

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75786; File No. SR-BYX-2015-36)

August 28, 2015

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees a Market Data Product Known as BYX Book Viewer

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 August 24, 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 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 adopt fees for a market data product called BYX Book Viewer.

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

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).

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 amend the Market Data section of its fee schedule to adopt fees for a market data product called BYX Book Viewer. BYX Book Viewer is a data feed that disseminates, on a real-time basis, the aggregated two-side quotations for up to five (5) price levels for all displayed orders for securities traded on the Exchange and for which the Exchanges reports quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan. BYX Book Viewer also contains the last ten (10) trades including time of trade, price and share quantity.⁵ BYX Book Viewer is currently available via www.batstrading.com without charge.

The Exchange now proposes to amend its fee schedule to incorporate fees for

⁵ See Securities Exchange Act Release No. 75717 (August 18, 2015) (SR-BYX-2015-35) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.22 to Describe the Market Data Product BYX Book Viewer).

distribution of BYX Book Viewer to subscribers.⁶ BYX Book Viewer will remain available via www.batstrading.com for viewing without charge. The proposed fees include the following, each of which are described in detail below: (i) Distribution Fees for both Internal and External Distributors;⁷ (ii) Usage Fees for both Professional⁸ and Non-Professional⁹ Users;¹⁰ (iii) an Enterprise Fee;¹¹ and (iv) a Digital Media Enterprise

⁶ The Exchange notes that its affiliated exchanges, EDGX Exchange, Inc. (“EDGX”), EDGA Exchange, Inc. (“EDGA”) and BATS Exchange, Inc. (“BZX”), together with the Exchange, EDGX and EDGA, the “BATS Exchanges”), also intent to file proposed rule changes with Commission to adopt similar fees for their respective Book Viewer market data product.

⁷ A “Distributor” is defined as “any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.” See the Exchange Fee Schedule available at http://batstrading.com/support/fee_schedule/byx/. An “Internal Distributor” is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.” *Id.* An “External Distributor” 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.” *Id.*”

⁸ 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/.

⁹ 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.*

¹⁰ The Exchange notes that User fees as well as the distinctions based on professional and non-professional users have been previously filed with or approved by the Commission by the BATS Exchanges and the Nasdaq Stock Market LLC (“Nasdaq”). See Securities Exchange Act Release No. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR-Nasdaq-

Fee.

Distribution Fees. As proposed, each Internal Distributor that receives BYX Book Viewer shall pay a fee of \$500 per month. The Exchange does not propose to charge any User fees for BYX Book Viewer where the data is received and subsequently internally distributed to Professional or Non-Professional Users. In addition, the Exchange proposes to charge External Distributors that receives BYX Book Viewer a fee of \$2,500 per month.

User Fees. The Exchange proposes to charge those who receive BYX Book Viewer from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$3.00 per User. Non-Professional Users will be assessed a monthly fee of \$0.10 per User. The Exchange does not propose to charge per User fees to Internal Distributors.

External Distributors that receives BYX Book Viewer would be required to count every Professional User and Non-Professional User to which they provide BYX Book Viewer, the requirements for which are identical to that currently in place for the BATS

2008-102). See also 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”).

¹¹ The Exchange notes that Enterprise fees have been previously filed with or approved by the Commission by the Exchange, EDGA, EDGX, BZX, Nasdaq, NYSE, and the CTA/CQ Plans. See Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR-NASDAQ-2014-011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR-NYSE-2013-58); and 70010 (July 19, 2013) (File No. SR-CTA/CQ-2013-04). See also the Initial BATS One Feed Fee Filings, supra note 10.

One Feed.¹² Thus, the External Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. External Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with an External Distributor's distribution of BYX Book Viewer, the Distributor should count as one User each unique User that the Distributor has entitled to have access to BYX Book Viewer. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to BYX Book Viewer, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to BYX Book Viewer (e.g., a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.
- External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If an External Distributor entitles one or more individuals to use the same device, the External Distributor should include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee

¹² See the Initial BATS One Feed Fee Filings, supra note 10.

for BYX Book Viewer equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for BYX Book Viewer. For example, an External Distributor will be subject to a \$2,500 monthly Distributor Fee where they receive BYX Book Viewer. If that External Distributor reports User quantities totaling \$2,500 or more of monthly usage of BYX Book Viewer, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$1,000 of monthly usage, it will pay a net of \$1,500 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above.

Enterprise Fee. The Exchange also proposes to establish a \$20,000 per month Enterprise Fee that will permit a recipient firm who receives BYX Book Viewer from an External Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 15,000 Professional Users who each receive BYX Book Viewer at \$3.00 per month, then that recipient firm will pay \$45,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$20,000 for an unlimited number of Professional and Non-Professional Users for BYX Book Viewer. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls the display of BYX Book Viewer if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users. Lastly, the proposed Enterprise Fee would be counted towards the Distributor Fee credit described above,

under which an External Distributor receives a credit towards its Distributor Fee equal to the amount of its monthly BYX Book Viewer User fees.

Digital Media Enterprise Fee. The Exchange proposes to adopt a Digital Media Enterprise Fee of \$5,000 per month for BYX Book Viewer. As an alternative to proposed User fees discussed above, a recipient firm may purchase a monthly Digital Media Enterprise license to receive BYX Book Viewer from an External Distributor to distribute to an unlimited number of Professional and Non-Professional Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only without having to account for the extent of access to the data or the report the number of Users to the Exchange. Lastly, the proposed Digital Media Enterprise Fee would be counted towards the Distributor Fee credit described above, under which an External Distributor receives a credit towards its Distributor Fee equal to the amount of its monthly BYX Book Viewer User fees.

Implementation Date

The Exchange proposes to implement the proposed changes to its fee schedule on September 8, 2015.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4),¹⁴ 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

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

Exchange data. The Exchange believes that the 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 Act¹⁵ 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,¹⁶ 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

¹⁵ 15 U.S.C. 78k-1.

¹⁶ See 17 CFR 242.603.

on an equivalent basis. BYX Book Viewer is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by 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. 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. 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 Book Viewer further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, 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 distribute its similar product than the Exchange charges to consolidate and distribute BYX Book Viewer, prospective Users likely would not subscribe to, or would cease subscribing to, BYX Book Viewer.

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.¹⁷

Distributor Fee. The Exchange believes that the proposed Distributor Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.¹⁸ The Exchange believes that the Distributor Fees for BYX Book Viewer are reasonable and fair in light of alternatives

¹⁷ 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).

¹⁸ The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See Nasdaq Rule 019(b); see also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081). See also the Initial BATS One Feed Fee Filings, supra note 10.

offered by other market centers. For example, BYX Book Viewer provides investors with alternative market data and competes with similar market data product currently offered by the New York Stock Exchange, Inc. (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”).¹⁹ Specifically, the NYSE charges an access fee of \$5,000 per month for NYSE OpenBook,²⁰ which is higher than the External Distributor fee proposed herein for BYX Book Viewer.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for BYX Book Viewer are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for BYX Book Viewer is reasonable because it provides an additional method for retail investors to access BYX Book Viewer data by providing the same data that is available to 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. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the BATS One Feed and has long been used by other exchanges for their proprietary data

¹⁹ See Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView is a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). See also Nasdaq Book Viewer, a description of which is available at <https://data.nasdaq.com/Book Viewer.aspx> (last visited July 29, 2015). See NYSE OpenBook available at <http://www.nyxdata.com/openbook> (last visited July 29, 2015) (providing real-time view of the NYSE limit order book).

²⁰ See NYSE Market Data Pricing dated May 2015 available at <http://www.nyxdata.com/>. Nasdaq charges distribution fees ranging from \$300 for 1-10 subscribers to \$75,000 for more than \$250 [sic] subscribers. See Nasdaq Rule 7023(b)(4).

products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.²¹ Offering BYX Book Viewer to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE and Nasdaq. Specifically, NYSE offers NYSE OpenBook for a monthly fee of \$60.00 per professional subscriber and \$15 per non-professional subscriber.²² Nasdaq offers Nasdaq BookViewer for the same fees as Nasdaq TotalView, which is a monthly fee of \$70.00 per professional subscriber and \$14 per non-professional subscriber.²³ The Exchange's proposed per User Fees for BYX Book Viewer are less than the NYSE and Nasdaq fees.

Enterprise Fee. The proposed Enterprise Fee for BYX Book Viewer is equitable and reasonable as the fees proposed are less than the enterprise fees currently charged for Nasdaq Book Viewer, which is subject to the exact same fees as Nasdaq TotalView. Nasdaq charges an enterprise fee of \$100,000 per month for Nasdaq TotalView,²⁴ which

²¹ See the Initial BATS One Feed Fee Filings, *supra* note 10. See also, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); Nasdaq Rules 7023(b), 7047.

²² See NYSE Market Data Pricing dated May 2015 available at <http://www.nyxdata.com/>.

²³ See Nasdaq Rule 7023(b)(2).

²⁴ See Nasdaq Rule 7023(c)(2) (stating that a distributor that is also a broker-dealer pays a monthly fee of \$100,000 for the right to provide Nasdaq TotalView and for display usage for internal distribution, or for external distribution to both professional and non-professional subscribers with whom the firm has a brokerage relationship.) Nasdaq also charges an enterprise fee of \$25,000 to provide Nasdaq TotalView to an unlimited number of non-professional subscribers only. See Nasdaq Rule 7023(c)(1).

is far greater than the proposed Enterprise Fee of \$20,000 per month for BYX Book Viewer. In addition, the Enterprise Fee proposed by the Exchange could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of BYX Book Viewer, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute BYX Book Viewer, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

Digital Media Enterprise Fee. The Exchange believes that the proposed Digital Media Enterprise Fee for BYX Book Viewer provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. In establishing the Digital Media Enterprise Fee, the Exchange recognizes that there is demand for a more seamless and

easier-to-administer data distribution model that takes into account the expanded variety of media and communication devices that investors utilize today. The Exchange believes the Digital Media Enterprise Fee will be easy to administer because data recipients that purchase it would not be required to differentiate between Professional and Non-Professional Users, account for the extent of access to the data, or report the number of Users. This is a significant reduction on a recipient firm's administrative burdens and is a significant value to investors. For example, a television broadcaster could display BYX Book Viewer data during market-related programming and on its website or allow viewers to view the data via their mobile devices, creating a more seamless distribution model that will allow investors more choice in how they receive and view market data, all without having to account for and/or measure who accesses the data and how often they do so.

The proposed Digital Media Enterprise Fee is equitable and reasonable because it will also enable recipient firms to more widely distribute data from BYX Book Viewer to investors for informational purposes at a lower cost than is available today. For example, a recipient firm may purchase an Enterprise license in the amount of \$20,000 per month for to receive BYX Book Viewer from an External Distributor for an unlimited number of Professional and Non-Professional Users, which is greater than the proposed Digital Media Enterprise Fee. The Exchange also believes the amount of the Digital Media Enterprise Fee is reasonable as compared to the existing enterprise fees discussed above because the distribution of BYX Book Viewer data is limited to television, websites, and mobile devices for informational purposes only, while distribution of BYX Book Viewer data pursuant to an Enterprise license contains no such limitation. The Exchange also

believes that the proposed Digital Media Enterprise Fee is equitable and reasonable because it is less than similar fees charged by other exchanges.²⁵

(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 Book Viewer is 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.

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 Book Viewer competes with a number of alternative products. For instance, BYX Book Viewer does provide a complete picture of all trading activity in

²⁵ The Nasdaq Stock Market offers proprietary data products for distribution over the internet and television under alternative fee schedules that are subject to maximum fee of \$50,000 per month. See Nasdaq Rule 7039(b). The NYSE charges a Digit Media Enterprise fee of \$40,000 per month for the NYSE Trade Digital Media product. See Securities Exchange Act Release No. 69272 (April 2, 2013), 78 FR 20983 (April 8, 2013) (SR-NYSE-2013-23).

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 and depth-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 Exchange 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 Book Viewer, 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 Act²⁶ and paragraph (f) of Rule 19b-4 thereunder.²⁷ 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 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-BYX-

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f).

2015-36 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-BYX-2015-36. 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 am and 3:00 pm. Copies of such 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 No. SR-

BYX-2015-36 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.²⁸

Robert W. Errett
Deputy Secretary

²⁸ 17 CFR 200.30-3(a)(12).