

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67422; File No. SR-BYX-2012-013)

July 12, 2012

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 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 8, 2012, BATS Y-Exchange, Inc. (“BYX” or “Exchange”) 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 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 proposes to amend the fee schedule applicable to Members<sup>3</sup> and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

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.

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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> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

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 in order to: (i) accommodate an additional venue as part of the Exchange’s “TRIM” routing strategy; and (ii) commence charging for logical ports used to enter orders into Exchange systems and to receive data from the Exchange. Each of these proposed changes is described in further detail below.

(i) TRIM Routing Strategy

The Exchange proposes to modify its fee schedule in order to accommodate an additional venue as part of the Exchange’s “TRIM” routing strategy. As defined in BYX Rule 11.13(a)(3)(G), TRIM is a routing option under which an order checks the System<sup>4</sup> for available shares and then is sent to destinations on the System routing table. The TRIM routing strategy is focused on seeking execution of orders while minimizing execution costs by routing to certain low cost execution venues on the Exchange’s routing table. Accordingly, the Exchange’s current TRIM routing strategy will check the Exchange’s order book and then route to various venues on

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<sup>4</sup> As defined in BYX Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

the Exchange's routing table, including NASDAQ OMX BX, Inc. ("NASDAQ BX"), EDGA EXCHANGE, Inc. ("EDGA"), the New York Stock Exchange LLC ("NYSE"), BATS Exchange, Inc. ("BZX Exchange") and certain alternative trading systems available through the Exchange's "DRT" strategy ("DRT Venues").<sup>5</sup> As of July 2, 2012, the Exchange plans to add an additional execution venue, NASDAQ OMX PSX ("NASDAQ PSX"), to the TRIM routing strategy. The TRIM routing strategy generally passes the same execution fee assessed by the applicable market center back to Exchange Users.<sup>6</sup> In order to add NASDAQ PSX to the TRIM routing strategy, the Exchange is proposing to adopt pricing for executions through the TRIM routing strategy of orders routed to NASDAQ PSX.

Based on a recently filed proposal, as of July 2, 2012, NASDAQ PSX does not assess any charge to remove liquidity from its order book for participants that reach certain volume tiers.<sup>7</sup> Because the Exchange anticipates being able to reach such tiers based on its routing practices, the Exchange proposes neither to assess any fee nor to provide any rebate for TRIM orders that remove liquidity from NASDAQ PSX.

(ii) Logical Port Fees

The Exchange also proposes to commence charging fees to Members and non-members for logical ports used to enter orders into Exchange systems and to receive data from the

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<sup>5</sup> As set forth in BYX Rule 11.13(a)(3)(E), DRT is a routing option in which the entering firm instructs the System to route to alternative trading systems included in the System routing table. Unless otherwise specified, DRT can be combined with and function consistent with all other routing options.

<sup>6</sup> As defined in BYX Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. A Sponsored Participant is a firm that is sponsored by a Member of the Exchange to access the Exchange and that meets the criteria of Exchange Rule 11.3.

<sup>7</sup> See SR-Phlx-2012-87 (June 27, 2012). This proposal was recently filed and will become operative on July 2, 2012.

Exchange. A logical port is also commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or Multicast PITCH data receipt.

In contrast to its affiliate, BZX Exchange, and most of its competitors, the Exchange currently provides logical ports free of charge to Members and non-members that have access to or receive data from the Exchange. Pursuant to the proposed rule change, the Exchange will begin charging a monthly fee for ports used to enter orders in the Exchange's trading system and to receive data from the Exchange. The Exchange proposes to charge \$400.00 per month per pair<sup>8</sup> of any port type other than a Multicast PITCH Spin Server Port or a GRP Port. Thus, this proposed charge will apply to all Exchange FIX, FIXDROP, BOE, DROP, TCP PITCH, and TOP ports. In addition, the Exchange proposes to provide all Exchange constituents that receive the Exchange's Multicast PITCH Feed with 32 Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports. The Exchange proposes to charge such customers \$400.00 per month per additional pair of GRP Ports or additional set of 32 Multicast PITCH Spin Server Ports. The Exchange's proposal to provide certain ports free of charge to Multicast Pitch customers is designed to encourage use of the Exchange's Multicast PITCH Feed because the Exchange believes that the feed is its most efficient feed, and thus, will reduce infrastructure costs for both the Exchange and those who utilize the feed. Any Member or non-member that has entered into the appropriate agreements with the Exchange is permitted to receive Multicast PITCH Spin Server Ports and GRP Ports from the Exchange.

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<sup>8</sup> Each pair of ports will consist of one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

Based on the proposal, the change applies to Members that obtain ports for direct access to the Exchange, Sponsored Participants sponsored by Members to receive direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, and market data recipients. The Exchange has previously provided ports free of charge to all Members and non-members that use such ports for order entry to the Exchange or for receipt of market data. However, over time, the Exchange's infrastructure costs have increased. In addition, the Exchange believes that providing ports free of charge has not encouraged Members and non-members to reserve and maintain ports efficiently, but rather, has led to a significant number of ports that are reserved and enabled by such market participants but are never used or are under used. Accordingly, the Exchange believes that the imposition of port fees will help the Exchange to continue to maintain and improve its infrastructure, while also encouraging Exchange customers to request and enable only the ports that are necessary for their operations related to the Exchange. The Exchange also notes that its affiliated national securities exchange, BZX Exchange, charges for ports to access its cash equity securities platform on exactly the same terms as are proposed herein.

## 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.<sup>9</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>10</sup> 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

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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. The Exchange also notes that with respect to the routing changes proposed in this filing, although routing options are available to all Users, Users are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different venues or can utilize a myriad of other routing solutions that are available to market participants.

The Exchange believes that the proposed fee for executions at NASDAQ PSX under the TRIM routing option is reasonable in that it is the same fee as the fee charged directly by NASDAQ PSX, as described above. As such, the Exchange believes that the proposed routing fee is competitive, fair and reasonable, and non-discriminatory in that it is generally designed to mirror the fee applicable to the execution if such routed orders were executed directly by the Member at NASDAQ PSX. The Exchange also believes that the proposed fees for the TRIM routing strategy are fair and equitable and not unreasonably discriminatory in that they apply equally to all Exchange Users.

The Exchange believes that its proposed logical port fees are reasonable in light of the benefits to Members of direct market access and receipt of data, which data, other than the proposed logical port fee, is currently provided free of charge. In addition, the Exchange believes that its fees are equitably allocated among its constituents based upon the number of access ports that they require to submit orders to the Exchange or receive data from the Exchange. The Exchange believes that its fees for access services will enable it to better cover its infrastructure costs and to improve its technology and services.

The Exchange also believes that providing financial incentives to use Exchange technology that the Exchange believes is the most technologically efficient for the Exchange and its constituents is a fair and equitable approach to pricing. Accordingly, the Exchange believes that promotion of its Multicast PITCH data feed through the offering of free logical ports is fair and equitable. The Multicast PITCH data feed is available to all Members, and as such, all Members have the ability to receive applicable Multicast PITCH ports free of charge. Based on the foregoing, the Exchange believes that the proposed pricing structure for logical ports is not unreasonably discriminatory.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange will not assess any routing fee for orders routed to NASDAQ PSX, consistent with NASDAQ PSX pricing. The Exchange also notes that Users may choose to mark their orders as ineligible for routing to avoid incurring routing fees.<sup>11</sup> With respect to port fees, fees for access to the Exchange will be a component of the overall fees charged by the Exchange to execute and route orders through the Exchange. As the Commission has recognized, the market for execution and routing services is extremely competitive.<sup>12</sup> Market participants that choose not to connect directly to the Exchange can readily access liquidity available on the Exchange by directing their order flow to other venues that, under Regulation NMS, must route to the Exchange if it has posted the best price. Accordingly, the Exchange must set its fees, including access service fees, at a level that will not deter market participants from connecting to

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<sup>11</sup> See, e.g., BYX Rule 11.9(c)(4) (describing "BATS Only" orders) and BYX Rule 11.13(a)(2) (describing the routing process, which is dependent on User instruction).

<sup>12</sup> Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

the Exchange; otherwise, potential users of the Exchange's services will simply direct order flow to the Exchange's multiple competitors. In addition, the Exchange believes that the proposed port fees are consistent with or less than the port fees charged by its competitors. With respect to market data, the Exchange does not currently charge any fees for such data. Although it will now begin imposing a fee related to access to such data, for market participants that receive such data directly from the Exchange, the Exchange believes that its free provision of data justifies such market participants paying some amount in order to help the Exchange offset the infrastructure costs of providing such data.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and Rule 19b-4(f)(2) thereunder,<sup>14</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

#### 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-2012-013 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.

All submissions should refer to File Number SR-BYX-2012-013. 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 publicly available. All submissions should refer to File Number SR-BYX-2012-013 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.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).