

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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 available publicly. All submissions should refer to File Number SR-NYSEMKT-2013-17 and should be submitted on or before April 5, 2013.

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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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69104; File No. SR-NYSEMKT-2013-22]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 107C-Equities To Clarify That a Retail Member Organization May Submit Retail Orders to the Retail Liquidity Program in a Riskless Principal Capacity as Well as in an Agency Capacity

March 11, 2013.

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 March 1, 2013, NYSE MKT LLC ("NYSE MKT" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 Rule 107C-Equities to clarify that a Retail Member Organization ("RMO") may submit Retail Orders to the Retail Liquidity Program (the "Program") in a riskless principal capacity as well as in an agency capacity, provided that (i) the

entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO does not include non-retail orders together with the Retail Orders as part of the riskless principal transaction. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 is proposing an amendment to Rule 107C-Equities to clarify that an RMO may submit Retail Orders to the Program in a riskless principal capacity as well as in an agency capacity, provided that (i) the entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO does not include non-retail orders together with the Retail Orders as part of the riskless principal transaction.<sup>3</sup> Under current Rule 107C(a)(3)-Equities, a "Retail Order" is defined as "an agency order that originates from a natural person and is submitted to the Exchange by [an RMO]

<sup>3</sup> Recently, the Exchange proposed to amend the attestation requirement of Rule 107C to allow an RMO to attest that "substantially all" orders submitted to the Program will qualify as "Retail Orders." See Exchange Act Release No. 68747 (Jan. 28, 2013), 78 FR 7824 (Feb. 4, 2013). Riskless principal transactions permitted by this amendment would be considered "Retail Orders" for purposes of the attestation requirement.

provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or other computerized methodology."

The Exchange believes that, for purposes of determining whether an order should qualify as a Retail Order, there is no difference between a riskless principal order that meets the requirements of FINRA Rule 5320.03 and an agency order. A riskless principal transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and, contemporaneously, satisfies the original order by selling (buying) as principal at the same price. Generally, a riskless principal transaction involves two orders, the execution of one being dependent upon the receipt or execution of the other; thus, there is no "risk" in the interdependent transactions when completed. Unlike a riskless principal transaction, an agency order is entered directly in exchange systems on behalf of a customer. Ultimately, however, the results of a riskless principal transaction and an agency order are the same: The customer receives an execution while the involved member acts as an intermediary to effect the transaction.<sup>4</sup>

A riskless principal transaction under the Program would occur as follows. Assume an RMO receives a market order to sell 100 shares at \$10.01 of ABC from a retail customer. The RMO then enters a Retail Order into the Program to sell at \$10.01 under the Program, and that order receives a price-improved execution under the Program at \$10.012. When that execution occurs, the RMO contemporaneously executes the order with the retail customer for the same price (\$10.012) that it received within the program, exclusive of any markup or markdown, commission equivalent, or other fee. Thus, the retail customer would receive the same benefit from the Program that it would have if the Retail Order had been entered on an agency basis. Therefore, there is no functional distinction for purposes of the Program between an order entered by an RMO on an agency basis and one entered on a riskless principal basis, and including riskless principal orders improves the ability of RMOs to offer the possibility of price improvement to their customers.

The Exchange believes that the requirement that the entry of such

<sup>4</sup> A principal transaction differs from both a riskless principal transaction and an agency order in that it is an order for the principal account of the entering member.

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

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

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

riskless principal orders satisfy FINRA Rule 5320.03 provides sufficient protection against RMOs submitting orders for their own account to the Program. An RMO entering a riskless principal transaction will have to, contemporaneously with the execution of the customer's order, submit a report identifying the trade as riskless principal to FINRA. Additionally, the RMO will need to have written policies and procedures to ensure that riskless principal transactions comply with applicable FINRA rules. The policies and procedures, at a minimum, must require that the customer order be received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent, or other fee, and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution. Additionally, the RMO must have supervisory systems in place that produce records that enable the RMO and FINRA to reconstruct accurately, readily, and in a time-sequenced manner all Retail Orders that are entered on a riskless principal basis. The RMO must also ensure that non-Retail Orders are not included with the Retail Orders as part of a riskless principal transaction. The above requirements ensure that despite the procedural differences between the execution of a riskless principal transaction and an agency order, the *only* difference will be the procedure in which the transactions are effected and not the result.

The Exchange further believes that clarifying that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are able to participate in the Program on the same basis as agency orders will enable more retail customers to benefit from the enhanced price competition and transparency of the Program.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is designed 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 Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that riskless principal orders that meet the requirements of FINRA Rule 5320.03 will have the same opportunity to participate in the Program as agency orders. As discussed above, there is no functional distinction for purposes of the Program between an order entered by an RMO on an agency basis and one entered on a riskless principal basis. The Exchange believes that the proposed change would tend to reduce any potential discrimination between similarly situated customers or brokers by ensuring that the ability of retail customers to benefit from the Program does not depend on a distinction in capacity that is not meaningful for purposes of the Program. As a result of the change, a retail customer will be able to benefit from the price improvement offered by the Program without regard to whether the RMO enters the order on a riskless principal or agency basis.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will clarify that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are eligible to participate in the Program on the same basis as agency orders. By allowing all orders that are functionally equivalent to agency orders to participate in the Program, the proposed change would potentially stimulate further price competition for retail orders.

Finally, the Exchange believes that the proposed change would protect investors and public interest by expanding the access of retail customers to the price improvement and transparency offered by the Program and the access of the public to an exchange-sponsored alternative to broker-operated internalization venues.

## 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the amendment, by increasing the eligible level of participation in the program, will burdens on competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral

internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

## 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 with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such 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:

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement in this case.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-22 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-NYSEMKT-2013-22. This file number should be included on the subject line if email 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 10:00 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-NYSEMKT-2013-22 and should be submitted on or before April 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69107; File No. SR-BYX-2013-009]

**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.**

March 11, 2013.

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 February 26, 2013, 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 the Substance of the Proposed Rule Change**

The Exchange proposes 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). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on March 1, 2013.

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 effective March 1, 2013, in order to amend the rebates that it provides for removing liquidity and to amend the fees that it charges for adding liquidity, as described in further detail below.

**Rebates To Remove Liquidity**

The Exchange currently offers a tiered pricing structure for executions that remove liquidity. Under the tiered pricing structure, a Member must add a daily average of at least 50,000 shares of liquidity on BYX Exchange in order to receive a rebate to remove liquidity, which is currently provided at \$0.0002 per share. As with its other current tiered pricing, the daily average in order to receive the liquidity removal rebate is calculated based on a Member's activity in the month for which the rebates would apply. For Members that do not reach the tier to receive the liquidity removal rebate, the Exchange does not currently provide rebate. The Exchange does not, however, charge such Members, but rather, provides such executions free of charge.

The Exchange proposes to adopt two additional tiers in addition to the free removal rate for Members that do not qualify for an enhanced rebate and the \$0.0002 rebate to remove liquidity for Members that add a daily average of at least 50,000 shares of liquidity on BYX Exchange. Specifically, the Exchange proposes to provide a rebate of \$0.0004 per share to remove liquidity for Members that have an average daily volume ("ADV") on the Exchange of at least 0.5% of the total consolidated volume ("TCV") during the month and a rebate of \$0.0003 per share to remove liquidity for Members that have an ADV on the Exchange of at least 0.25% but less than 0.5% of TCV. To receive the rebate pursuant to either of the proposed new tiers, the Exchange will continue to impose the requirement that a Member add a daily average of at least 50,000 shares of liquidity on BYX Exchange. Although the Exchange does not propose modifying the existing rebate structure for Members that do not

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).