

3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA.

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-CTA/CQ-2013-02 and should be submitted on or before May 2, 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. 34-69325; File No. SR-NYSEArca-2013-17]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Amending Its Rules To Reflect the Merger of NYSE Arca Holdings, Inc., An Intermediate Holding Company, Into and With NYSE Group, Inc., Thereby Eliminating NYSE Arca Holdings, Inc. From the Ownership Structure of the Exchange

April 5, 2013.

#### I. Introduction

On February 7, 2013, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> proposed rule changes to reflect the merger of NYSE Arca Holdings, Inc. ("NYSE Arca Holdings"), an intermediate holding company, into and with NYSE Group, Inc. ("NYSE Group"), thereby eliminating NYSE Arca Holdings from the ownership structure of the Exchange (the "Merger"). The proposed rule changes were published for comment in the **Federal Register** on February 26, 2013.<sup>3</sup> The Commission received no comment letters on the proposal. The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent

with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> This order approves the proposed rule changes.

#### II. Description

NYSE Euronext intends to merge NYSE Arca Holdings with and into NYSE Group, effective following approval of the proposed rule changes.<sup>5</sup> According to the Exchange, the reason for the Merger is to eliminate an unnecessary intermediate holding company.<sup>6</sup> Following the Merger, the Exchange would be wholly-owned by NYSE Group (as its two affiliate exchanges, New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT"), are), which in turn would be wholly-owned by NYSE Euronext.

The Exchange has submitted its proposal to (i) delete in its entirety the Second Amended and Restated Certificate of NYSE Arca Holdings (the "NYSE Arca Holdings Certificate"), (ii) delete in its entirety the Amended and Restated Bylaws of NYSE Arca Holdings ("NYSE Arca Holdings Bylaws"); (iii) amend the rules of NYSE Arca, Inc. ("NYSE Arca"); (iv) amend the Bylaws of NYSE Arca ("NYSE Arca Bylaws"); and (v) file the resolution (the "Resolution") of the Board of Directors of NYSE Arca (the "NYSE Arca Board") in connection with the Merger.

Section 19(b) of the Act and Rule 19b-4 thereunder require a self-regulatory organization ("SRO") to file proposed rule changes with the Commission. Although NYSE Arca Holdings is not an SRO, the NYSE Arca Holdings Certificate and NYSE Arca Holdings Bylaws, along with other corporate documents, are rules of the Exchange<sup>7</sup> and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b-4 thereunder. Accordingly, the Exchange filed the NYSE Arca Holdings Certificate and NYSE Arca Holdings Bylaws with the Commission, along with other corporate governance documents.<sup>8</sup>

<sup>4</sup> In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> Currently, NYSE Arca Holdings, Inc. owns all of the equity interest of the Exchange. NYSE Group owns all of the equity interest of NYSE Arca Holdings. NYSE Euronext owns all of the equity interest of NYSE Group.

<sup>6</sup> See Notice, *supra* note 3, at 13103.

<sup>7</sup> See Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27).

<sup>8</sup> The Exchange proposes to delete the entirety of the Second Amended and Restated Certificate of Incorporation of NYSE Arca Holdings and the

The proposed rule changes reflect the elimination of NYSE Arca Holdings from the Exchange's ownership structure and delete duplicative or obsolete text. For example, the Exchange proposes to replace references to NYSE Arca Holdings in Sections 2.01 and 3.13 of the NYSE Arca Bylaws with references to NYSE Group.<sup>9</sup> The Exchange also proposes to delete Sections 2.02, 2.04 and 2.05 of the NYSE Arca Bylaws which relate to scheduling meetings of the Holding Member. The Exchange states that the Second Amended and Restated Bylaws of NYSE Group already include provisions for meetings of NYSE Group's stockholders and Board of Directors.<sup>10</sup> The Exchange also represents that the operating agreements of the Exchange's affiliated SROs, the NYSE and NYSE MKT, do not contain provisions relating to annual meetings of NYSE Group.<sup>11</sup>

The Exchange proposes to amend Section 3.02(f) of the NYSE Arca Bylaws to provide that, except as otherwise provided in the NYSE Arca Bylaws or rules, the Holding Member shall nominate directors for election at the Holding Member's annual meeting.<sup>12</sup> The Exchange notes that the NYSE Arca Bylaws and rules do not have any other provisions concerning the nomination of non-fair representation directors.<sup>13</sup> Accordingly, this proposed rule change will not have any impact on the current process for the nomination and selection of fair representation directors of the Exchange and NYSE Arca Equities, Inc. ("NYSE Arca Equities").<sup>14</sup>

#### III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

Amended and Restated Bylaws of NYSE Arca Holdings, attached as Exhibit A and Exhibit B, respectively, to the Notice. The Exchange also filed the proposed rule changes to its rules as the proposed Amended and Restated NYSE Arca Bylaws and rules, attached as Exhibit C and Exhibit D, respectively, to the Notice. The Exchange also filed the Resolution as Exhibit E to the Notice. These exhibits are available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>) and at the Commission's Public Reference Room.

<sup>9</sup> As a result of this change NYSE Group will replace NYSE Arca Holdings as the "Holding Member" for purposes of the NYSE Arca Bylaws.

<sup>10</sup> See Notice, *supra* note 3, at 13104.

<sup>11</sup> See *id.*

<sup>12</sup> Currently, Section 3.02(f) provides that "[e]xcept as otherwise provided in these Bylaws or the Rules, the Nominating Committee of NYSE Arca Holdings, Inc. Holding Member shall nominate directors for election at the annual meeting of the Holding Member."

<sup>13</sup> See Notice, *supra* note 3, at 13104.

<sup>14</sup> See Notice, *supra* note 3 at 13104.

<sup>9</sup> 17 CFR 200.30-3(a)(27).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 68959 (February 20, 2013), 78 FR 13103 ("Notice").

exchange.<sup>15</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 proposal would accommodate the merger of NYSE Arca Holdings, an intermediate holding company, into and with NYSE Group, thereby eliminating NYSE Arca Holdings from the ownership structure of the Exchange. The Commission notes that the proposed rule changes would otherwise have no substantive impact on other rules of the Exchange, including those concerning the nomination and selection of fair representation directors that currently apply to the Exchange. The Exchange would continue as an indirect wholly-owned subsidiary of NYSE Euronext. In addition, the Commission notes that the NYSE Arca Board made certain findings set forth in the Resolution that the proposed rule changes to NYSE Arca's Bylaws are consistent with the restrictions on amending NYSE Arca's Bylaws.<sup>17</sup>

In light of these representations and findings, the Commission believes that the proposed rule changes are consistent with the Act and will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSEArca-2013-17) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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<sup>15</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See Resolution.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69317; File No. SR-BYX-2013-012]

### 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.

April 5, 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 27, 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 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 April 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to modify its fee schedule effective April 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. For Members that meet this requirement, the Exchange provides three different rebates, as described below.

The Exchange currently provides 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"), 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, and a rebate of \$0.0002 per share to remove liquidity for Members that add the requisite number of shares of liquidity on BYX Exchange but do not qualify for a rebate based on TCV as set forth above. 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 a 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 does not propose modifying the existing rebate structure for Members that do not achieve one of the three enhanced rebate tiers.

The Exchange does not propose to change the requirement that a Member add a daily average of at least 50,000 shares of liquidity on BYX Exchange in order to receive a rebate to remove liquidity. The Exchange proposes to

<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.