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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70170; File No. SR-BYX-2013-025)

August 13, 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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 31, 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 Members⁵ 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 August 1, 2013.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule effective August 1, 2013, in order to: (i) lower the thresholds at which Members qualify for tiers related to lower fees for adding liquidity and higher rebates for removing liquidity; (ii) amend the rebates that it provides for removing liquidity; and (iii) amend the fees that it charges for adding liquidity. The Exchange is also proposing to correct a typographical error on its fee schedule.

Tiers and Trading Volume

The Exchange currently offers tiered pricing structures for both adding and removing liquidity. As part of this pricing structure, Members must also add a daily average (calculated monthly) of at least 50,000 shares of liquidity on the Exchange (the "Liquidity Add Requirement") in order to receive a rebate for removing liquidity. Under these tiered pricing structures, Members that have an average daily volume ("ADV") on the Exchange of at least

.25% but less than .5% of total consolidated volume (“TCV”) (the “Bottom Tier Threshold”) are charged a fee that is lower than the standard adding fee for adding liquidity or, where a Member has met the Liquidity Add Requirement, receive a higher rebate than the standard removal rebate for removing liquidity. Similarly, Members that have an ADV on the Exchange of at least .5% of TCV (the “Upper Tier Threshold”) are charged an even lower fee for adding liquidity or, where a Member has met the Liquidity Add Requirement, receive an even higher rebate for removing liquidity.

The Exchange is proposing to: (i) eliminate the Liquidity Add Requirement to receive a rebate for removing liquidity; (ii) lower the Upper Tier Threshold from .5% to .4% of ADV as a percentage of TCV; and (iii) lower the Bottom Tier Threshold from .25% to .2% of ADV as a percentage of TCV.

Rebates to Remove Liquidity

As described above, the Exchange currently offers a tiered pricing structure for executions that remove liquidity. Currently, the Exchange provides a rebate of \$0.0007 per share to remove liquidity for Members that reach the Upper Tier Threshold and meet the Liquidity Add Requirement; a rebate of \$0.0006 per share to remove liquidity for Members that reach the Bottom Tier Threshold, but not the Upper Tier Threshold, and meet the Liquidity Add Requirement; and a rebate of \$0.0005 per share to remove liquidity for Members that do not reach the Bottom Tier Threshold, but do meet the Liquidity Add Requirement. For Members that do not reach the Bottom Tier Threshold and do not meet the Liquidity Add Requirement, the Exchange does not currently provide rebate. The Exchange does not, however, charge such Members, but rather, provides such executions free of charge.

As described above, the Exchange proposes to eliminate the requirement that a Member meet the Liquidity Add Requirement in order to receive a rebate to remove liquidity, which will mean that all Members will receive a rebate for executions that remove liquidity from the Exchange. The Exchange also proposes to decrease by \$0.0004 per share the rebates provided to all Members that qualify for a liquidity removal tier. Specifically, the Exchange proposes to provide a rebate of \$0.0003 per share to remove liquidity for Members that reach or exceed the Upper Tier Threshold; a rebate of \$0.0002 per share to remove liquidity for Members that reach the Lower Tier Threshold but not the Upper Tier Threshold; and a rebate of \$0.0001 per share to remove liquidity for Members that do not reach the Lower Tier Threshold.

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.

Fees to Add Liquidity

As described above, 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 that such liquidity sets the national best bid or offer (the “NBBO Setter Program”). Currently, the Exchange charges Members that reach the Upper Tier Threshold 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 charges Members that reach the Lower Tier Threshold but not the Upper Tier Threshold 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 charges a liquidity adding fee of \$0.0007 per share to Members that do not qualify for a reduced fee based on their volume on the Exchange.

The Exchange proposes to decrease its fees to add displayed liquidity for all Members by at least \$0.0004 per share. Specifically, the Exchange proposes to offer Members that reach the Upper Tier Threshold free executions on orders that set the NBBO and charge a liquidity adding fee of \$0.0001 per share on orders that do not set the NBBO; for Members that reach the Lower Tier Threshold, the Exchange proposes to charge a liquidity adding fee of \$0.0001 per share on orders that set the NBBO and \$0.0002 per share for orders that do not set the NBBO; and for Members that do not reach the Lower Tier Threshold, the Exchange proposes to charge Members a liquidity adding fee of \$0.0003 per share.

The Exchange is not proposing to change pricing for securities priced under \$1.00 and will continue to offer executions free of charge for orders that add liquidity in securities priced under \$1.00 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.

Typographical Order [sic]

The Exchange proposes to modify a reference on the fee schedule to ‘any Retail Price Improving Order order’ under the Retail Price Improvement Program Pricing heading where the Exchange describes the charge per share for a Retail Price Improving Order that adds liquidity to

the BYX Exchange order book that is removed by a Retail Order. Specifically, the Exchange proposes to delete the second “order” in the phrase “any Retail Price Improving Order order”.

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.⁶ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ 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.

Generally, 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 provide aggressively priced displayed liquidity.

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 lower the thresholds to receive rebates and reduced fees, creating a larger pool of Members that will be eligible for rebates (the removal of the Liquidity Add Requirement means that all orders that access liquidity on the Exchange in securities priced \$1.00 or above will receive at least a \$0.0001 per share rebate) and decreased fees. By greatly increasing the base of Members

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

eligible for and lowering the thresholds to receive increased rebates and reduced fees, the Exchange is incentivizing all Members to participate in the growth of the Exchange. In addition, as proposed the Upper Tier Threshold and Lower Tier Threshold will be more attainable, and thus will provide additional incentive to Members that do not reach one or both of the thresholds to increase their participation on the Exchange in order to receive higher rebates or reduced fees. 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 decreases to the rebates offered to remove liquidity, the Exchange believes that the proposed rebates are reasonable as such rebates are still comparable to other market centers that provide rebates for removing liquidity and represent only a slight decrease from the current rebate levels. In addition, the Exchange believes that the proposed rebates are reasonable because, upon elimination of the Liquidity Add Requirement, the Exchange will pay a rebate to all Members for every order that removes liquidity. Further, the Exchange is making increased rebates available to more Members by lowering the tier thresholds. So, while the Exchange is proposing to reduce rebates on a per share basis, it is simultaneously providing rebates to all Members for removing liquidity, increasing the number of Members that will

receive increased rebates, and making it easier for Members to receive increased rebates for removing liquidity.

With respect to the decreases to the fees charged to add displayed liquidity, the Exchange believes that the proposed fees are reasonable as they will act to attract liquidity to the Exchange. The Exchange believes that increasing the reduction in fees from \$0.00005 to \$0.0001 per share added for orders that set the NBBO and at least reach the Lower Tier Threshold (which will make transactions free on orders that set the NBBO for Members that reach the Upper Tier Threshold) will further incentivize Members to provide tighter and deeper liquidity. As noted above, 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. The Exchange believes that any additional revenue that it may receive based on the amendment to the fee schedule as 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.

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 orders to the Exchange. 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 Act⁸ and paragraph (f) of Rule 19b-4 thereunder.⁹ 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.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f).

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 Number SR-BYX-2013-025 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-2013-025. 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 such 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-2013-025 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

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¹⁰ 17 CFR 200.30-3(a)(12).