8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71939; File No. SR-BYX-2014-004)

April 14, 2014

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 March 31, 2014, 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[3] 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 filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

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 April 1, 2014, in order to: (i) modify the tiers applicable to the Exchange's tiered pricing structure; (ii) modify the rebates that the Exchange provides for orders that remove liquidity; (iii) modify the fees that the Exchange charges to add liquidity; (iv) adopt separate fees applicable to adding and removing Mid-Point Peg Order[6] liquidity ("Mid-Point Peg liquidity"); (v) eliminate a specific fee for orders that add non-displayed liquidity to the Exchange and are removed by Retail Orders (as defined below); and (vi) modify the destinations subject to the Exchange's "One Under/Better" pricing model for Destination Specific Orders (as defined below). In connection with these changes, the Exchange is also proposing to make various modifications to the format of its fee schedule that are intended to simplify and increase the understandability of the fee schedule.

---

6 As defined in Exchange Rule 11.9(c)(9).

Tiers and Trading Volume

The Exchange currently offers tiered pricing structures for both adding and removing liquidity. Under these tiered pricing structures, Members that have an average daily volume ("ADV") on the Exchange of at least 0.2% but less than 0.4% of average total consolidated volume ("TCV") (the "Bottom Tier Threshold") are charged a fee that is lower than the standard adding fee for adding displayed liquidity or receive a higher rebate than the standard removal rebate for removing liquidity. Similarly, Members that have an ADV on the Exchange of at least 0.4% of average TCV (the "Upper Tier Threshold") are charged an even lower fee for adding displayed liquidity or receive an even higher rebate for removing liquidity. Furthermore, Members that qualify for either the Upper Tier Threshold or the Bottom Tier Threshold also qualify for an additional discount to the applicable fee to add displayed liquidity when a displayed order sets the national best bid or offer ("NBBO") upon entry (the "NBBO Setter Program").

With respect to its tiered pricing structure, the Exchange is proposing to: (i) eliminate the tiered pricing structure for removing liquidity; (ii) eliminate the Upper Tier and the Bottom Tier Threshold; (iii) replace the use of the defined term ADV for purposes of tier calculations with a defined term of ADAV, or average daily added volume, as further described below; and (iv) implement a new tier, requiring ADAV of 0.3% of average TCV (the "0.3% ADAV Tier").
As noted above, the Exchange proposes to modify the existing defined term of ADV, used to calculate tiers, with ADAV, which would mean "average daily volume calculated as the number of shares added per day on a monthly basis." In contrast, the current defined term, ADV, includes both added and removed volume in the calculation. Other than limiting volume counted

to added volume, the Exchange does not otherwise propose to modify the way that volume is calculated for purposes of tiers.

<u>Rebates to Remove Liquidity</u>

As described above, the Exchange currently offers a tiered pricing structure for executions that remove liquidity in securities priced $1.00 and above. Currently, the Exchange provides a rebate of $0.0003 per share to remove liquidity for Members that reach the Upper Tier Threshold; a rebate of $0.0002 per share to remove liquidity for Members that reach the Bottom 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 Bottom Tier Threshold.

As described above, the Exchange proposes to eliminate the tiers applicable to executions that remove liquidity from the Exchange. The Exchange instead proposes to provide a standard rebate of $0.0015 per share for all orders that remove liquidity from the Exchange, other than orders that remove Mid-Point Peg liquidity, as described below. The proposed change to the remove liquidity rebate structure is reflective of the ongoing intense level of competition for order flow in the cash equities markets, and specifically among exchanges that provide rebates to market participants accessing liquidity.

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.

<u>Fees to Add Liquidity</u>

As set forth below, the Exchange proposes to modify various fees charged to add displayed liquidity to the Exchange. 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.

Displayed 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. Currently, pursuant to the NBBO Setter Program, the Exchange does not charge or provide a rebate to Members that reach the Upper Tier Threshold for orders that add liquidity and set the NBBO, but rather provides such executions free of charge. The Exchange currently charges Members that reach the Upper Tier Threshold $0.0001 per share for orders that add displayed liquidity but do not qualify for NBBO Setter Program pricing. Members that achieve the Lower Tier Threshold but not the Upper Tier Threshold are currently charged 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. The Exchange charges a liquidity adding fee of $0.0003 per share to Members that do not qualify for a reduced fee based on their volume on the Exchange.

As described above, the Exchange proposes to eliminate the existing tier structure and to implement a single tier, the 0.3% Tier Threshold. The Exchange proposes to increase its fees to add displayed liquidity for all Members by at least $0.0013 per share. Specifically, the Exchange proposes to charge Members that reach the 0.3% Tier Threshold a liquidity adding fee of $0.0013 per share on orders that set the NBBO and to charge a liquidity adding fee of $0.0014 per share on orders by such Members that do not set the NBBO. For Members that do not reach the 0.3% Tier Threshold, the Exchange proposes to charge a liquidity adding fee of $0.0017 per share.

The Exchange also proposes to group the types of fees applicable under the fees to add displayed section as displayed liquidity, non-displayed liquidity and Mid-Point Peg liquidity. In connection with this change, the Exchange is moving, but not modifying language regarding the $0.0030 fee that is currently applied to displayed orders that are subject to price sliding and receive price improvement when executed. This language also currently applies to non-displayed liquidity, which the Exchange is not proposing to change. The Exchange is simply proposing to separately set forth this fee under the displayed liquidity section and the non-displayed liquidity section.

Non-Displayed Liquidity

As noted above, the Exchange proposes to group fees to add non-displayed liquidity under a new sub-heading, "Fees to Add Other Non-Displayed Liquidity." The Exchange proposes the following changes to the fees to add non-displayed liquidity.

The Exchange currently charges a fee of $0.0010 per share to add non-displayed liquidity to the Exchange. The Exchange proposes to increase its fees to add non-displayed liquidity to a fee of $0.0024 per share. As described below, the Exchange also proposes to adopt separate fees applicable to adding Mid-Point Peg liquidity, which is currently charged in the same way as all other non-displayed liquidity. In this connection, the Exchange proposes to modify current footnote 3 on the fee schedule, to make clear that Mid-Point Peg liquidity is not included in such pricing. The Exchange also proposes to correct a typographical error in footnote 3, which references the non-displayed liquidity "rebate" by instead referring to the fee for adding non-displayed liquidity. This change is consistent with both current pricing and pricing as proposed, where non-displayed liquidity added to the Exchange is always charged a fee. As is also described above, the Exchange proposes to include language regarding the $0.0030 fee that is currently applied to non-displayed orders that receive price improvement when executed in the non-displayed liquidity.

Mid-Point Peg Liquidity

The Exchange currently does not differentiate any fees and rebates applicable to Mid-Point Peg liquidity. Thus, Mid-Point Peg liquidity is currently charged the standard fee to add non-displayed liquidity. Similarly, orders that interact with Mid-Point Peg liquidity do not receive any different fees or rebates than they otherwise would receive.

In order to incentivize the growth of Mid-Point Peg liquidity on the Exchange, which liquidity can provide substantial price improvement to all Exchange participants, the Exchange proposes to add specific fees and rebates for Mid-Point Peg liquidity. The Exchange proposes to provide a discounted rate to add Mid-Point Peg liquidity as compared to other non-displayed liquidity. The Exchange proposes to charge a standard fee of $0.0010 per share to add Mid-Point Peg liquidity, which is $0.0014 less per share than to add other non-displayed liquidity. In addition, the Exchange proposes to charge a further discounted fee of $0.0005 per share to add Mid-Point Peg liquidity to all Members that qualify for the 0.3% Tier Threshold.

Because of the substantial price improvement provided by such Mid-Point Peg liquidity, the Exchange proposes to provide executions against such liquidity free of charge but also without providing a rebate. The Exchange also proposes to apply such pricing to “Retail Orders” (as defined below) that remove Mid-Point Peg liquidity. Accordingly, as proposed, Retail Orders would receive no rebate when removing Mid-Point Peg liquidity. The Exchange proposes to modify the description of pricing for Retail Orders, including footnote 4, to make this pricing clear.

Retail Orders that Remove Non-Displayed Liquidity

Currently, pursuant to the Retail Price Improvement ("RPI") program the Exchange provides a $0.0025 rebate per share for any Retail Order[7] that removes liquidity from the Exchange (except for: (i) a Retail Order that removes displayed liquidity and, (ii) as proposed, a Retail Order that removes Mid-Point Peg liquidity, which are both subject to standard rebates and fees). The Exchange currently charges a $0.0025 fee per share for any Retail Price Improving Order[8] that adds liquidity to the Exchange order book and is removed by a Retail Order. Finally, the Exchange currently charges a $0.0010 fee per share for any non-displayed order that adds liquidity to the Exchange order book and is removed by a Retail Order. The Exchange proposes to eliminate the separate reference and $0.0010 fee per share for a non-displayed order that adds liquidity to the Exchange and is removed by a Retail Order. Accordingly, all such orders will be charged based on the standard fee schedule, which, as proposed, would be a fee of $0.0024 per share.

Destination Specific Orders

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

---

7 As defined in BYX Rule 11.24(a)(2), a "Retail Order" is an agency order that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, 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 other computerized methodology.

8 As defined in BYX Rule 11.24(a)(3), a "Retail Price Improvement Order" 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.

Under" pricing). Consistent with this program, the Exchange provides an enhanced rebate for Destination Specific Orders routed to EDGA Exchange that is $0.0001 more per share than EDGA Exchange provides for removing liquidity (referred to by the Exchange as "One Better" pricing, and collectively with One Under pricing, the "One Under/Better" pricing model). The Exchange proposes to remove EDGA Exchange from the One Under/Better pricing model and to instead provide a pass through of the applicable rebate provided by EDGA Exchange. Specifically, the Exchange proposes to provide a rebate of $0.0002 per share for orders routed to and executed at EDGA Exchange as a Destination Specific Order.

The Exchange also proposes to add NASDAQ BX to the One Under/Better pricing model. NASDAQ BX currently provides a standard rebate of $0.0013 per share to remove liquidity. Thus, the Exchange proposes to provide a rebate of $0.0014 per share for orders routed to and executed at NASDAQ BX as a Destination Specific Order.

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 NASDAQ BX to the list of market centers to which this charge does not apply. The Exchange also proposes to eliminate specific pricing for Destination Specific Orders to BATS Exchange, Inc. ("BZX Exchange") because such pricing is already set at a fee of $0.0030, and thus, there is no need to separately specify pricing for Destination Specific Orders to BZX Exchange.

<u>Other Structural Changes</u>

In addition to the changes described above, the Exchange proposes to make various formatting and structural changes, including: (i) restructuring the titles for the fee sections applicable to adding and removing liquidity; (ii) as set forth above, separately setting forth add liquidity fees under headings for displayed liquidity, mid-point peg liquidity and non-displayed liquidity; (iii) removing from the title for the One Under/Better program applicable to Destination Specific orders the list of markets to which such program applies and instead simply stating "Specified Markets"; (iv) removing language referencing liquidity added to or removed from the "BYX Exchange order book," as such language is unnecessary given the context in which it is used.

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.[9] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] 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.

---

9 15 U.S.C. 78f.

10 15 U.S.C. 78f(b)(4).

With respect to the proposed changes to the pricing structure for removing liquidity from the Exchange, the Exchange believes that its proposal is reasonable because it will eliminate the tier structure necessary to qualify for the highest remove liquidity rebate, thus greatly increasing the base of Members eligible for this rebate. The Exchange also believes that the rebates are reasonable and equitably allocated because the proposed changes will significantly increase this rebate from as compared to the current structure. The proposed rebates are equitably allocated and not unfairly discriminatory due to the fact that the rebates will apply equally to all members.

With respect to the increases to the fees charged to add displayed liquidity, the Exchange believes that the proposed fees are reasonable and equitably allocated as they are designed to attract additional removing liquidity to the Exchange. So, while the Exchange is proposing to increase fees on a per share basis, it is simultaneously providing higher rebates to all Members for removing liquidity. Thus, although the change increases the fee for orders that provide liquidity, it provides an offsetting increase in the rebate for orders removing liquidity. The Exchange also believes that simplifying the tiered pricing structure such that there is one tier to attain will benefit Members and will further incentivize Members to provide tighter and deeper liquidity. Further, although they are not paid a credit for liquidity provision under the pricing structure, and instead pay a fee that will be increased, certain Members of the Exchange nevertheless find it advantageous to post liquidity because the rebate paid to liquidity takers further encourages the execution of posted orders.

Volume-based tiers such as the liquidity add 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 amendments to the fee schedule as proposed 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.

With respect to new pricing and tiers for Mid-Point Peg liquidity, the Exchange believes that they are reasonable because they will reduce fees for Members that use higher volumes of Mid-Point Peg Orders to offer price improvement. The changes are consistent with an equitable allocation of fees because the Exchange believes that it is equitable to provide financial incentives, such as both the reduced fees for all Members for executions of Mid-Point Peg Orders and the further reduced fees for Members that meet the applicable tier, to encourage Members to submit Mid-Point Peg liquidity, which will provide price improvement, as opposed to other non-displayed liquidity. The changes are not unfairly discriminatory because the use of Mid-Point Peg Orders is equally available to all Members and because the proposed tier is structured as a market participation based pricing tier, under which the level of fee reduction increases as the Member’s relative volume increases. As noted above, such pricing tiers are widely in use at various national securities exchanges and have been accepted as consistent with the Act because the financial benefit offered is correlated to the member's usage of the market.

The Exchange also believes that not providing a rebate for orders that remove a Mid-Point Peg Order, including Retail Orders, is reasonable because the removing order will be guaranteed to receive price improvement when executed. The Exchange also believes that the changes are equitably allocated and not unfairly discriminatory because the changes apply equally to all orders that remove Mid-Point Peg Orders across all Members.

The Exchange believes that charging the same fees for non-displayed orders, regardless of the removing party is reasonable because it provides a more simple and predictable fee structure for Members that enter non-displayed liquidity. While the Exchange acknowledges that the proposed change marks an increase in fees charged for non-displayed liquidity that is removed by a Retail Order, this change is reasonable because it removes a variable in fees charged based on a factor entirely out of the control of the Member entering the order. The Exchange also believes that the changes are equitably allocated and not unfairly discriminatory because the changes apply equally to all Members.

The adoption of new pricing for a Destination Specific Order that offers improvement of the execution rebate offered by NASDAQ BX and the elimination of the EDGA Destination Specific Order from the One Under/Better pricing model 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. In particular, as the Exchange's proposed pricing model is more competitive as compared to NASDAQ BX than it is EDGA, the Exchange believes that a Destination Specific Order to NASDAQ BX is more appropriate to be included in the One Under/Better pricing model. Further, the Exchange's proposal will result in increased rebates that will benefit Members due to the obvious economic benefit those Members will receive and the potential of increased available liquidity at the Exchange. The fee is equitably allocated and not unfairly discriminatory as it will be equally applied to all Members.

Finally, the proposed changes to the formatting and structure of the fee schedule are designed to clarify and simplify the fee schedule and the Exchange believes that such changes are fair and reasonable, and non-discriminatory in that they are designed to be more easily understood by Members.

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 removing liquidity is appropriately competitive vis-à-vis the Exchange's competitors, with at least one such competitor, NASDAQ BX, offering a similar pricing model. In a competitive environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and alternative liquidity sources. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, thee Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Further, the modifications described herein are a direct response to competition, which should be viewed as a positive signal that a competitive market exists. If the changes are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets. 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. Finally, 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[11] and paragraph (f) of Rule 19b-4 thereunder.[12] 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. Please include File Number SR-BYX-2014-004 on the subject line.

---

11 15 U.S.C. 78s(b)(3)(A).

12 17 CFR 240.19b-4(f).

<u>Paper Comments:</u>

- 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 Number SR-BYX-2014-004. 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-2014-004 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.[13]

Jill M. Peterson
Assistant Secretary

[FR Doc. 2014-08825 Filed 04/17/2014 at 8:45 am; Publication Date: 04/18/2014]

---

13 17 CFR 200.30-3(a)(12).