particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change will enable member organizations to expand the types of activities that can be conducted from booth premises to include transactions in certain OTCBB and OTC Markets securities for the member organization's own account, the account of an associated person, or an account with respect to which they or an associated person thereof exercise investment discretion. At the same time, the proposal excludes such transactions in an OTC Security that is related to a security listed or traded on the Exchange or on NYSE. In addition, the Commission notes that the proposed proprietary transactions in OTC Securities would remain subject to the registration, audit trail, and supervision requirements of NYSE Amex Equities Rule 70.40.[17] This includes the requirement to adopt and implement comprehensive written procedures governing the conduct and supervision of proprietary trading in OTC Securities handled through the booth and the staff responsible for such activities. These procedures must be reasonably designed to ensure that member organizations are not effecting transactions from booth premises in OTC Securities that are related to securities listed or traded on the Exchange or NYSE.[18]

The primary reason for the earlier restriction on proprietary trading by Floor Brokers was concern that the Floor Broker's knowledge of events on the floor and the state of the market would provide him with an unfair advantage over off-floor market participants. However, in light of the proposed rule's restriction on trading OTC Securities that are related to a security listed or traded on the Exchange or NYSE, the Commission believes that the opportunities for members to trade on non-public information will be appropriately minimized or eliminated.

In addition to written procedures, the member organization must have a supervisory system in place to produce records sufficient to reconstruct, in a time-sequenced manner, all orders with respect to trading from booth premises and must be able to demonstrate which OTC Security transactions were effected from the booth premises. Furthermore, as noted above, to the extent that a member organization has already obtained approval to operate booth premises under NYSE Amex Equities Rule 70.40, it would still be required to update its written procedures to address proprietary trading in OTC Securities and obtain NYSER approval under NYSE Amex Equities Rule 70.40(7).[19]

In light of the foregoing requirements, which provide for appropriate limitations on and oversight of proprietary trading by Exchange members from their approved booth premises adjacent to the floor, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSEAmex–2011–34) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17690 Filed 7–13–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64846; File No. SR–BYX–2011–013]

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.

July 8, 2011.

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 July 1, 2011, 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 [3] 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 proposes to amend the fee schedule applicable to Members [5] 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 Web site at *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 modify its fee schedule applicable to use of the Exchange effective July 1, 2011, in order to: (i) Decrease the standard rebate to remove liquidity from the Exchange; (ii) modify the tiered pricing structure applicable to adding displayed liquidity to the Exchange's order book; (iii) adopt a fee for non-displayed orders that add liquidity to the Exchange and receive price improvement when executed; (iv) increase the standard routing fee for the CYCLE, RECYCLE, Parallel D and

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[16] 15 U.S.C. 78f(b)(5).

[17] *See* Notice, *supra* note 3.

[18] *See id.*

[19] *See* Notice. *See also supra* note 12.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[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).

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

Parallel 2D routing strategies;[6] and (v) make other modifications to certain other non-standard routing options and strategies.

(i) Decrease to Standard Rebate for Removing Liquidity

The Exchange proposes to reduce the rebate that it provides for orders that remove liquidity from the Exchange from $0.0003 per share to $0.0002 per share. Consistent with the current rebate to remove liquidity, the rebate per share for executions that remove liquidity from the Exchange will not apply to executions that remove liquidity in securities priced under $1.00 per share. The fee for such executions will remain at 0.10% of the total dollar value of the execution. Similarly, as is currently the case for adding liquidity to the Exchange, there will be no liquidity rebate for adding liquidity in securities priced under $1.00 per share.

(ii) Changes to Tiered Fee Structure for Adding Liquidity

The Exchange currently maintains a tiered pricing structure for adding displayed liquidity in securities priced $1.00 and above that allows Members to add liquidity free of charge to the extent such liquidity sets the national best bid or offer (the ''NBBO Setter Program''). The NBBO Setter Program is applicable to a Member's orders so long as the Member submitting the order achieves the applicable average daily volume (''ADV'') requirement of at least 0.1% of the total consolidated volume (''TCV'') during the month. All other executions resulting from liquidity added by a Member are subject to a fee of $0.0002 per share. The Exchange proposes to increase this standard fee to add liquidity from $0.0002 per share to $0.0003 per share and to adopt a fee to add liquidity under the NBBO Setter Program. Specifically, the Exchange proposes to charge $0.0002 per share for Member executions under the NBBO Setter Program, which will continue to be available for Members with an ADV of at least 0.1% of TCV during the month. The Exchange does not propose to modify either the volume level required to meet the NBBO Setter Program or its existing definitions of ADV or TCV in connection with this change.

(iii) Fee for Non-Displayed Price Improved Orders

As defined on the Exchange's current fee schedule, ''non-displayed liquidity'' includes liquidity resulting from all forms of Pegged Orders,[7] Mid-Point Peg Orders,[8] and Non-Displayed Orders,[9] but does not include liquidity resulting from Reserve Orders[10] or Discretionary Orders.[11] The Exchange currently charges $0.0010 per share for non-displayed orders that add liquidity to and are executed on the Exchange. The Exchange recently received approval of a rule to allow non-displayed orders that are not executable at their most aggressive price to be executed at one-half minimum price variation less aggressive than that price.[12] Accordingly, such non-displayed orders will receive price improvement upon execution. Because such orders will receive price improvement, the Exchange proposes to execute the orders subject to a fee of $0.0030 per share. The Exchange believes that price improvement received for executions of non-displayed orders will offset the additional fee charged by the Exchange for such orders.

(iv) Increase to Fee for Standard Best Execution Routing Strategies

The Exchange proposes to modify the fee charged by the Exchange for its CYCLE, RECYCLE, Parallel D and Parallel 2D routing strategies from $0.0026 per share to $0.0028 per share. To be consistent with this change, the Exchange proposes to charge 0.28%, rather than 0.26%, of the total dollar value of the execution for any security priced under $1.00 per share that is routed away from the Exchange through these strategies.

(v) Other Modifications to Non-Standard Routing Rates

Various market centers, including the Exchange's affiliate, BATS Exchange, Inc. (''BZX''), are implementing certain pricing changes effective July 1, 2011. The Exchange proposes various changes to its routing strategies in connection with such changes so that fees charged and rebates provided reflect a direct pass-through of the fee charged or rebate received when routing directly to such market centers. For instance, the Exchange's affiliate, BZX, is increasing the fee charged for shares removed from BZX from $0.0028 per share to $0.0029 per share. Accordingly, the Exchange proposes to modify its Destination Specific Order[13] to BZX, as well as its TRIM[14] and SLIM[15] routing strategies with respect to any executions at BZX, to charge a fee of $0.0029 per share. The Exchange also proposes to modify its TRIM routing strategy to reflect the exact rate paid or assessed for executions at NASDAQ BX and EDGA Exchange, respectively. The Exchange currently identifies both of these venues as ''low priced venues'' and the Exchange does not charge or rebate its Members for orders routed to and executed by such venues. As proposed, the Exchange will pass on rebates that are paid by these venues in full. Specifically, the Exchange proposes to rebate $0.0014 per share for TRIM routed orders executed at NASDAQ BX, as this is the same rate paid by NASDAQ BX and is thus a direct pass-through. Similarly, the Exchange proposes to rebate $0.00015 per share for TRIM routed orders executed at EDGA Exchange, as this is, again, a direct pass-through of the rebate provided by EDGA Exchange.

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.[16] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[17] 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 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 changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also allowing the Exchange to continue to offer incentives to providing aggressively priced displayed liquidity. While Members that remove liquidity from the Exchange, add liquidity to the Exchange and/or route orders through the Exchange's standard routing strategies will be paying higher fees or receiving lower rebates due to the proposal, the increased revenue received by the

[6] As defined in BYX Rule 11.13.

[7] As defined in BYX Rule 11.9(c)(8).

[8] As defined in BYX Rule 11.9(c)(9).

[9] As defined in BYX Rule 11.9(c)(11).

[10] As defined in BYX Rule 11.9(c)(1).

[11] As defined in BYX Rule 11.9(c)(10).

[12] *See* Securities Exchange Act Release No. 64753 (June 27, 2011) (SR–BYX–2011–009).

[13] As defined in BYX Rule 11.9(c)(12).

[14] As defined in BYX Rule 11.13(a)(3)(G).

[15] As defined in BYX Rule 11.13(a)(3)(H).

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

Exchange will be used to continue to fund programs that the Exchange believes will attract additional liquidity and thus improve the depth of liquidity available on the Exchange.

The Exchange believes that basing its tiered rebate structure on overall TCV, rather than a static number irrespective of overall volume in the securities industry, is a fair and equitable approach to pricing. Volume-based tiers such as the liquidity rebate tiers offered by the Exchange have been widely adopted in the equities markets, and are equitable and not unreasonably discriminatory because they are open to all members on an equal basis and provide 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 process. Accordingly, the Exchange believes that the proposal is not unreasonably discriminatory because it is consistent with the overall goals of enhancing market quality.

Despite the decrease in rebate for all Members, the Exchange believes that its proposed fee structure is fair and equitable as the Exchange's standard rebate to remove liquidity still remains higher than standard rebates paid by at least one other market center with a similar fee structure, EDGA Exchange ($0.00015 per share).

Also, the Exchange's proposed NBBO Setter liquidity adding fee of $0.0002 per share and standard displayed liquidity adding fee of $0.0003 per share still remain approximately the same as one other market center that imposes a fee to add liquidity, EDGA Exchange ($0.00025 charge per share). The Exchange's proposed fees for adding liquidity are also significantly lower than the standard liquidity adding fees of NASDAQ OMX BX ($0.0018 charge per share). Additionally, the Exchange believes that the NBBO Setter Program will continue to incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors. To the extent the proposed changes will result in increased fees charged to Members, the Exchange believes that any additional revenue it receives will allow the Exchange to devote additional capital to its operations and to continue to offer competitive pricing, which, in turn, will benefit Members of the Exchange.

The Exchange believes that the additional fee for executions of non-displayed orders that receive price improvement is appropriate because the price improvement received will offset the change in the fee structure for such orders. The Exchange does not want to overly incentivize hidden liquidity, as this would be contrary to the goals of this proposal. Finally, the Exchange believes that the proposed changes to the Exchange's non-standard routing fees and strategies are competitive, fair and reasonable, and non-discriminatory in that they are designed to mirror the cost and/or rebate applicable to the execution if such routed orders were executed directly by the Member at each away market.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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 [18] and Rule 19b–4(f)(2) thereunder,[19] 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.

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. Please include File Number SR–BYX–2011–013 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–2011–013. 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 Web site (*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 Web site 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 a.m. and 3 p.m. 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–2011–013 and should be submitted on or before August 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Cathy H. Ahn,

Deputy Secretary.

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[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

[20] 17 CFR 200.30–3(a)(12).