

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 16	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2013 - * 008	Amendment No. (req. for Amendments *)
----------------	--	-----------------------------	---------------------------------------

Filing by BATS Y-Exchange, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/> Section 806(e)(2) <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>
--	---

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
---	---

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend the attestation requirement of BYX Rule 11.24 to allow a Retail Member Organization to attest that "substantially all" orders submitted to the Retail Price Improvement Program will qualify as Retail Orders.

**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 action.

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.

(Title \*)

Date 02/12/2013	VP, Associate General Counsel
By Anders Franzon <small>(Name *)</small>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Anders Franzon,</div>

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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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 \***

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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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, security-based swap submission, or advance notice 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Y-Exchange, Inc. (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the attestation requirement of BYX Rule 11.24 to allow a Retail Member Organization<sup>3</sup> (“RMO”) to attest that “substantially all” orders submitted to the Retail Price Improvement Program (the “Program”) will qualify as Retail Orders.<sup>4</sup> BYX Rule 11.24(b)(2)(C) currently requires RMOs to attest that “any order” will so qualify, effectively preventing certain significant retail brokers from participating in the Program due to operational constraints.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

---

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

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

<sup>3</sup> A Retail Member Organization is a Member (or a division thereof) that has been approved by the Exchange under BATS Rule 11.24 to submit Retail Orders.

<sup>4</sup> A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on February 11, 2013. 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 is proposing an amendment to BYX Rule 11.24 to provide that an RMO may attest that "substantially all" of the orders it submits to the Program are Retail Orders, replacing the requirement that the RMO must attest that all submitted orders qualify as Retail Orders. Currently, under BYX Rule 11.24(b)(2)(C), a Member<sup>5</sup> wishing to become an RMO must submit: (A) an application form; (B) supporting documentation; and (C) an attestation that "any order" submitted as a Retail Order will qualify as such under BYX Rule 11.24.

The Exchange believes that the categorical nature of the current attestation language is preventing certain Members with retail customers from participating in the Program. In particular, the Exchange understands that some Members wishing to participate in the Program represent both Retail Orders as well as other agency flow that may not meet the strict definition of "Retail Order." The Exchange further understands that limitations in order management systems and routing networks used by such

---

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

Members may make it infeasible for them to isolate 100% of Retail Orders from other agency, non-Retail Order flow that they would direct to the Program. Unable to make the categorical attestation required by the current language of BYX Rule 11.24, some Members have chosen not to participate, notwithstanding that substantially all order flow from such Members would be Retail Orders. This limitation has the effect of preventing their retail customers from benefiting from the enhanced price competition and transparency of the Program.

Accordingly, the Exchange is proposing a de minimis relaxation of the RMO attestation requirement in order to accommodate these system limitations and expand the access of retail customers to the benefits of the Program. Specifically, as proposed, an RMO would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under existing definitions of the Program.

The Exchange will issue notice to its Members to make clear that the “substantially all” language is meant to permit the presence of only isolated and de minimis quantities of agency orders that do not qualify as Retail Orders that cannot be segregated from Retail Orders due to systems limitations. In this regard, an RMO would need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis in terms of the overall number of Retail Orders sent to the Exchange.

(b) Statutory Basis

The rule change proposed in this submission 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(b) of the Act.<sup>6</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the RMO applicant to attest that “substantially all” of its orders will qualify as Retail Orders. The slight relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted to the Program would not qualify as Retail Orders.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated Members who have only slight differences in the capability of their systems will be able to equally benefit from the Program.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow Members, who are concerned about its system limitations not

---

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

allowing 100% certification that submitted orders are Retail Orders, to still participate in the Program. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the price improvement and transparency offered by the Program and thereby potentially stimulate further price competition for retail orders.

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. The Exchange believes that the amendment, by increasing the level of participation in the Program, will increase the level of competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Program on an exchange market would result in better prices for retail investors and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-exchange venues.

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)

Not applicable.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

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

Exhibits 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BYX-2013-008)

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of Proposed Rule Change Amending the Attestation Requirement of Rule 11.24 Allowing a Retail Member Organization To Attest That “Substantially All” Orders Submitted to The Retail Price Improvement Program Will Qualify As “Retail Orders.”

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 February 12, 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 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 is proposing to amend the attestation requirement of BYX Rule 11.24 to allow a Retail Member Organization<sup>3</sup> (“RMO”) to attest that “substantially all” orders submitted to the Retail Price Improvement Program (the “Program”) will qualify as Retail Orders.<sup>4</sup> BYX Rule 11.24(b)(2)(C) currently requires RMOs to attest that “any

---

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

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

<sup>3</sup> A Retail Member Organization is a Member (or a division thereof) that has been approved by the Exchange under BATS Rule 11.24 to submit Retail Orders.

<sup>4</sup> A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology.

order” will so qualify, effectively preventing certain significant retail brokers from participating in the Program due to operational constraints.

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

The Exchange is proposing an amendment to BYX Rule 11.24 to provide that an RMO may attest that “substantially all” of the orders it submits to the Program are Retail Orders, replacing the requirement that the RMO must attest that all submitted orders qualify as Retail Orders. Currently, under BYX Rule 11.24(b)(2)(C), a Member<sup>5</sup> wishing to become an RMO must submit: (A) an application form; (B) supporting documentation; and (C) an attestation that “any order” submitted as a Retail Order will qualify as such under BYX Rule 11.24.

---

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

The Exchange believes that the categorical nature of the current attestation language is preventing certain Members with retail customers from participating in the Program. In particular, the Exchange understands that some Members wishing to participate in the Program represent both Retail Orders as well as other agency flow that may not meet the strict definition of “Retail Order.” The Exchange further understands that limitations in order management systems and routing networks used by such Members may make it infeasible for them to isolate 100% of Retail Orders from other agency, non-Retail Order flow that they would direct to the Program. Unable to make the categorical attestation required by the current language of BYX Rule 11.24, some Members have chosen not to participate, notwithstanding that substantially all order flow from such Members would be Retail Orders. This limitation has the effect of preventing their retail customers from benefiting from the enhanced price competition and transparency of the Program.

Accordingly, the Exchange is proposing a de minimis relaxation of the RMO attestation requirement in order to accommodate these system limitations and expand the access of retail customers to the benefits of the Program. Specifically, as proposed, an RMO would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under existing definitions of the Program.

The Exchange will issue notice to its Members to make clear that the “substantially all” language is meant to permit the presence of only isolated and de minimis quantities of agency orders that do not qualify as Retail Orders that cannot be segregated from Retail Orders due to systems limitations. In this regard, an RMO would

need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis in terms of the overall number of Retail Orders sent to the Exchange.

## 2. Statutory Basis

The rule change proposed in this submission 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(b) of the Act.<sup>6</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the RMO applicant to attest that “substantially all” of its orders will qualify as Retail Orders. The slight relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted to the Program would not qualify as Retail Orders.

---

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated Members who have only slight differences in the capability of their systems will be able to equally benefit from the Program.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow Members, who are concerned about its system limitations not allowing 100% certification that submitted orders are Retail Orders, to still participate in the Program. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the price improvement and transparency offered by the Program and thereby potentially stimulate further price competition for retail orders.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the amendment, by increasing the level of participation in the Program, will increase the level of competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Program on an exchange market would result in better prices for retail investors and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-exchange venues.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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:

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](mailto:rule-comments@sec.gov). Please include File No. SR-BYX-2013-008 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-2013-008. 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 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 changes 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-2013-008 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.<sup>8</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>8</sup> 17 CFR 200.30-3(a)(12).

Note: Proposed new language is underlined. Proposed deletions are enclosed in [brackets].

**Rules of BATS Y-Exchange, Inc.**

\*\*\*

**CHAPTER XI. TRADING RULES**

\*\*\*

Rule 11.23. (Reserved.)

Rule 11.24. Retail Price Improvement Program

(a) (No changes.)

(b) *Retail Member Organization Qualifications and Application.*

(1) (No changes.)

(2) To become a Retail Member Organization, a Member must submit:

(A)-(B) (No changes.)

(C) an attestation, in a form prescribed by the Exchange, that substantially all[any] orders submitted as [a ]Retail Orders will qualify as such under this Rule.

(3)-(6) (No changes.)

(c)-(h) (No changes.)

\*\*\*