

resulting in executions at prices that are away from the best bid or offer, thereby protecting investors from receiving executions at inferior prices to what may be available at other market centers.

#### *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 is proposing a market enhancement that provides greater protections from potentially erroneous executions and the attendant risks of such executions to market participants. Therefore, the Exchange believes that the proposal should provide an incentive for market participants to enter executable interest in the CME that can help foster price discovery and transparency thereby benefiting all market participants. The proposal is structured to offer the same enhancement to all market participants, regardless of account type, and will not impose a competitive burden on any participant. The Exchange does not believe that the proposed mechanism will impose a burden on competing options exchanges. Rather, the availability of this mechanism may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. When an exchange offers enhanced functionality that distinguishes it from the competition and participants find it useful, it has been the Exchange's experience that competing exchanges will move to adopt similar functionality. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the market place as a whole as it can result in enhanced processes, functionality, and technologies.

#### *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**

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and Rule 19b-4(f)(6)<sup>15</sup> 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.<sup>17</sup>

### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-103 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-NYSEArca-2013-103. 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

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its 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 the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(C).

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 20549-1090, 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 available publicly. All submissions should refer to File Number SR-NYSEArca-2013-103, and should be submitted on or before November 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

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

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70665; File No. SR-BYX-2013-035]

#### **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.**

October 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 October 1, 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)

<sup>18</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.

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). Changes to the fee schedule pursuant to this proposal are 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 the use of the Exchange effective October 1, 2013, in order to modify pricing related to executions that occur on BATS Exchange, Inc. ("BZX") through the Exchange's Destination Specific Order routing strategy.<sup>6</sup> BZX is implementing certain pricing changes effective October 1, 2013, including modification of the fee of \$0.0029 per share when removing liquidity to a fee of \$0.0030 per share when removing liquidity. To maintain a direct pass through of the applicable economics of Destination Specific Order executions at BZX, the Exchange proposes to charge \$0.0030

per share for a Destination Specific Order executed on BZX, rather than the \$0.0029 per share that it currently charges for such orders. The Exchange is not proposing any other changes to its routing fees at this time.

##### **2. Statutory Basis**

The [sic] 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>7</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</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 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 structures at a particular venue to be unreasonable and/or excessive. The Exchange believes that the proposed changes to the Exchange's routing fee for Destination Specific Orders executed on BZX are equitably allocated, fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror the fee applicable to the execution if such routed orders were executed directly by the Member at BZX.

#### *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, as amended. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange and executed at BZX through the Destination Specific Order strategy, the proposed fee change is designed to equal the fee that a Member would have received if such routed orders would have been executed directly by a Member at BZX.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>10</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2013-035 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-2013-035. 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

<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>6</sup> As defined in BYX Rule 11.9(c)(12).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f).

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 available publicly. All submissions should refer to File Number SR-BYX-2013-035 and should be submitted on or before November 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70653; File No. SR-NYSEMKT-2013-79]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 2—Equities To Specify That the Definition of An Approved Person Does Not Include a Governmental Entity and Amending Rule 304—Equities To Provide That if a Governmental Entity Directly or Indirectly Owns a Member Organization, Then the Member Organization Must Identify Such Governmental Entity to the Exchange

October 10, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on September 26, 2013, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 2—Equities to specify that the definition of an approved person does not include a governmental entity and amend Rule 304—Equities to provide that if a governmental entity directly or indirectly owns a member organization, then the member organization must identify such governmental entity to the Exchange. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Rule 2—Equities to specify that the definition of an approved person does not include a governmental entity and amend Rule 304 to provide that if a governmental entity directly or indirectly owns a member organization, then the member organization must identify such governmental entity to the Exchange.

Under Rule 2(b)(i)—Equities, a "member organization" is defined as a registered broker-dealer that has been approved for membership on the Exchange. To qualify as a member organization, a broker-dealer must be a member of either (i) the Financial Industry Regulatory Authority, Inc. ("FINRA") or (ii) a registered securities exchange other than the Exchange. Under Rule 2(c)—Equities, an approved person of a member organization is defined as a person, other than a member, principal executive or employee of a member organization, who controls a member organization, is engaged in a securities or kindred

business that is controlled by a member or member organization, or is a U.S.-registered broker-dealer under common control with a member organization. Under Rule 2(d)—Equities, "control" means the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract or otherwise. A person is presumed to control another person if such person, directly or indirectly, (i) has the right to vote 25 percent or more of the voting securities, (ii) is entitled to receive 25 percent or more of the net profits, or (iii) is a director, general partner or principal executive (or person occupying a similar status or performing similar functions) of the other person.<sup>4</sup>

Rule 304—Equities provides that a member organization must identify each approved person to the Exchange. Each approved person must execute a written consent to the jurisdiction of the Exchange and agree to (1) supply the Exchange with information relating to the existence of any statutory disqualification to which the approved person or any person associated with the approved person may be subject, as defined in the Act; (2) abide by such provisions of the rules of the Exchange relating to approved persons as shall from time to time be in effect; and (3) permit examination by the Exchange, or any person designated by it, at any time or from time to time, of its books and records to verify the accuracy of the information required to be supplied herein and by the rules of the Exchange. Supplementary Material .10 to Rule 304—Equities sets forth certain additional requirements for approved persons domiciled outside the United States.

The Exchange recently received a membership application for a broker-dealer that is an approved FINRA member; this broker-dealer has an owner that is a governmental entity that indirectly controls the broker-dealer and thus falls within the definition of approved person under the Exchange's rules. This is the first time that the Exchange has received a membership application presenting this ownership structure. The Exchange notes that a governmental entity could be either a direct or an indirect owner of a member organization, and by virtue of its control, fall within the Exchange's definition of approved person, although this result was not contemplated at the time the definition was created. The

<sup>4</sup> The Exchange notes that the approved person definition is an Exchange convention and is not intended to be identical to the definition of "associated person" pursuant to Section 3(a)(18) of the Act. See 15 U.S.C. 78c(a)(18).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.