

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 24

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

File No.\* SR - 2015 - \* 45  
 Amendment No. (req. for Amendments \*)

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant  
 to the Securities Exchange Act of 1934

Section 806(e)(1) \*

☐

Section 806(e)(2) \*

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Section 3C(b)(2) \*

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Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



### Description

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

BATS Y-Exchange, Inc. proposea to amend Rule 11.24, 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 action.

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

### 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 10/14/2015

By Anders Franzon

(Name \*)

VP, Associate General Counsel

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.

afranzone@bats.com

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549	
For complete Form 19b-4 instructions please refer to the EFFT website.	
<div>Form 19b-4 Information *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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.
<div>Exhibit 1 - Notice of Proposed Rule Change *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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)
<div>Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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)
<div>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	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.
<div>Exhibit 3 - Form, Report, or Questionnaire</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	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.
<div>Exhibit 4 - Marked Copies</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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.
<div>Exhibit 5 - Proposed Rule Text</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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.
<div>Partial Amendment</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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 Proposed Rule Change

Pursuant to the provisions of 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 Exchange Rule 11.24, which governs the Exchange’s Retail Price Improvement Program (“Retail Program”), to distinguish between retail orders routed on behalf of other broker-dealers and retail orders that are routed on behalf of introduced retail accounts that are carried on a fully disclosed basis, as further described below. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>3</sup>

(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.

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 February 11, 2014. 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

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6)(iii).

the rule change.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Eric Swanson  
EVP, General Counsel  
(913) 815-7000

Anders Franzon  
VP, Associate General Counsel  
(913) 815-7154

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

a. Purpose

The Exchange proposes to amend Rule 11.24, which governs the Exchange's Retail Program,<sup>4</sup> to distinguish between orders routed on behalf of other broker-dealers and orders routed on behalf of introduced retail accounts that are carried on a fully disclosed basis, as further described below.

The Exchange established the Retail Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. Under the Retail Program, Retail Member Organizations<sup>5</sup> ("RMOs") are permitted to submit Retail Orders.<sup>6</sup> All Exchange Users<sup>7</sup> are permitted members to submit Retail

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<sup>4</sup> In November 2012, the Commission approved the RPI Program on a pilot basis. See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019).

<sup>5</sup> A Retail Member Organization is a Member (or a division thereof) that has been approved by the Exchange under Rule 11.24 to submit Retail Orders.

<sup>6</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.

<sup>7</sup> A "User" is defined "as any member or sponsored participant who is authorized to obtain access to the System." See Rule 1.5(cc).

Price Improvement Orders (“RPI Orders”),<sup>8</sup> which are designed 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”).<sup>9</sup> In addition, RMOs may optionally designate Retail Orders to be identified as Retail on the Exchange’s proprietary data feeds.<sup>10</sup>

Exchange Rule 11.24(b)(1) currently states that “[t]o qualify as a Retail Member Organization, a Member must conduct a retail business or *handle* retail orders on behalf of another broker-dealer.”<sup>11</sup> Rather than stating that one way to qualify as an RMO is to “handle” retail orders on behalf of another broker-dealer, the Exchange proposes to state that a Member may qualify as an RMO if it “routes” retail orders on behalf of another broker-dealer. The Exchange believes that providing routing services on behalf of other broker-dealers with retail order flow was the intended meaning of the provision and that the term “handle” is vague. Thus, the Exchange believes that the description would be better if it referred to routing services provided to another broker-dealer with retail customers. The Exchange also proposes to distinguish such routing services on behalf of

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<sup>8</sup> A “Retail Price Improvement Order” is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least \$0.001 and that is identified as such. See Rule 11.24(a)(3).

<sup>9</sup> The term Protected Quotation is defined in 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 Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer.

<sup>10</sup> See Rule 11.24(i).

<sup>11</sup> Emphasis added.

another broker-dealer from services provided by broker-dealers that carry retail customer accounts on a fully disclosed basis, as described below.

As background with respect to the proposed change, the Exchange first would like to describe the terms “introducing broker”, “carrying firm” or “carrying broker-dealer”, and “fully disclosed,” as such terms are commonly used in the securities industry. An “introducing” broker-dealer is “one that has a contractual arrangement with another firm, known as the carrying or clearing firm, under which the carrying firm agrees to perform certain services for the introducing firm. Usually, the introducing firm submits its customer accounts and customer orders to the carrying firm, which executes the orders and carries the account. The carrying firm’s duties include the proper disposition of the customer funds and securities after the trade date, the custody of customer securities and funds, and the recordkeeping associated with carrying customer accounts.”<sup>12</sup>

Further, a “fully disclosed” introducing arrangement is “distinguished from an omnibus clearing arrangement where the clearing firm maintains one account for all the customer transactions of the introducing firm. In an omnibus relationship, the clearing firm does not know the identity of the customers of the introducing firm. In a fully disclosed clearing arrangement, the clearing firm knows the names, addresses, securities positions and other relevant data as to each customer.”<sup>13</sup>

With respect to a broker-dealer that is routing on behalf of another broker-dealer, the Exchange does not believe that the routing broker-dealer has sufficient information to assess whether orders are truly retail in nature, and thus, requires an RMO routing on

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<sup>12</sup> See Securities Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973 (December 2, 1992).

<sup>13</sup> Id.

behalf of other broker-dealers to maintain additional supervisory procedures and obtain annual attestations, as described below, in order to submit Retail Orders to the Exchange. In contrast, however, if a broker-dealer is carrying a customer account on a fully disclosed basis, then such carrying broker-dealer is required to perform certain diligence regarding such account that the Exchange believes is sufficient to assess whether a customer is a retail customer in order to submit orders on behalf of such a customer to the Exchange as a Retail Order. The carrying broker of an account typically handles orders from its retail customers that are “introduced” by an introducing broker. However, as noted above, in contrast to a typical routing relationship on behalf of another broker-dealer, a carrying broker does obtain a significant level of information regarding each customer introduced by the introducing broker. Accordingly, the Exchange proposes to state in Rule 11.24(b)(1) that for purposes of Rule 11.24, “conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis.”

Rule 11.24(b)(6) currently states, in part, that “[i]f a Retail Member Organization represents Retail Orders from another broker-dealer customer, the Retail Member Organization’s supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order.” This includes obtaining attestations from the other broker-dealers for whom the RMO routes. In addition to the proposed changes to Rule 11.24(b)(1) described above, the Exchange proposes to modify the language of Rule 11.24(b)(6) to again distinguish between an RMO that conducts a retail business because it carries accounts on a fully disclosed basis from an RMO that routes orders on behalf of another broker-dealer. As proposed, the additional attestation requirements of Rule

11.24(b)(6) would apply to an RMO that does not itself conduct a retail business but routes Retail Orders on behalf of other broker-dealers. In turn, such attestation requirements would not apply to an RMO that carries retail customer accounts on a fully disclosed basis. In connection with this change, the Exchange is proposing various edits to the existing rule text so that the reference is consistently to “other broker-dealers” rather than “broker-dealer customers.”

The Exchange believes that allowing an RMO that carries retail customer accounts on a fully disclosed basis to submit Retail Orders to the Exchange without obtaining attestations from broker-dealers that might introduce such accounts will encourage participation in the Retail Program. As noted above, the Exchange believes that the carrying broker has sufficient information to itself confirm that orders are Retail Orders without such attestations. The Exchange still believes it is necessary to require the attestation by broker-dealers that route Retail Orders on behalf of other broker-dealers, because, in contrast, such broker-dealers typically do not have a relationship with the retail customer and would not be in position to confirm that such customers are in fact retail customers.

b. Statutory Basis

The Exchange believes 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>14</sup> Specifically, the proposed change is consistent with Section

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<sup>14</sup> 15 U.S.C. 78f(b).



6(b)(5) of the Act,<sup>15</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 it highlights the parties for whom additional procedures are required because they do not maintain relationships with the end customer (i.e., routing brokers) and still requires the RMO to follow such procedures to ensure that such orders qualify as Retail Orders. As proposed, however, an RMO would not be required to follow such procedures, including obtaining annual attestations, to the extent such RMO actually knows the end customer and carries the account of such customer and thus can itself confirm that the orders qualify as Retail Orders.

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 RMOs that carry retail customer accounts to participate in the Program without imposing additional attestation requirements that the Exchange did not initially intend to impose upon them. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the Program.

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

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

participation in the Program, will increase the level of competition around retail executions. 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

Not applicable.

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)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.<sup>18</sup>

As described above, the Exchange believes that the original intention of the

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

references to handling and representing orders on behalf of other broker-dealers was intended to capture orders routed on behalf of other broker-dealers where the routing broker-dealer does not have sufficient information regarding the end customer. In contrast, the Exchange believes that a broker-dealer that carries customer accounts introduced by another broker-dealer does have a significant amount of information regarding the end customer. As such, the Exchange believes the proposed rule changes will improve participation in the Program while maintaining the necessary safeguards that require routing broker-dealers to follow additional procedures if routing Retail Orders on behalf of other broker-dealers. Because the Exchange views the proposed change as a modification of the rules that is intended to align the rules with the original intent of their application, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>19</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>20</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

Not applicable.

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4.

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 – Form of Notice of Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BYX-2015-45)

## Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.24, Retail Price Improvement Program

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 \_\_\_\_\_, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it 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 filed a proposal to amend Rule 11.24, which governs the Exchange’s Retail Price Improvement Program (“Retail Program”), to distinguish between retail orders routed on behalf of other broker-dealers and retail orders that are routed on behalf of introduced retail accounts that are carried on a fully disclosed basis,

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

as further described below.

The text of the proposed rule change is available at the Exchange's website at [www.batstrading.com](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 amend Rule 11.24, which governs the Exchange's Retail Program,<sup>5</sup> to distinguish between orders routed on behalf of other broker-dealers and orders routed on behalf of introduced retail accounts that are carried on a fully disclosed basis, as further described below.

The Exchange established the Retail Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow.

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<sup>5</sup> In November 2012, the Commission approved the RPI Program on a pilot basis. See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019).

Under the Retail Program, Retail Member Organizations<sup>6</sup> (“RMOs”) are permitted to submit Retail Orders.<sup>7</sup> All Exchange Users<sup>8</sup> are permitted members to submit Retail Price Improvement Orders (“RPI Orders”),<sup>9</sup> which are designed 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”).<sup>10</sup> In addition, RMOs may optionally designate Retail Orders to be identified as Retail on the Exchange’s proprietary data feeds.<sup>11</sup>

Exchange Rule 11.24(b)(1) currently states that “[t]o qualify as a Retail Member Organization, a Member must conduct a retail business or *handle* retail orders on behalf of another broker-dealer.”<sup>12</sup> Rather than stating that one way to qualify as an RMO is to

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<sup>6</sup> A Retail Member Organization is a Member (or a division thereof) that has been approved by the Exchange under Rule 11.24 to submit Retail Orders.

<sup>7</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.

<sup>8</sup> A “User” is defined “as any member or sponsored participant who is authorized to obtain access to the System.” See Rule 1.5(cc).

<sup>9</sup> A “Retail Price Improvement Order” is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least \$0.001 and that is identified as such. See Rule 11.24(a)(3).

<sup>10</sup> The term Protected Quotation is defined in 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 Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer.

<sup>11</sup> See Rule 11.24(i).

<sup>12</sup> Emphasis added.

“handle” retail orders on behalf of another broker-dealer, the Exchange proposes to state that a Member may qualify as an RMO if it “routes” retail orders on behalf of another broker-dealer. The Exchange believes that providing routing services on behalf of other broker-dealers with retail order flow was the intended meaning of the provision and that the term “handle” is vague. Thus, the Exchange believes that the description would be better if it referred to routing services provided to another broker-dealer with retail customers. The Exchange also proposes to distinguish such routing services on behalf of another broker-dealer from services provided by broker-dealers that carry retail customer accounts on a fully disclosed basis, as described below.

As background with respect to the proposed change, the Exchange first would like to describe the terms “introducing broker”, “carrying firm” or “carrying broker-dealer”, and “fully disclosed,” as such terms are commonly used in the securities industry. An “introducing” broker-dealer is “one that has a contractual arrangement with another firm, known as the carrying or clearing firm, under which the carrying firm agrees to perform certain services for the introducing firm. Usually, the introducing firm submits its customer accounts and customer orders to the carrying firm, which executes the orders and carries the account. The carrying firm’s duties include the proper disposition of the customer funds and securities after the trade date, the custody of customer securities and funds, and the recordkeeping associated with carrying customer accounts.”<sup>13</sup>

Further, a “fully disclosed” introducing arrangement is “distinguished from an omnibus clearing arrangement where the clearing firm maintains one account for all the

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<sup>13</sup> See Securities Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973 (December 2, 1992).



customer transactions of the introducing firm. In an omnibus relationship, the clearing firm does not know the identity of the customers of the introducing firm. In a fully disclosed clearing arrangement, the clearing firm knows the names, addresses, securities positions and other relevant data as to each customer.”<sup>14</sup>

With respect to a broker-dealer that is routing on behalf of another broker-dealer, the Exchange does not believe that the routing broker-dealer has sufficient information to assess whether orders are truly retail in nature, and thus, requires an RMO routing on behalf of other broker-dealers to maintain additional supervisory procedures and obtain annual attestations, as described below, in order to submit Retail Orders to the Exchange. In contrast, however, if a broker-dealer is carrying a customer account on a fully disclosed basis, then such carrying broker-dealer is required to perform certain diligence regarding such account that the Exchange believes is sufficient to assess whether a customer is a retail customer in order to submit orders on behalf of such a customer to the Exchange as a Retail Order. The carrying broker of an account typically handles orders from its retail customers that are “introduced” by an introducing broker. However, as noted above, in contrast to a typical routing relationship on behalf of another broker-dealer, a carrying broker does obtain a significant level of information regarding each customer introduced by the introducing broker. Accordingly, the Exchange proposes to state in Rule 11.24(b)(1) that for purposes of Rule 11.24, “conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis.”

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<sup>14</sup> Id.

Rule 11.24(b)(6) currently states, in part, that “[i]f a Retail Member Organization represents Retail Orders from another broker-dealer customer, the Retail Member Organization’s supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order.” This includes obtaining attestations from the other broker-dealers for whom the RMO routes. In addition to the proposed changes to Rule 11.24(b)(1) described above, the Exchange proposes to modify the language of Rule 11.24(b)(6) to again distinguish between an RMO that conducts a retail business because it carries accounts on a fully disclosed basis from an RMO that routes orders on behalf of another broker-dealer. As proposed, the additional attestation requirements of Rule 11.24(b)(6) would apply to an RMO that does not itself conduct a retail business but routes Retail Orders on behalf of other broker-dealers. In turn, such attestation requirements would not apply to an RMO that carries retail customer accounts on a fully disclosed basis. In connection with this change, the Exchange is proposing various edits to the existing rule text so that the reference is consistently to “other broker-dealers” rather than “broker-dealer customers.”

The Exchange believes that allowing an RMO that carries retail customer accounts on a fully disclosed basis to submit Retail Orders to the Exchange without obtaining attestations from broker-dealers that might introduce such accounts will encourage participation in the Retail Program. As noted above, the Exchange believes that the carrying broker has sufficient information to itself confirm that orders are Retail Orders without such attestations. The Exchange still believes it is necessary to require the attestation by broker-dealers that route Retail Orders on behalf of other broker-

dealers, because, in contrast, such broker-dealers typically do not have a relationship with the retail customer and would not be in position to confirm that such customers are in fact retail customers.

## 2. Statutory Basis

The Exchange believes 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>15</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>16</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 it highlights the parties for whom additional procedures are required because they do not maintain relationships with the end customer (i.e., routing brokers) and still requires the RMO to follow such procedures to ensure that such orders qualify as Retail Orders. As proposed, however, an RMO would not be required to follow such procedures, including obtaining annual attestations, to the extent such RMO actually knows the end customer and carries the account of such customer and thus can itself confirm that the orders qualify as Retail Orders.

The Exchange believes that the proposed rule change will remove impediments to

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system because it will allow RMOs that carry retail customer accounts to participate in the Program without imposing additional attestation requirements that the Exchange did not initially intend to impose upon them. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the Program.

(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. 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

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective

pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>18</sup> the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2015-45 on the subject line.

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

<sup>18</sup> 17 CFR 240.19b-4.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BYX-2015-45. 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-2015-45 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</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.**

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### **CHAPTER XI. TRADING RULES**

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#### **Rule 11.24. Retail Price Improvement Program**

(a) (No change.)

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

(1) To qualify as a Retail Member Organization, a Member must conduct a retail business or [handle]route retail orders on behalf of another broker-dealer. For purposes of this Rule, conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis.

(2)-(5) (No change.)

(6) A Retail Member Organization must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the Member to: (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If a Retail Member Organization [represents]does not itself conduct a retail business but routes Retail Orders [from another]on behalf of another broker-dealer [customer], the Retail Member Organization's supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer [customer] that [it]are designated[s] as Retail Orders meet the definition of a Retail Order. The Retail Member Organization must: (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer [customer] that sends [it]the Retail Member Organization orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether [its broker-dealer customer's] Retail Order flow routed on behalf of such other broker-dealers meets the applicable requirements.

(c)-(i) (No change.)

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