

Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Commission notes that the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange,<sup>30</sup> will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continuing listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(3) Except for up to 10% of ADRs, which may be unsponsored, the Fund will invest only in equity securities (including financial instruments that are linked to the performance of foreign issuers),<sup>31</sup> ETPs, and BDCs that trade in

nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>30</sup> The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>31</sup> See notes 8 and 9, *supra*, and accompanying text.

markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>32</sup> as provided by NYSE Arca Equities Rule 5.3.<sup>33</sup>

(7) The Fund will not invest in options contracts, futures contracts, or swap agreements.

(8) The Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

(9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities.

(10) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section

<sup>32</sup> 17 CFR 240.10A-3.

<sup>33</sup> See Notice, *supra* note 4, 78 FR at 21478.

6(b)(5) of the Act<sup>34</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>35</sup> that the proposed rule change (SR-NYSEArca-2013-33), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69589; File No. SR-BYX-2013-014]

### 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.

May 16, 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 May 3, 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>

<sup>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> 15 U.S.C. 78s(b)(2).

<sup>36</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.

<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.

and non-members 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 fees applicable to Members and non-members in order to encourage use of connectivity that provides redundant access to the Exchange by eliminating any potential fees for logical ports<sup>6</sup> in connection with such redundant access.

The Exchange currently charges a monthly fee for ports used to enter orders in the Exchange's trading system and to receive data from the Exchange. The Exchange currently charges \$400.00 per month per "pair" of any port type other than a Multicast PITCH Spin Server Port or a GRP Port.<sup>7</sup> Each pair of ports consists of one port at the Exchange's primary data center and one port at the Exchange's secondary data center. Rather than stating that the fee for logical ports is per "pair", the Exchange proposes to simplify the fee schedule by adding a footnote that states that logical port fees are limited to logical ports in the Exchange's primary data center and that no logical port fees

will be assessed for redundant secondary data center ports. Although this change to fee schedule language will not result in any substantive change to Members or non-members, as the Exchange is already providing secondary data center ports free of charge, the Exchange believes that this is a simpler way to bill for ports rather than billing in pairs. Further, this will allow the Exchange to include the concept of a "primary" Multicast PITCH data feed, as described below, without confusion as related to the Exchange's primary data center.

In addition, the Exchange proposes to modify the description of the billing for ports related to the Exchange's Multicast PITCH data feed.<sup>8</sup> The Exchange currently provides 32 pairs of Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports.<sup>9</sup> The Exchange charges customers \$400.00 per month per additional set of 32 Multicast PITCH Spin Server Ports or additional pair of GRP Ports. Consistent with the change described above, the Exchange proposes to eliminate the concept of port "pairs" and instead maintain a fee schedule that imposes fees only for logical ports at the Exchange's primary data center. Thus, the Exchange will continue to provide at the Exchange's primary data center 32 Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free GRP Port and all redundant Multicast PITCH Spin Server Ports and GRP Ports at the secondary data center will be free of charge. Again, although not a substantive change for Members and non-members, the Exchange believes that this change simplifies the fee schedule and also indicates the Exchange's support for Members and non-members to establish sufficient connectivity for business continuity purposes.

Similarly, the Exchange proposes to modify its fee schedule in order to allow Members and non-members to take redundant Multicast PITCH data feeds from the Exchange. The Exchange's Multicast PITCH data feed is currently

offered through two primary feeds, identified as the "A feed" and the "C feed", which contain the same information but differ only in the way such feeds are received. The Exchange is in the process of commencing to offer redundant versions of the Multicast PITCH data feed and does not intend for Members and non-members that connect to such feeds to incur additional port fees. As such, the Exchange is proposing to modify its description of Multicast PITCH logical port fees so that only ports necessary to take a primary feed (either A or C), and not redundant versions of such feed, are subject to logical port fees. Again, the Exchange wishes to encourage Members and non-members to establish connectivity for business continuity purposes, including in the event the Exchange's data center is fully operational but a specific version of an Exchange data feed becomes unavailable.

Based on the proposal, the change applies to Members that obtain ports for direct access to the Exchange, Sponsored Participants sponsored by Members to receive direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, and market data recipients.

#### 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.<sup>10</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</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 believes that its proposed changes to logical port fees are reasonable in light of the fact that all such changes are intended to ensure that Members and non-members are able to establish redundant connections to the Exchange without incurring additional logical port fees. In addition, the Exchange believes that the proposed changes to fees are equitably allocated among Exchange constituents as the cost savings for redundant connectivity will be available to all such constituents. The Exchange reiterates that the change

<sup>8</sup> The Multicast PITCH data feed is defined in Rule 11.22(c) as "an uncompressed data feed that offers depth of book quotations and execution information based on equity orders entered into the System."

<sup>9</sup> The Exchange notes that its fees for Multicast PITCH customers, including the current provision of certain ports free of charge, are designed to encourage use of the Exchange's Multicast PITCH data feed because the Exchange believes that the feed is its most efficient feed, and thus, will reduce infrastructure costs for both the Exchange and those who utilize the feed. Any Member or non-member that has entered into the appropriate agreements with the Exchange is permitted to receive Multicast PITCH Spin Server Ports and GRP Ports from the Exchange.

<sup>6</sup> A logical port is commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or Multicast PITCH data receipt.

<sup>7</sup> Thus, the charges apply to all Exchange FIX, FIXDROP, BOE, DROP, TCP PITCH, and TOP ports.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

to limit logical port fees to logical port fees at the primary data center is not a substantive change in that Exchange constituents currently receive without charge a corresponding port at the secondary data center for any port established at the primary data center.

The Exchange also believes that providing financial incentives to use Exchange technology that the Exchange believes is the most technologically efficient for the Exchange and its constituents is a fair and equitable approach to pricing. Accordingly, the Exchange believes that promotion of its Multicast PITCH data feed through the continued offering of free logical ports is fair and equitable. The Multicast PITCH data feed is available to all Members, and as such, all Members have the ability to receive applicable Multicast PITCH ports free of charge. Further, the Exchange believes that promoting the use of redundant connectivity is reasonable, fair and equitable and not unreasonably discriminatory as it is uniform in application amongst Members and non-members and should enable such participants to enhance their business continuity planning.

#### *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. To the contrary, the Exchange will not assess new fees as part of the proposal. Instead, the proposal is focused on enhancing the clarity of the fee schedule and reducing barriers to Exchange Members and non-member constituents that may be seeking to establish redundant connections to the Exchange.

#### *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>12</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>13</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-2013-014 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-2013-014. 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 available publicly. All submissions should refer to File Number SR-BYX-2013-014 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69590; File No. SR-NYSE-2013-32]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Proposing an Amendment to the Bylaws of Its Wholly-Owned Subsidiary, NYSE Regulation, Inc. ("NYSE Regulation"), To Eliminate a Requirement That Not Less Than Two Members of the Board of Directors of NYSE Regulation Must Qualify as "Fair Representation Candidates"**

May 16, 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 May 8, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 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 the Substance of the Proposed Rule Change**

The Exchange proposes to amend an amendment to the bylaws of its wholly-owned subsidiary NYSE Regulation, Inc. ("NYSE Regulation") to eliminate a requirement that not less than two members of the board of directors of NYSE Regulation must qualify as "fair representation candidates" (as that term is defined in those bylaws). A requirement that such directors constitute a minimum of 20% of the board would remain in place. 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.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f).