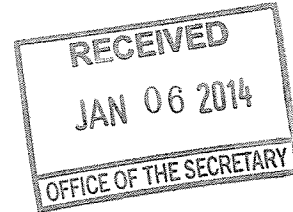




January 3, 2014

**VIA FEDERAL EXPRESS**

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, DC 20549-1090



Re: Request for Extension of Exemptive Order Pursuant to Rule 612(c) of Regulation NMS – BATS Y-Exchange Retail Price Improvement Program

Dear Ms. Murphy:

Pursuant to Rule 612(c) of Regulation NMS under the Securities Exchange Act of 1934 (the “Exchange Act”), BATS Y-Exchange, Inc. (“BYX” or the “Exchange”) requests that the Securities and Exchange Commission (“the Commission”) approve an extension of the exemption applicable to the Exchange and Retail Price Improvement Orders (“RPI Orders”) entered under the Exchange’s Retail Price Improvement (“RPI”) Program (“the Program”)<sup>1</sup> from the provisions of Rule 612 (“the Sub-Penny Rule” or “the Rule”) that prohibit a national securities exchange from accepting or ranking certain orders based on an increment smaller than the minimum pricing increment.

The exemption was previously granted by the Commission on November 27, 2012, for the RPI Program.<sup>2</sup> The exemption operates coterminous with the pilot period of the program. The pilot period is set to expire on January 11, 2014, and the exemption would expire on the same date. For the reasons set forth below, the Exchange requests an extension of the exemption until January 31, 2015.

The Program was established on a pilot basis to attract certain retail order flow (“Retail Orders”) to the Exchange. The Program allows such Retail Orders to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, Exchange participants are able to provide potential price improvement to Retail Orders in the form non-displayed interest (“RPI interest”) that is

<sup>1</sup> The Program is contained in proposed BYX Rule 11.24 (the “Rule”), which is a pilot program operated by the Exchange. The Exchange has filed to extend the Program concurrently with this exemptive application.

<sup>2</sup> The Sub-Penny Exemption was originally granted by the Commission concurrently with the approval of the Program. See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (“RPI Approval Order”) (SR-BYX-2012-019).

better than the national best bid that is a Protected Quotation (“Protected NBB”) or the national best offer that is a Protected Quotation (“Protected NBO”, and together with the Protected NBB, the “Protected NBBO”).<sup>3</sup> When there is RPI interest in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating such interest exists. Retail Member Organizations (“RMOs”) can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPI interest.

As stated in the Exchange’s previous letter requesting relief,<sup>4</sup> the Exchange believes that the quality of our markets and accuracy of price discovery depend on the interaction among a diverse set of market participants, including short-term, long-term, retail, and institutional investors. As was the case when the Commission granted the Sub-Penny Exemption, the vast majority of marketable retail order flow today is executed pursuant to bilateral agreements that are not exposed to the enhanced price competition and transparency occurring on exchanges. The Program continues to offer the potential to enhance the level of order interaction and price competition experienced by retail order flow through market center competition. By extending the Sub-Penny Exemption, the Commission would allow exchanges to compete for retail orders in the same manner that OTC market makers have long done--by offering sub-penny prices. At the same time, the reasonable design and limited nature of the Program avoid any risk of quote flickering because sub-penny prices are not disseminated. In addition, the Program does not undermine the incentive of market participants to display orders because the marketable Retail Orders that are routed to the Program would not otherwise be exposed to price competition, but, rather, executed pursuant to bilateral internalization arrangements.

Because of the Exchange’s gradual implementation of the Program and given its preliminary participation and results, extending the exemptions for the Program would provide additional opportunities for greater participation in the Program and assessment of the results of such participation. As such, the Exchange believes that extending the exemptions is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide. Accordingly, the Exchange

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<sup>3</sup> The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (“NBB”) and national best offer (“NBO”, together with the NBB, the “NBBO”) will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.


<sup>4</sup> See Letter from Eric Swanson, Senior Vice President and General Counsel, BATS Global Markets, to Elizabeth M. Murphy, Secretary, Commission, dated August 14, 2012.

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requests that the previously provided exemptions be extended by to January 31, 2015, because the Program serves the public interest and otherwise protects investors.

Thank you in advance for your consideration of this request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric Swanson", with a long horizontal line extending to the right.

Eric Swanson  
SVP, General Counsel