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Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2012 - * 024
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) *
☑	☐	☐	☐	☑	☐

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

Rule

19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	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 the fee schedule of BATS Y-Exchange, Inc. to adopt fees for the Exchange's Retail Price Improvement Program.

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 * afranzon@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 12/06/2012

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 EFFS 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 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 Members[3] 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.

(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 [October 1] <u>December 6</u>, 2012

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."

* * * * *

Liquidity Fees for All Securities Priced $1.00 or Above

* * * * *

$0.0010 charge per share that adds non-displayed[3] (hidden) liquidity to the BYX Exchange order book<u>, unless removed by a Retail Order as described below</u>

* * * * *

<u>Retail Price Improvement Program Pricing</u>

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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.

<u>$0.0025 rebate per share for a Retail Order that removes liquidity from the BYX Exchange order book in an RPI Group 1 Security, except for a Type 2 Retail Order that removes displayed liquidity[4]</u>
<u>$0.0010 rebate per share for a Retail Order that removes liquidity from the BYX Exchange order book in an RPI Group 2 Security, except for a Type 2 Retail Order that removes displayed liquidity[4]</u>
<u>$0.0025 charge per share for any Retail Price Improving Order or non-displayed[3] (hidden) order that adds liquidity to the BYX Exchange order book in an RPI Group 1 Security and is removed by a Retail Order</u>
<u>$0.0010 charge per share for any Retail Price Improving Order or non-displayed[3] (hidden) order that adds liquidity to the BYX Exchange order book in an RPI Group 2 Security and is removed by a Retail Order</u>
<u>RPI Group 1 Securities: AAPL, SPY, FB, FAS, FAZ, IWM, C, GE, GOOG, GLD</u>
<u>RPI Group 2 Securities: SIRI, BAC, NOK, S, MU, F, AMD, JPM, HPQ, XLF</u>

* * * * *

[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.

[4] <u>The standard rebate of $0.0002 per share applies to any Type 2 Retail Order that removes displayed liquidity.</u>

* * * * *

(a) Not applicable.

(b) Not applicable.

2. <u>Procedures of the Self-Regulatory Organization</u>

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

On August 14, 2012, the Exchange filed with the Commission a proposed rule change to establish on a one-year pilot basis the Retail Price Improvement ("RPI") Program (the "Program").[4] The Program seeks to establish a venue for the execution of retail orders with greater price competition and transparency than existing execution arrangements. The Exchange filed an amendment to the proposal on November 13, 2012, proposing to make various minor amendments to the Proposal, including an amendment to limit the Program to a group of up to 25 securities for the first 90 days of the pilot period, and to gradually expand the program on a monthly basis for the remainder of the pilot period.

The Program establishes a new class of market participants (Retail Member Organizations) and two new order types (Retail Orders and Retail Price Improvement Orders). Retail Member Organizations will submit Retail Orders to the Exchange. All Exchange Users[5] will be permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation ("Protected NBB") or the national best offer that is a Protected Quotation ("Protected NBO", and together with the Protected NBB, the "Protected

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4 See Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (SR-BYX-2012-019) (the "Proposal").

5 A "User" is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

NBBO").[6] Such price improving interest can be entered either in the form of Retail Price Improvement Orders (or "RPI Orders") or as other non-displayed interest.

The Commission recently approved the Program's operation on a pilot basis.[7] Accordingly, the Exchange proposes to modify its fee schedule effective December 6, 2012, in order to adopt pricing for the Program, which will be applicable to the first set of securities selected by the Exchange for inclusion in the Program.[8]

The Exchange proposes to provide a rebate to Retail Member Organizations for executions of their Retail Orders and to charge Users a fee for executions of their orders against Retail Orders. Further, the Exchange proposes to bifurcate into "Group 1" and "Group 2" the original 20 securities selected by the Exchange to be included in the Program, and to differentiate rebates and fees between such Groups.

Group 1, as proposed, will initially include 10 securities, as follows: Apple Inc. (AAPL), SPDR S&P ETF Trust (SPY), Facebook Inc. (FB), Direxion Daily Financial

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6 The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO", together with the NBB, the "NBBO") will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

7 <u>See</u> Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019).

8 The Exchange currently plans to implement the Program on December 17, 2012. Although the Program is not yet operative, the Exchange is adopting the applicable fees in anticipation of the Program's operation.

Bull 3X Shares (FAS), Direxion Daily Financial Bear 3X Shares (FAZ), iShares Russell 2000 Index (IWM), Citigroup Inc. (C), General Electric Company (GE), Google Inc. (GOOG), and SPDR Gold Trust (GLD) ("Group 1 Securities"). The Exchange proposes to provide a rebate of $0.0025 per share for a Retail Order that removes liquidity from the BYX Exchange order book in an RPI Group 1 Security. Similarly, the Exchange proposes to charge $0.0025 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 1 Security and is removed by a Retail Order.

Group 2, as proposed, will initially include 10 securities, as follows: Sirius XM Radio Inc. (SIRI), Bank of America Corp. (BAC), Nokia Corporation-ADR (NOK), Sprint Nextel Corporation (S), Micron Technology, Inc. (MU), Ford Motor Company (F), Advanced Micro Devices, Inc. (AMD), JPMorgan Chase & Co. (JPM), Hewlett-Packard Company (HPQ), and Financial Select Sector SPDR (XLF) ("Group 2 Securities"). The Exchange proposes to provide a rebate of $0.0010 per share for a Retail Order that removes liquidity from the BYX Exchange order book in an RPI Group 2 Security. Similarly, the Exchange proposes to charge $0.0010 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 2 Security and is removed by a Retail Order.

As proposed, the rebates for Retail Orders described above will not apply to Type 2 Retail Orders that remove displayed liquidity from the BYX Exchange order book. Instead, such Retail Orders, when removing displayed liquidity, will receive the standard rebate of $0.0002 per share for orders that remove liquidity. Similarly, a liquidity provider that enters a displayed order that is removed by a Retail Order will be charged the standard fee for adding displayed liquidity (either $0.0003 per share or $0.0002 per share depending on whether such liquidity provider qualifies for tiered pricing incentives).

The Exchange is proposing the higher remove rebate and fee to add liquidity for Group 1 Securities because the Exchange believes that, while both Group 1 and Group 2 Securities attract heavy retail investor interest, liquidity providers in the over-the-counter market are generally willing to pay retail brokers higher fees for retail orders in Group 1 Securities. The Exchange's rebate for Group 1 Securities is designed to compete with such higher fees.

The Exchange currently charges a fee of $0.0010 per share to add non-displayed liquidity to the BYX order book. As explained in the Proposal, the Exchange proposes to execute incoming Retail Orders against all available contra-side interest that will provide price improvement to the Retail Order, including non-displayed orders other than RPI Orders. In the event non-displayed interest other than an RPI Order interacts with a Retail Order, the Exchange proposes to charge the User that entered such non-displayed interest the same fee as is imposed for an RPI Order execution. As set forth above, the Exchange proposes to charge a fee of $0.0025 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 1 Security and is removed by a Retail Order. Accordingly, the Exchange proposes language to the existing text related to liquidity fees to make clear that any non-displayed order removed by a Retail Order will pay the applicable fee under the Retail Pricing Improvement program for such execution.

(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.[9] Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Program is intended to increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[11] The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market where it may be subject to greater competition from multiple liquidity providers.

The Exchange understands that Section 6(b)(5) of the Act[12] prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or

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[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (b)(5).

[11] See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

[12] 15 U.S.C. 78f(b)(5).

other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business. The differentiation established by the Exchange in connection with the Program is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements.

The Exchange believes that the proposed rebates for Retail Orders are fair and equitable in that they are designed to compete with internalization arrangements established by executing broker-dealers. The Exchange further believes that differentiation between the two types of securities (Groups 1 and 2) is fair and equitable and not unreasonably discriminatory because this differentiation is based on the Exchange's belief as to relative economic value of order flow, namely, that order flow in Group 1 Securities is more valuable, and in turn, is rewarded with better economic arrangements by broker-dealers, than is order flow in Group 2 Securities.

As set forth above, in addition to establishing pricing for orders particularly designated to participate in the Program, namely Retail Orders and RPI Orders, the proposal will impact non-displayed orders that interact with Retail Orders in Group 1 Securities in that such orders will be charged a higher fee than they do today. The Exchange believes that the proposal to treat non-displayed orders differently depending on the parties with whom they interact is consistent with Section 6(b)(5) of the Act,[13] which requires that the rules of an exchange are not designed to permit unfair discrimination. The Exchange believes that such a differential pricing structure for non-displayed orders is not unfairly discriminatory. As stated in the NYSE RLP Approval Order, the "Commission has previously recognized that the markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed."[14] The Exchange's proposed differential pricing structure for non-displayed orders recognizes that not only are liquidity providers willing to provide better prices to retail investors, they are also willing to pay higher fees to trade certain securities with retail investors and, hence, raises substantively identical policy considerations as the rules approved by the Commission in the NYSE RLP Approval Order, which account for the difference of assumed information and sophistication level

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13 15 U.S.C. 78f(b)(5).

14 See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673, at 40679-40680 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) (citing Concept Release on Equity Market Structure and approval of an options exchange program related to price improvement for retail orders). Certain options exchanges deploy this same rationale today through pricing structures that vary for a trading participant based on the capacity of the contra-side trading participant. See, e.g., Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR-BATS-2010-038) (notice of filing and immediate effectiveness of proposal to modify fees for BATS Options, including liquidity rebates that are variable depending on the capacity of the contra-party to the transaction; see also Securities Exchange Act Release No. 67171 (June 8, 2012), 77 FR 35732 (June 14, 2012) (SR-NASDAQ-2012-068) (notice of filing and immediate effectiveness of proposal to modify fees for the NASDAQ Options Market, including certain fees and rebates that are variable depending on the capacity of the contra-party to the transaction).

between different trading participants by providing Retail Orders access to better execution prices as well as more favorable access fees.

Finally, as set forth above, the rebates for Retail Orders described above will not apply to Type 2 Retail Orders that remove displayed liquidity from the BYX Exchange order book. Instead, such Retail Orders, when removing displayed liquidity, will receive the standard rebate of $0.0002 per share for orders that remove liquidity. Type 2 Retail Orders under the Program are designated by the entering Member as willing to remove all available liquidity, after receiving any available price improving liquidity, including removing the Exchange's displayed best bid or offer. The Exchange believes that Type 2 Retail Orders that remove displayed liquidity should receive the same pricing as any other order that removes displayed liquidity from the Exchange and that applying its existing pricing structure for any executions of Retail Orders against displayed quotations is fair and equitable and not unreasonably discriminatory.

4. 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.

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 Act[15] and Rule 19b-4(f)(2) thereunder,[16] 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

Not applicable.

9. Exhibits

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

Exhibit 2 – 5: Not applicable.

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15 15 U.S.C. 78s(b)(3)(A)(ii).

16 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-_____________; File No. SR-BYX-2012-024)

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 December 6, 2012, 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[3] 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 Members[5] 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.

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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.

The text of the proposed rule change is available at the Exchange's website 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

On August 14, 2012, the Exchange filed with the Commission a proposed rule change to establish on a one-year pilot basis the Retail Price Improvement ("RPI") Program (the "Program").[6] The Program seeks to establish a venue for the execution of retail orders with greater price competition and transparency than existing execution arrangements. The Exchange filed an amendment to the proposal on November 13, 2012, proposing to make various minor amendments to the Proposal, including an amendment to limit the Program to a group of up to 25 securities for the first 90 days of the pilot period, and to gradually expand the program on a monthly basis for the remainder of the pilot period.

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[6] See Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (SR-BYX-2012-019) (the "Proposal").

The Program establishes a new class of market participants (Retail Member Organizations) and two new order types (Retail Orders and Retail Price Improvement Orders). Retail Member Organizations will submit Retail Orders to the Exchange. All Exchange Users[7] will be permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation ("Protected NBB") or the national best offer that is a Protected Quotation ("Protected NBO", and together with the Protected NBB, the "Protected NBBO").[8] Such price improving interest can be entered either in the form of Retail Price Improvement Orders (or "RPI Orders") or as other non-displayed interest.

The Commission recently approved the Program's operation on a pilot basis.[9] Accordingly, the Exchange proposes to modify its fee schedule effective December 6,

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7 A "User" is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

8 The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO", together with the NBB, the "NBBO") will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

9 See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019).

2012, in order to adopt pricing for the Program, which will be applicable to the first set of securities selected by the Exchange for inclusion in the Program.[10]

The Exchange proposes to provide a rebate to Retail Member Organizations for executions of their Retail Orders and to charge Users a fee for executions of their orders against Retail Orders. Further, the Exchange proposes to bifurcate into "Group 1" and "Group 2" the original 20 securities selected by the Exchange to be included in the Program, and to differentiate rebates and fees between such Groups.

Group 1, as proposed, will initially include 10 securities, as follows: Apple Inc. (AAPL), SPDR S&P ETF Trust (SPY), Facebook Inc. (FB), Direxion Daily Financial Bull 3X Shares (FAS), Direxion Daily Financial Bear 3X Shares (FAZ), iShares Russell 2000 Index (IWM), Citigroup Inc. (C), General Electric Company (GE), Google Inc. (GOOG), and SPDR Gold Trust (GLD) ("Group 1 Securities"). The Exchange proposes to provide a rebate of $0.0025 per share for a Retail Order that removes liquidity from the BYX Exchange order book in an RPI Group 1 Security. Similarly, the Exchange proposes to charge $0.0025 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 1 Security and is removed by a Retail Order.

Group 2, as proposed, will initially include 10 securities, as follows: Sirius XM Radio Inc. (SIRI), Bank of America Corp. (BAC), Nokia Corporation-ADR (NOK), Sprint Nextel Corporation (S), Micron Technology, Inc. (MU), Ford Motor Company (F), Advanced Micro Devices, Inc. (AMD), JPMorgan Chase & Co. (JPM), Hewlett-Packard

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10 The Exchange currently plans to implement the Program on December 17, 2012. Although the Program is not yet operative, the Exchange is adopting the applicable fees in anticipation of the Program's operation.

Company (HPQ), and Financial Select Sector SPDR (XLF) ("Group 2 Securities"). The Exchange proposes to provide a rebate of $0.0010 per share for a Retail Order that removes liquidity from the BYX Exchange order book in an RPI Group 2 Security. Similarly, the Exchange proposes to charge $0.0010 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 2 Security and is removed by a Retail Order.

As proposed, the rebates for Retail Orders described above will not apply to Type 2 Retail Orders that remove displayed liquidity from the BYX Exchange order book. Instead, such Retail Orders, when removing displayed liquidity, will receive the standard rebate of $0.0002 per share for orders that remove liquidity. Similarly, a liquidity provider that enters a displayed order that is removed by a Retail Order will be charged the standard fee for adding displayed liquidity (either $0.0003 per share or $0.0002 per share depending on whether such liquidity provider qualifies for tiered pricing incentives).

The Exchange is proposing the higher remove rebate and fee to add liquidity for Group 1 Securities because the Exchange believes that, while both Group 1 and Group 2 Securities attract heavy retail investor interest, liquidity providers in the over-the-counter market are generally willing to pay retail brokers higher fees for retail orders in Group 1 Securities. The Exchange's rebate for Group 1 Securities is designed to compete with such higher fees.

The Exchange currently charges a fee of $0.0010 per share to add non-displayed liquidity to the BYX order book. As explained in the Proposal, the Exchange proposes to execute incoming Retail Orders against all available contra-side interest that will provide price improvement to the Retail Order, including non-displayed orders other than RPI

Orders. In the event non-displayed interest other than an RPI Order interacts with a Retail Order, the Exchange proposes to charge the User that entered such non-displayed interest the same fee as is imposed for an RPI Order execution. As set forth above, the Exchange proposes to charge a fee of $0.0025 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 1 Security and is removed by a Retail Order. Accordingly, the Exchange proposes language to the existing text related to liquidity fees to make clear that any non-displayed order removed by a Retail Order will pay the applicable fee under the Retail Pricing Improvement program for such execution.

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.[11] Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,[12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Program is intended to increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual

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[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4) and (b)(5).

investors are executed over-the-counter.[13] The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market where it may be subject to greater competition from multiple liquidity providers.

The Exchange understands that Section 6(b)(5) of the Act[14] prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business. The differentiation established by the Exchange in connection with the Program is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements.

The Exchange believes that the proposed rebates for Retail Orders are fair and equitable in that they are designed to compete with internalization arrangements established by executing broker-dealers. The Exchange further believes that

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13 See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

14 15 U.S.C. 78f(b)(5).

differentiation between the two types of securities (Groups 1 and 2) is fair and equitable and not unreasonably discriminatory because this differentiation is based on the Exchange's belief as to relative economic value of order flow, namely, that order flow in Group 1 Securities is more valuable, and in turn, is rewarded with better economic arrangements by broker-dealers, than is order flow in Group 2 Securities.

As set forth above, in addition to establishing pricing for orders particularly designated to participate in the Program, namely Retail Orders and RPI Orders, the proposal will impact non-displayed orders that interact with Retail Orders in Group 1 Securities in that such orders will be charged a higher fee than they do today. The Exchange believes that the proposal to treat non-displayed orders differently depending on the parties with whom they interact is consistent with Section 6(b)(5) of the Act,[15] which requires that the rules of an exchange are not designed to permit unfair discrimination. The Exchange believes that such a differential pricing structure for non-displayed orders is not unfairly discriminatory. As stated in the NYSE RLP Approval Order, the "Commission has previously recognized that the markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed."[16] The Exchange's proposed differential pricing

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15 15 U.S.C. 78f(b)(5).

16 See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673, at 40679-40680 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) (citing Concept Release on Equity Market Structure and approval of an options exchange program related to price improvement for retail orders). Certain options exchanges deploy this same rationale today through pricing structures that vary for a trading participant based on the capacity of the contra-side trading

structure for non-displayed orders recognizes that not only are liquidity providers willing to provide better prices to retail investors, they are also willing to pay higher fees to trade certain securities with retail investors and, hence, raises substantively identical policy considerations as the rules approved by the Commission in the NYSE RLP Approval Order, which account for the difference of assumed information and sophistication level between different trading participants by providing Retail Orders access to better execution prices as well as more favorable access fees.

Finally, as set forth above, the rebates for Retail Orders described above will not apply to Type 2 Retail Orders that remove displayed liquidity from the BYX Exchange order book. Instead, such Retail Orders, when removing displayed liquidity, will receive the standard rebate of $0.0002 per share for orders that remove liquidity. Type 2 Retail Orders under the Program are designated by the entering Member as willing to remove all available liquidity, after receiving any available price improving liquidity, including removing the Exchange's displayed best bid or offer. The Exchange believes that Type 2 Retail Orders that remove displayed liquidity should receive the same pricing as any other order that removes displayed liquidity from the Exchange and that applying its existing pricing structure for any executions of Retail Orders against displayed quotations is fair and equitable and not unreasonably discriminatory.

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participant. See, e.g., Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR-BATS-2010-038) (notice of filing and immediate effectiveness of proposal to modify fees for BATS Options, including liquidity rebates that are variable depending on the capacity of the contra-party to the transaction; see also Securities Exchange Act Release No. 67171 (June 8, 2012), 77 FR 35732 (June 14, 2012) (SR-NASDAQ-2012-068) (notice of filing and immediate effectiveness of proposal to modify fees for the NASDAQ Options Market, including certain fees and rebates that are variable depending on the capacity of the contra-party to the transaction).

(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.

(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 Act[17] and Rule 19b-4(f)(2) thereunder,[18] 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:

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17 15 U.S.C. 78s(b)(3)(A)(ii).

18 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-2012-024 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-2012-024. 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 website (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 website 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-2012-024 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.[19]

Kevin M. O'Neill
Deputy Secretary

[19] 17 CFR 200.30-3(a)(12).