that do not qualify for a reduced fee based on their volume on the Exchange a liquidity adding fee of \$0.0007 per share.

The Exchange notes that it does not propose to modify its existing definitions of “ADV” or “TCV” in connection with the changes described above. The Exchange notes that the definition of ADV used in conjunction with TCV for the NBBO Setter Program and the tiered pricing structures for executions that add and remove liquidity includes both a Member’s liquidity adding and removing activity. However, as today, the 50,000 shares added requirement necessary to achieve tiered pricing to remove liquidity only includes added volume.

## 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>6</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</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 changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also allowing the Exchange to continue to offer incentives to providing aggressively priced displayed liquidity. While Members that add liquidity to the Exchange will be paying higher fees due to

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

the proposal, the increased revenue received by the Exchange will be used to continue to fund programs that the Exchange believes will attract additional liquidity to the Exchange.

With respect to the proposed changes to the tiered pricing structure for removing liquidity from the Exchange, the Exchange believes that its proposal is reasonable because it will continue to be available to Members that achieve a relatively low threshold of added liquidity, and thus who contribute to the depth of liquidity generally available on the Exchange. By providing higher potential rebates to all qualifying Members, the Exchange is further incentivizing Members to participate in the growth of the Exchange. The increased rebates also provide additional incentive to Members that do not qualify for the tier to increase their participation on the Exchange in order to qualify. Volume-based tiers such as the liquidity removal tiers maintained by the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is equitably allocated and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

With respect to the increases to the fees charged to add displayed liquidity, the Exchange believes that the proposed fees are reasonable as such fees are still comparable to other market centers that charge to add displayed liquidity and represent only a slight increase from the

current fee levels. The Exchange notes that at least one market center charges a higher fee to add displayed liquidity.<sup>8</sup>

The Exchange believes that any additional revenue it receives based on the increases to fees set forth above 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. Further, the Exchange again notes that the tiered fee structure whereby Members meeting certain volume thresholds will receive reduced fees on their added liquidity executions is equitable and not unfairly discriminatory because it will be open to all Members on an equal basis the reduced fee is reasonably related to the value to the Exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process.

**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, as amended. Because the market for order execution is extremely competitive, Members may choose to preference other market centers ahead of the Exchange if they believe that they can receive better fees or rebates elsewhere. Further, because certain of the proposed changes are intended to provide incentives to Members that will result in increased activity on the Exchange, such changes are necessarily competitive. The Exchange also believes that its pricing for displayed orders is appropriately competitive vis-à-vis the Exchange's competitors. Further, the Exchange believes that continuing to incentivize the entry of aggressively priced, displayed liquidity fosters intra-market competition to the benefit of all market participants that enter

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<sup>8</sup> NASDAQ OMX BX charges up to \$0.0018 per share, with the potential for a slightly lower fee to the extent a participant meets certain quoting criteria.

orders to the Exchange. However, 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, as amended. The Exchange does not believe that any of the changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>10</sup> 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-2013-012 on the subject line.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f).



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-2013-012. 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 Number SR-BYX-2013-012 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).