SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69107; File No. SR-BYX-2013-009)

March 11, 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 February 26, 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[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 proposes to amend the fee schedule applicable to Members[5] 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 March 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 March 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, which is currently provided at $0.0002 per share. 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 the 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 proposes to adopt two additional tiers in addition to the free removal rate for Members that do not qualify for an enhanced rebate and the $0.0002 rebate to remove liquidity for Members that add a daily average of at least 50,000 shares of liquidity on BYX Exchange. Specifically, the Exchange proposes to provide 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") during the month and 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. To receive the rebate pursuant to either of the proposed new tiers, the Exchange will continue to impose the requirement that a Member add a daily average of at least 50,000 shares of liquidity on BYX Exchange. Although the Exchange does not propose modifying the existing rebate structure for Members that do not achieve either of the new tiers, the Exchange has proposed language changes to the fee schedule to accommodate the new tiers (i.e., adding language to the 50,000 shares added tier to address Members that reach this tier but not a TCV tier and modifying language for Members that do not qualify for an enhanced rebate to remove liquidity to more general language).

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 to the extent such liquidity sets the national best bid or offer (the "NBBO Setter Program"). The NBBO Setter Program is applicable to a Member's orders so long as the Member submitting the order achieves the applicable ADV requirement of at least 0.5% of TCV during the month. Members that qualify for the NBBO Setter Program are charged a fee of $0.0002 per share for executions resulting from orders that add liquidity to the BYX Exchange order book and set the NBBO. Members that achieve the applicable ADV requirement of at least 0.5% of TCV during the month are currently charged $0.00025 per share for all other executions (that do not set the NBBO). All other executions resulting from displayed liquidity added by any Member are currently subject to a fee of $0.0005 per share. The Exchange proposes changes to its tiered pricing structure to add liquidity, as described below.

First, the Exchange proposes to increase the fee charged under the NBBO Setter Program to Members that maintain ADV on the Exchange of at least 0.5% of the total TCV during the month from $0.0002 per share to $0.00025 per share on orders that set the NBBO. The Exchange also proposes to increase the fee for Members that maintain ADV on the Exchange of at least 0.5% of the total TCV during the month on executions that do not set the NBBO from $0.00025 per share to $0.0003 per share.

Second, the Exchange proposes to adopt a new tier for Members that maintain ADV on the Exchange of at least 0.25% but less than 0.5% of the total TCV during the month. The Exchange proposes to charge Members that reach this 0.25% tier a fee to add liquidity 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 does not propose to change the fee charged to Members that do not qualify for a reduced fee based on their volume on the Exchange. Accordingly, such Members will still be charged a fee of $0.0005 per share for executions resulting from orders that add liquidity to the Exchange.

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 proposed 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.[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

---

6 15 U.S.C. 78f.

7 15 U.S.C. 78f(b)(4).

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 certain Members that add liquidity to the Exchange will be paying higher fees due to 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 and thus improve the depth of liquidity available on the Exchange. Further, by adding another tier to qualify for reduced fees to add liquidity, the Exchange is expanding the availability of tiered pricing discounts.

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 allow Members that achieve a relatively low threshold of added liquidity, and thus who contribute to the depth of liquidity generally available on the Exchange, to continue to receive the current rebate. Certain Members will be unaffected by this change, as the initial threshold of reaching 50,000 shares added per day on the Exchange remains unchanged. However, by also providing higher potential rebates for Members that achieve at least either 0.25% or 0.5% of TCV, the Exchange is further incentivizing Members to participate in the growth of the Exchange. Volume-based tiers such as the liquidity removal tier proposed 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 Exchange's proposal to add another tier for Members that achieve at least 0.25% of TCV through which such Members can participate in the NBBO Setter Program and receive lower fees for adding liquidity for other orders, the Exchange believes that its proposal is reasonable because the tier is intended to incentivize Members to maintain or increase their participation on the Exchange. As noted above, volume-based tiers such as the threshold necessary to qualify for the NBBO Setter Program and the reduced fee to add liquidity 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.

With respect to the increases to the fees charged to add liquidity as applied to orders that set the NBBO and all other orders entered Members that qualify for reduced charges based on a level of at least 0.5% of TCV, the Exchange believes that the proposed fees are reasonable as both 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.[8] The Exchange reiterates that it is not proposing to increase fees charged to Members that do not qualify for a tier.

---

[8] 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.

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 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[9] and paragraph (f) of Rule 19b-4 thereunder.[10] 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-2013-009 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.

---

9 15 U.S.C. 78s(b)(3)(A)(ii).

10 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-BYX-2013-009. 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-2013-009, 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.[11]

Kevin M. O'Neill
Deputy Secretary

---

[11] 17 CFR 200.30-3(a)(12).