

OMB APPROVAL

OMB Number: 3235-0045
Expires: August 31, 2011
Estimated average burden
hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2011 - * 008

Amendment No. (req. for Amendments *)

Proposed Rule Change by BATS Y-Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☒ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☒ Section 19(b)(3)(B) * ☐

Rule

Pilot ☐ Extension of Time Period
for Commission Action * ☐ Date Expires *

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☒ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Amendments to fee schedule of BATS Y-Exchange, Inc.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Anders Last Name * Franzon
Title * VP, Associate General Counsel
E-mail * afranzone@batstrading.com
Telephone * (913) 815-7154 Fax (913) 815-7119

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 04/29/2011

By Anders Franzon
(Name *)

VP, Associate General Counsel

(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Anders Franzon,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information (required)

[Add](#) [Remove](#) [View](#)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

[Add](#) [Remove](#) [View](#)

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

[Add](#) [Remove](#) [View](#)

Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

[Add](#) [Remove](#) [View](#)

Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

[Add](#) [Remove](#) [View](#)

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

[Add](#) [Remove](#) [View](#)

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

[Add](#) [Remove](#) [View](#)

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² BATS Y-Exchange, Inc. (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members³ 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 May 2, 2011.

(a) The text of the proposed rule change is below. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

* * * * *

BATS BYX Exchange Fee Schedule
Effective [March 1]May 2, 2011

The following is the Schedule of Fees (pursuant to Rule 15.1(a) and (c)) for BATS Y-Exchange, Inc. (“BYX Exchange” or “BYX”).

All references to “per share” mean “per share executed.”

Rebates for Accessing Liquidity for All Securities Priced \$1.00 or Above

\$0.0003 rebate per share that removes liquidity from the BYX Exchange order book

Liquidity Fees for All Securities Priced \$1.00 or Above

No charge or rebate for adding displayed liquidity to the BYX Exchange order book that sets the national best bid or offer (“NBBO”) for Members who have an [average daily volume] ADV^1 equal to or greater than 0.10% of average TCV² [of 10 million shares or more added per day during the month]

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

\$0.0002 charge per share for adding displayed liquidity to the BYX Exchange order book for all other [Members] executions

\$0.0010 charge per share that adds non-displayed[*]³ (hidden) liquidity to the BYX Exchange order book

Securities Priced Below \$1.00

0.10% charge of the total dollar value to remove liquidity for securities priced below \$1.00 traded on the BYX Exchange order book

No liquidity rebate for securities priced below \$1.00 traded on the BYX Exchange order book

Standard Routing Pricing – Best Execution Routing

\$0.0020 charge per share for shares executed at a dark liquidity venue (“DRT” routing)

\$0.0026 charge per share for shares executed at any other venue (“CYCLE”, “RECYCLE”, “Parallel D”, and “Parallel 2D” routing)

\$0.0033 charge per share for shares executed at any other venue (“Parallel T” routing)

Note: Default Best Execution Routing = DRT + Parallel D

Discounted Destination Specific Routing (“One Under/Better”) to NYSE, NYSE ARCA, NASDAQ, and EDGA

- BYX + NYSE Destination Specific Orders: \$0.0022 charge per share
- BYX + NYSE ARCA Destination Specific Orders for Tape B: \$0.0027 charge per share
- BYX + NYSE ARCA Destination Specific Orders for Tapes A and C: \$0.0029 charge per share
- BYX + NASDAQ Destination Specific Orders: \$0.0029 charge per share
- BYX + EDGA Destination Specific Orders: \$0.00025 rebate per share

Other Non-Standard Routing Options – Specific Order Types and Securities Priced Below \$1.00

- BYX + BATS Exchange, Inc. (“BZX Exchange”) Destination Specific Orders (“B2B”): \$0.0028 charge per share
- BYX + DRT Destination Specific Orders: \$0.0020 charge per share
- BYX + (Protected Market Center) Destination Specific Orders other than NYSE, NYSE ARCA, NASDAQ, and EDGA: \$0.0030 charge per share
- Directed ISO’s: \$0.0033 charge per share
- Stocks Priced Below \$1.00 for CYCLE, RECYCLE, Parallel D, and Parallel 2D routed executions: 0.26% charge of the total dollar value
- Stocks Priced Below \$1.00 for Parallel T routed executions: 0.33% charge of the total dollar value

TRIM Routing Strategy

- TRIM orders executed at low-priced venues: no charge
- TRIM orders executed at a DRT venue: \$0.0020 charge per share
- TRIM orders executed at NYSE: \$0.0022 charge per share
- TRIM orders executed at BZX Exchange: \$0.0028 charge per share

SLIM Routing Strategy

- SLIM orders executed at BZX Exchange: \$0.0028 charge per share
- SLIM orders executed at NYSE: \$0.0022 charge per share
- SLIM orders executed at any other venue, including any DRT venue: \$0.0026 charge per share

¹ “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day on a monthly basis; routed shares are not included in ADV calculation; with prior notice to the Exchange, a Member may aggregate ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member’s Form BD).

² “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[*]³ Non-displayed order types include all forms of Pegged, Mid-Point Peg and Non-Displayed Limit orders. The non-displayed rebate does not apply to Reserve or Discretionary orders.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on September 27, 2010. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (913) 815-7000.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective May 2, 2011, in order to amend its pricing to add displayed liquidity. The Exchange currently maintains a tiered pricing structure applicable to added displayed liquidity in securities priced \$1.00 and above, under which any Member adding a daily average of 10 million shares or more of liquidity (including displayed and non-displayed liquidity) during a month is able to add displayed liquidity without charge, while any Member adding a daily average of less than 10 million shares of liquidity during a month is charged \$0.0002 per share. The Exchange proposes to replace its existing tiered pricing structure with a structure 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") so long as the Member submitting the order achieves the applicable average daily volume ("ADV") requirement, as described below.

An order that is entered at the most aggressive price both on the BYX order book and according to then current consolidated data from the applicable securities industry processor ("SIP") will be determined to have set the national best bid or offer for purposes of the NBBO Setter Program without regard to whether a more aggressive order is entered prior to the original order being executed. The Exchange's affiliate, BATS Exchange, Inc., has adopted similar pricing for its options platform ("BATS Options").⁴

⁴ See Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR-BATS-2010-038) (adopting an NBBO Setter Rebate for BATS Options); see also Securities Exchange Act Release No. 64211 (April 6, 2011), 76 FR 20414 (April 12, 2011) (SR-BATS-2011-012) (modifying the

In conjunction with the adoption of the NBBO Setter Program, the Exchange proposes to modify the volume requirement of the tiered pricing structure from an ADV requirement of at least 10 million shares added per day in a given month to an ADV requirement of at least 0.1% of the total consolidated volume (“TCV”) during the month. Accordingly, rather than basing its pricing structure on a static number of shares, the Exchange proposes to modify its tiered pricing structure such that it is based on TCV, and is thus variable based on overall volumes in the securities industry. To illustrate the Exchange’s application of TCV, if the overall volume of securities traded as reported by all exchanges and trade reporting facilities is 100 billion shares in a given month, this amount will be used as the TCV against which the Exchange’s tiered pricing will be measured for all trading activity during the month. The amount of overall TCV in the month will be divided by the number of trading days to determine average TCV; for instance, 100 billion shares divided by 20 trading days is an average TCV of 5 billion shares per day. Using these volumes as an example, to reach the Exchange’s proposed tier of 0.10% of average TCV, and thus qualify for the NBBO Setter Program, a Member would need to have an ADV of at least 5 millions shares traded on BYX per day. If, in the next month, volumes doubled, and the TCV for the month was 200 billion shares, then a Member would need to have an ADV of at least 10 million shares traded on BYX per day to have an ADV equal to 0.10% of average TCV. The Exchange believes that basing its tiered pricing on TCV rather than a specific number of shares is a preferable measure of overall activity given the fluctuation of volumes in the securities industry.

NBBO Setter Program for BATS Options to include a volume requirement based on TCV).

Further, subject to increased volumes in the securities industry, a volume requirement of 0.10% of average TCV is likely less than 10 million shares per day, and is thus a reduction from the Exchange's current volume requirement for tiered pricing.

In addition, the Exchange proposes to adopt definitions for both ADV and TCV. For purposes of the fee schedule, the proposed definition of ADV is average daily volume calculated as the number of shares added or removed, combined, per day on a monthly basis. The Exchange currently applies its tiered pricing structure based on added shares only. Accordingly, in addition to 0.10% of TCV likely being a lower requirement than 10 million shares per day (absent a significant increase in volumes) the proposed tiered rates will also be easier to achieve because all shares traded, added and removed, will be included in the calculation of ADV. The Exchange proposes to make clear in the definition of ADV that routed contracts are not included in the Exchange's calculation of ADV, but rather, only volume executed on the Exchange counts towards a Member's ADV. The Exchange also proposes to allow affiliated entities to aggregate their order flow for purposes of the Exchange's determination of ADV with respect to pricing tiers if such entities provide prior notice to the Exchange. Specifically, to the extent two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such Members to count overall volume of the affiliates in calculating ADV. The Exchange will verify such affiliate using a Member's Form BD, which lists control affiliates.

As proposed, TCV is defined as total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

(b) 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.⁵ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ 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 Exchange believes that its fees and credits are competitive with those charged by other venues.

The establishment of the NBBO Setter Program may result in a small increase in fees for Members currently reaching the Exchange's 10 million share ADV tier who are able to add displayed liquidity without a fee. Although such Members (and likely several Members not currently reaching such tier) will likely meet the volume requirement of the NBBO Setter Program, as proposed, only those executions that were the result of such a Member adding liquidity *and* that set the NBBO will be added without fee. Nonetheless,

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

the Exchange's standard displayed liquidity adding fee of \$0.0002 per share still remains lower than other markets that impose a fee to add liquidity, such as EDGA Exchange (\$0.00025 charge per share) and NASDAQ OMX BX (\$0.0014 charge per share). Additionally, the Exchange believes that the NBBO Setter Program will incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors. Also, 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 new tier rate based on TCV represents a fair and equitable allocation of reasonable dues, fees, and other charges as it is aimed at incentivizing liquidity for high volume providers, which results in increased volume on BYX. By combining this volume tier with the NBBO Setter program, the Exchange is incentivizing aggressively priced liquidity from such liquidity providers. The increased, aggressively priced liquidity benefits all investors by deepening BYX's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based discounts such as the liquidity adding fee tier maintained by the Exchange have been widely adopted by numerous exchanges, and are equitable and not unreasonably discriminatory because they are open to all members on an equal basis and provide discounts 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. Additionally, the

Exchange believes that the adoption of a definition for TCV will help to avoid potential confusion regarding the Exchange's fee schedule.

The proposed language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. By way of example, many firms that are Members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access the Exchange. Absent the proposed policy, such corporate affiliates would not receive the same treatment as firms operating similar business lines within a single entity that is a Member of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

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

The proposed rule change does not impose any burden on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and Rule 19b-4(f)(2) thereunder,⁸ 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.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

The NBBO Setter Program proposed by this filing is analogous to the NBBO Setter Rebate offered by BATS Options.⁹ Specifically, both the proposal and the BATS Options program offer tiered pricing for executions of orders that set a new NBB or NBO so long as the Member submitting the order achieves the applicable average daily volume requirement. Further, both initiatives are based on a specified percentage of TCV, though this percentage does differ between the two. Specifically, the BATS Options NBBO Setter Program has two different ADV levels, either 0.30% of average TCV or 1% of

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ See supra note 4.

average TCV, in comparison to the proposed BYX ADV requirement of 0.10% of average TCV. The programs also differ in that Members qualifying for the BATS Options NBBO Setter Rebate receive a rebate for added liquidity rather than a reduced fee, as is proposed for the BYX NBBO Setter Program.

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 5: Not applicable.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-BYX-2011-008)

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.

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 April 29, 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 Act³ 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 Members⁵ of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee schedule

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.

pursuant to this proposal will be effective upon filing, the changes will become operative on May 2, 2011.

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 May 2, 2011, in order to amend its pricing to add displayed liquidity. The Exchange currently maintains a tiered pricing structure applicable to added displayed liquidity in securities priced \$1.00 and above, under which any Member adding a daily average of 10 million shares or more of liquidity (including displayed and non-displayed liquidity) during a month is able to add displayed liquidity without charge, while any Member adding a daily average of less than 10 million shares of liquidity during a month is charged \$0.0002 per share. The Exchange proposes to replace its existing tiered pricing structure with a structure 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")

so long as the Member submitting the order achieves the applicable average daily volume (“ADV”) requirement, as described below.

An order that is entered at the most aggressive price both on the BYX order book and according to then current consolidated data from the applicable securities industry processor (“SIP”) will be determined to have set the national best bid or offer for purposes of the NBBO Setter Program without regard to whether a more aggressive order is entered prior to the original order being executed. The Exchange’s affiliate, BATS Exchange, Inc., has adopted similar pricing for its options platform (“BATS Options”).⁶

In conjunction with the adoption of the NBBO Setter Program, the Exchange proposes to modify the volume requirement of the tiered pricing structure from an ADV requirement of at least 10 million shares added per day in a given month to an ADV requirement of at least 0.1% of the total consolidated volume (“TCV”) during the month. Accordingly, rather than basing its pricing structure on a static number of shares, the Exchange proposes to modify its tiered pricing structure such that it is based on TCV, and is thus variable based on overall volumes in the securities industry. To illustrate the Exchange’s application of TCV, if the overall volume of securities traded as reported by all exchanges and trade reporting facilities is 100 billion shares in a given month, this amount will be used as the TCV against which the Exchange’s tiered pricing will be measured for all trading activity during the month. The amount of overall TCV in the

⁶ See Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR-BATS-2010-038) (adopting an NBBO Setter Rebate for BATS Options); see also Securities Exchange Act Release No. 64211 (April 6, 2011), 76 FR 20414 (April 12, 2011) (SR-BATS-2011-012) (modifying the NBBO Setter Program for BATS Options to include a volume requirement based on TCV).

month will be divided by the number of trading days to determine average TCV; for instance, 100 billion shares divided by 20 trading days is an average TCV of 5 billion shares per day. Using these volumes as an example, to reach the Exchange's proposed tier of 0.10% of average TCV, and thus qualify for the NBBO Setter Program, a Member would need to have an ADV of at least 5 millions shares traded on BYX per day. If, in the next month, volumes doubled, and the TCV for the month was 200 billion shares, then a Member would need to have an ADV of at least 10 million shares traded on BYX per day to have an ADV equal to 0.10% of average TCV. The Exchange believes that basing its tiered pricing on TCV rather than a specific number of shares is a preferable measure of overall activity given the fluctuation of volumes in the securities industry. Further, subject to increased volumes in the securities industry, a volume requirement of 0.10% of average TCV is likely less than 10 million shares per day, and is thus a reduction from the Exchange's current volume requirement for tiered pricing.

In addition, the Exchange proposes to adopt definitions for both ADV and TCV. For purposes of the fee schedule, the proposed definition of ADV is average daily volume calculated as the number of shares added or removed, combined, per day on a monthly basis. The Exchange currently applies its tiered pricing structure based on added shares only. Accordingly, in addition to 0.10% of TCV likely being a lower requirement than 10 million shares per day (absent a significant increase in volumes) the proposed tiered rates will also be easier to achieve because all shares traded, added and removed, will be included in the calculation of ADV. The Exchange proposes to make clear in the definition of ADV that routed contracts are not included in the Exchange's calculation of ADV, but rather, only volume executed on the Exchange counts towards a Member's ADV. The Exchange also proposes to allow affiliated entities to aggregate their order

flow for purposes of the Exchange's determination of ADV with respect to pricing tiers if such entities provide prior notice to the Exchange. Specifically, to the extent two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such Members to count overall volume of the affiliates in calculating ADV. The Exchange will verify such affiliate using a Member's Form BD, which lists control affiliates.

As proposed, TCV is defined as total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

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.⁷ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ 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

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues.

The establishment of the NBBO Setter Program may result in a small increase in fees for Members currently reaching the Exchange's 10 million share ADV tier who are able to add displayed liquidity without a fee. Although such Members (and likely several Members not currently reaching such tier) will likely meet the volume requirement of the NBBO Setter Program, as proposed, only those executions that were the result of such a Member adding liquidity *and* that set the NBBO will be added without fee. Nonetheless, the Exchange's standard displayed liquidity adding fee of \$0.0002 per share still remains lower than other markets that impose a fee to add liquidity, such as EDGA Exchange (\$0.00025 charge per share) and NASDAQ OMX BX (\$0.0014 charge per share).

Additionally, the Exchange believes that the NBBO Setter Program will incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors. Also, 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 new tier rate based on TCV represents a fair and equitable allocation of reasonable dues, fees, and other charges as it is aimed at incentivizing liquidity for high volume providers, which results in increased volume on BYX. By combining this volume tier with the NBBO Setter program, the Exchange is incentivizing aggressively priced liquidity from such liquidity providers. The increased, aggressively priced liquidity benefits all investors by deepening BYX's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving

investor protection. Volume-based discounts such as the liquidity adding fee tier maintained by the Exchange have been widely adopted by numerous exchanges, and are equitable and not unreasonably discriminatory because they are open to all members on an equal basis and provide discounts 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. Additionally, the Exchange believes that the adoption of a definition for TCV will help to avoid potential confusion regarding the Exchange's fee schedule.

The proposed language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. By way of example, many firms that are Members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access the Exchange. Absent the proposed policy, such corporate affiliates would not receive the same treatment as firms operating similar business lines within a single entity that is a Member of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its

Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

(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 Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ 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 proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

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 No. SR-BYX-2011-008 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 No. SR-BYX-2011-008. 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 10:00 am and 3:00 pm. 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-2011-008 and should be submitted on or before [_____21 days from publication in the Federal Register].

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

Cathy H. Ahn
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).