

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77886; File No. SR-BatsBYX-2016-08)

May 23, 2016

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Change to the Market Data Section of its Fee Schedule

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 May 17, 2016, Bats BYX 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 Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule to: (i) decrease the External Distribution and User fees for the BYX Top and BYX Last Sale feeds; and (ii) amend the New External Distributor Credit for the BYX Top, BYX Last Sale, and Bats One Feeds.

The text of the proposed rule change is available at the Exchange’s website at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public

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).

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 amend the Market Data section of its fee schedule to: (i) decrease the External Distribution and User fees for the BYX Top and BYX Last Sale feeds; and (ii) amend the New External Distributor Credit for the BYX Top, BYX Last Sale, and Bats One Feeds.

BYX Top and Last Sale Fees

BYX Top is a market data feed that includes top of book quotations and execution information for all equity securities traded on the Exchange.⁵ BYX Last Sale is a market data feed that includes last sale information for all equity securities traded on Exchange.⁶ The Exchange proposes to decrease the External Distribution and User fees for the BYX Top and BYX Last Sale feeds.⁷

⁵ See Exchange Rule 11.22(d).

⁶ See Exchange Rule 11.22(g).

⁷ The Exchange notes that Bats EDGA Exchange, Inc. (“EDGA”) and Bats EDGX

The Exchange currently charges an External Distributor⁸ of BYX Last Sale a flat fee of \$1,250 per month. The Exchange also separately charges an External Distributor of BYX Top a flat fee of \$1,250 per month.⁹ The Exchange proposes to decrease the External Distribution fee for both the BYX Top and BYX Last Sale feeds to \$1,000 per month.

The Exchange also charges those who receive either BYX Top or BYX Last Sale from External Distributors different fees for both their Professional¹⁰ and Non-Professional¹¹ Users.

Exchange, Inc. (“EDGX”) also filed proposed rule changes with Commission to amend similar fees for their respective Top and Last Sale market data products. See File Nos. SR-BatsEDGA-2016-09 and SR-BatsEDGX-2016-18. The Exchange represents that the proposed fees will continue to not cause the combined cost of subscribing to EDGX, EDGA, BYX, and Bats BZX Exchange Inc.’s (“BZX”) individual Top and Last Sale feeds to be greater than those currently charged to subscribe to the Bats One Feed. See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09) (“Initial Bats One Feed Fee Filings”). In these filings, the Exchange represented that the cost of subscribing to each of the underlying individual feeds necessary to create the Bats One Feed would not be greater than the cost of subscribing to the Bats One Feed. Id.

⁸ An “External Distributor” of an Exchange Market Data product is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.” See the Exchange Fee Schedule available at http://batstrading.com/support/fee_schedule/byx/.

⁹ Subscribers to either BYX Top or BYX Last Sale are able to receive, upon request and at no additional cost, BYX Last Sale or BYX Top, as applicable.

¹⁰ A “Professional User” is defined as “any User other than a Non-Professional User.” See the Exchange Fee Schedule available at http://batstrading.com/support/fee_schedule/byx/.

¹¹ A “Non-Professional User” is defined as “a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.” Id.

The Exchange currently assesses a monthly fee for Professional Users of \$2.00 per User. Non-Professional Users are assessed a monthly fee of \$0.05 per User. The Exchange now proposes to decrease the Professional User fee to \$1.00 per User per month and the Non-Professional User fee to \$0.025 per User per month.¹²

The Exchange also offers a New External Distributor Credit under which new External Distributors of BYX Top or BYX Last Sale will not be charged a Distributor Fee for their first three (3) months. The Exchange now proposes to decrease the time a new External Distributor of BYX Top or BYX Last Sale will not be charged a Distributor Fee from their first three (3) months to their first one (1) month.¹³

Bats One Feed

In sum, the Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on BYX and its affiliated exchanges and for which the Bats Exchanges report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the “Bats One Summary Feed”). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for

¹² Each External Distributor will continue to receive a credit against its monthly Distributor Fee for BYX Top or BYX Last Sale equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for BYX Top or BYX Last Sale. External Distributors may also continue to pay a monthly Enterprise Fee that permits a recipient firm who receives BYX Top or BYX Last Sale from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users.

¹³ The Exchange notes that New External Distributor Credit will continue to be available for three (3) months to those Distributors who began to distribute BYX Top or BYX Last Sale prior to June 1, 2016.

up to five (5) price levels (“Bats One Premium Feed”).¹⁴

The Exchange charges External Distributors of the Bats One Summary Feed a monthly Distribution fee of \$5,000. The Exchange also offers a New External Distributor Credit under which new External Distributors of the Bats One Feed will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the Bats One Summary Feed. The Exchange now proposes to decrease the time a new External Distributor of the Bats One Feed will not be charged a Distributor Fee from their first three (3) months to their first one (1) month.¹⁵

Implementation Date

The Exchange proposes to implement the proposed changes to its fee schedule on June 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(4),¹⁷ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the

¹⁴ See Exchange Rule 11.22(i). See also Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) (“Bats One Approval Order”).

¹⁵ The Exchange notes that New External Distributor Credit will continue to be available for three (3) months to those Distributors who began to distribute the Bats One Summary Feed prior to June 1, 2016.

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4).

proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act¹⁸ in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁹ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. BYX Last Sale, BYX Top and the Bats One Feed are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by

¹⁸ 15 U.S.C. 78k-1.

¹⁹ See 17 CFR 242.603.

any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. The Exchange also believes the proposed decrease to the External Distribution fees for BYX Last Sale and BYX Top are reasonable and equitable in light of the continued benefits to data recipients. To the extent consumers do purchase the data products, the revenue generated will continue to offset the Exchange's fixed costs of operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. It will also help the Exchange to continue to cover its costs in developing and running that platform, as well as ongoing infrastructure costs. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data feeds. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to BYX Top, BYX Last Sale, and the Bats One Feed further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives because the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute BYX Top, BYX Last Sale, or the Bats One Feed, prospective Users likely would not subscribe to, or would cease subscribing to, the BYX Top, BYX Last Sale, or the Bats One Feed.

The Exchange notes that the Commission is not required to undertake a cost-of-service or

rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.²⁰

The Exchange believes the proposed Professional and Non-Professional User fees for BYX Top and BYX Last Sale are equitable and reasonable because they will continue to result in greater availability to Professional and Non-Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE. Specifically, NYSE offers NYSE BBO, which includes best bid and offer for NYSE traded securities, for a monthly fee of \$4.00 per professional subscriber and \$0.20 per non-professional subscriber.²¹ NYSE also

²⁰ The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

²¹ See NYSE Market Data Pricing dated March 2016 available at <http://www.nyxdata.com/>.

offers NYSE Trades, which is a data feed that provides the last sale information for NYSE traded securities, for the same price as NYSE BBO. The Exchange's proposed per User Fees for BYX Top and BYX Last Sale are less than the NYSE's fees for NYSE Trades and NYSE BBO.

The Exchange also believes that amending the New External Distributor Credit for BYX Top, BYX Last Sale, and the Bats One Feed is equitable and reasonable. The Exchange notes that the New External Distributor Credit was initially adopted at the time the Exchange began to offer the Bats One Summary Feed to subscribers. It was intended to incentivize new Distributors to enlist Users to subscribe to the Bats One Summary Feed in an effort to broaden the product's distribution. The credit was also provided for BYX Top and BYX Last Sale in order to alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Bats One Summary Feed based on the underlying data feeds. The Exchange also believes that decreasing the time during which the New External Distributor Credit is available from three (3) to one (1) month for BYX Top, BYX Last Sale, and the Bats One Feed is equitable and reasonable because the credit has been available to Distributors since January 2015 providing new Distributors with ample time to grow their subscriber bases during the available three (3) month periods. Decreasing the credit period to one (1) month is equitable and reasonable as it would continue to provide new Distributors ample time to grow their subscriber bases.

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. The Exchange's ability to price BYX Last Sale, BYX Top, and the Bats One Feed are constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of

inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data. This competitive pressure is evidenced by the Exchange's proposal to decrease fees as described herein.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, BYX Last Sale, BYX Top, and the Bats One Feed compete with a number of alternative products. For instance, BYX Last Sale, BYX Top, and the Bats One Feed do not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain access to BYX last sale prices and top-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on the Exchange's data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the

proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to BYX Last Sale, BYX Top, and the Bats One Feed, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Act²² and paragraph (f) of Rule 19b-4 thereunder.²³ 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.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 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 proposal 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 No. SR-BatsBYX-2016-08 on the subject line.

Paper Comments:

- 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 No. SR-BatsBYX-2016-08. 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 No. SR-BatsBYX-2016-08, 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.²⁴

Robert W. Errett
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).