

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75677; File No. SR-BYX-2015-34)

August 12, 2015

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2015, 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<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c) (“Fee Schedule”) to: (i) modify the rebate structure for certain routing strategies that route to NASDAQ OMX BX, Inc. (“Nasdaq BX”); and (ii) adopt a new tier applicable to certain routed orders as well as a new

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

definition to support such tier.

The text of the proposed rule change is available at the Exchange's website at [www.batstrading.com](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: (i) modify the rebate structure for certain routing strategies that route to Nasdaq BX; and (ii) adopt a new tier applicable to certain routed orders as well as a new definition to support such tier.

Amended Fee Code C

The Exchange currently provides: (i) a rebate of \$0.0016 per share for Members' orders that yield fee code C, applicable to orders routed to Nasdaq BX using the Destination Specific routing strategy;<sup>6</sup> (ii) a rebate of \$0.0010 per share for Members' orders that yield fee code TV, applicable to orders routed to Nasdaq BX using the TRIM2 routing strategy;<sup>7</sup> and (iii) a rebate of

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<sup>6</sup> The Destination Specific routing strategy is defined in Rule 11.13(b)(3)(E).

<sup>7</sup> The TRIM2 routing strategy is defined in Rule 11.13(b)(3)(G)(v).

\$0.0015 per share for Members' orders that yield fee code TX, applicable to orders routed to Nasdaq BX using the TRIM routing strategy.<sup>8</sup> The Exchange proposes to amend its Fee Schedule to provide a standard rebate of \$0.0010 per share for Members' orders that yield fee code C, which would continue to include Destination Specific routing to Nasdaq BX as well as routing to Nasdaq BX using the TRIM and TRIM2 routing strategies. The Exchange would, in turn, eliminate fee codes TV and TX. The Exchange notes that the \$0.0010 per share rebate provided pursuant to the proposed change may still be a higher rebate for an order routed to Nasdaq BX that a Member may obtain when routing directly to Nasdaq BX, depending on the applicable tier for which such Member may qualify. Nasdaq BX currently provides a standard rebate to remove liquidity of \$0.0006 per share, with various tiers providing rebates up to \$0.0017 per share.<sup>9</sup>

#### Routing Tier

In conjunction with the change above, the Exchange proposes to adopt a Routing Tier that would allow Members to achieve a higher rebate for orders routed to Nasdaq BX through the Destination Specific, TRIM and TRIM2 routing strategies. Specifically, for such orders, which will yield fee code C, the Exchange proposes to provide a rebate of \$0.0016 per share to any Member that maintains ADV, as defined below, equal to or greater than 0.10% of the TCV.<sup>10</sup> Thus, if a Member qualifies for this tier, such Member will be able to continue to receive the same rebate that was previously provided for Destination Specific routing and a higher rebate

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<sup>8</sup> The TRIM routing strategy is defined in Rule 11.13(b)(3)(G)(iv).

<sup>9</sup> See the Nasdaq BX fee schedule available at: [http://www.nasdaqtrader.com/Trader.aspx?id=bx\\_pricing](http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing).

<sup>10</sup> "TCV" means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

than has been previously provided for routing through the TRIM and TRIM2 routing strategies.

The Exchange's Fee Schedule currently defines the term ADAV, which means the average daily volume calculated as the number of shares added per day. The Exchange proposes to adopt a definition of ADV, which would mean the number of shares added or removed, combined, per day. As is true for ADAV, the Exchange proposes to calculate ADV on a monthly basis.

The Exchange also proposes to extend each of the volume exclusions and details applicable to ADAV to the new definition of ADV. Thus, the Exchange proposes to exclude from its calculation of ADV shares added on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption"), on any day with a scheduled early market close and on the last Friday in June (the "Russell Reconstitution Day"). The Exchange also proposes to make clear that routed shares are not included in ADAV or ADV calculation. Finally, the Exchange proposes to state on the Fee Schedule that with prior notice to the Exchange, a Member may aggregate ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD). The Exchange notes that the proposed definition of ADV is based on the fee schedules of affiliates of the Exchange, including BATS Exchange, Inc., which already has definitions of both ADV and ADAV.<sup>11</sup>

#### Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule immediately.

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<sup>11</sup> See the BATS Exchange fee schedule available at: [http://batstrading.com/support/fee\\_schedule/bzx/](http://batstrading.com/support/fee_schedule/bzx/).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>13</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also 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. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

The Exchange believes that its proposal to modify the rebate for Members' orders that yield fee code C from \$0.0016 to \$0.0010 per share and to include TRIM and TRIM2 routing strategies that execute at Nasdaq BX within such fee code represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. The Exchange notes that this will not result in any change, other than the fee code assigned, to Members using the TRIM2 routing strategy. Though the proposed change will result in a lower rebate for Members using the Destination Specific and TRIM routing strategies, the Exchange notes that the rebate provided for routing to Nasdaq BX through the Exchange is still higher than the rebate provided by Nasdaq BX unless a Member would otherwise qualify for certain higher

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<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

rebate tiers at Nasdaq BX. Further, the Exchange notes that the proposed Routing Tier will provide Members with an opportunity to maintain the same rebate earned for Destination Specific routing to Nasdaq BX and a higher rebate than was previously available for the TRIM and TRIM2 routing strategies for orders executed at Nasdaq BX. Therefore, the Exchange believes that the proposed changes to fee code C and the elimination of fee codes TX and TV is equitable and reasonable. The Exchange notes that routing through the Exchange is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that the proposed addition of the Routing Tier represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because it rewards Members that contribute to price discovery on the Exchange. Volume-based rebates such as the ones proposed herein have been widely by equities and options exchanges, and are equitable and reasonable because they are open to all Members on an equal basis and provide discounts or 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 processes. The Exchange believes that the proposed rebate for the Routing Tier is reasonable because it is the same rebate as is currently provided for Destination Specific routing for orders executed at Nasdaq BX and is comparable to the rebate provided by Nasdaq BX directly to participants on Nasdaq BX that reach the highest tier.<sup>14</sup> The Exchange also believes that the proposed Routing Tier is fair and equitable and non-discriminatory in that it will be available to all Members.

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<sup>14</sup> See supra, note 7.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendments to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe that its proposal would burden intramarket competition because the proposed rate would apply uniformly to all Members and the Routing Tier would be equally available to all Members.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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<sup>15</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>16</sup> 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.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2015-34 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BYX-2015-34. 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 will also 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-2015-34 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

Brent J. Fields  
Secretary