

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2012-13 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2012-13. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2012-13, and should be submitted on or before February 13, 2013.

**VI. Conclusion**

In summary, and for the reasons discussed in more detail above, the Commission believes that the rules being adopted by CHX, taken as whole, should benefit investors by helping listed companies make informed decisions regarding the amount and form of executive compensation. CHX's new rules will help to meet Congress's intent that compensation committees that are responsible for setting compensation policy for executives of

listed companies consist only of independent directors.

CHX's rules also, consistent with Rule 10C-1, require compensation committees of listed companies to assess the independence of compensation advisers, taking into consideration six specified factors. This should help to assure that compensation committees of CHX-listed companies are better informed about potential conflicts when selecting and receiving advice from advisers. Similarly, the provisions of CHX's standards that require compensation committees to be given the authority to engage and oversee compensation advisers, and require the listed company to provide for appropriate funding to compensate such advisers, should help to support the compensation committee's role to oversee executive compensation and help provide compensation committees with the resources necessary to make better informed compensation decisions.

For the foregoing reasons, the Commission finds that the proposed rule change, SR-CHX-2012-13, as amended, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Exchange Act.<sup>109</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>110</sup> that the proposed rule change, SR-CHX-2012-13, as amended, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>111</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-01220 Filed 1-22-13; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-68665; File No. SR-BYX-2013-001]**

**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.**

January 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

"Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 2, 2013, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

**1. Purpose**

The Exchange proposes to modify its fee schedule effective January 2, 2013,

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

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

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

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

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

<sup>109</sup> 15 U.S.C. 78f(b)(5).

<sup>110</sup> 15 U.S.C. 78s(b)(2).

<sup>111</sup> 17 CFR 200.30-3(a)(12).

in order to amend the rebates that it provides for removing liquidity, amend the fees that it charges for adding liquidity and to modify certain routing fees, as described in further detail below.

#### Rebates To Remove Liquidity

The Exchange currently provides a rebate of \$0.0002 per share for orders that remove liquidity from the Exchange. The Exchange proposes to introduce a tiered pricing structure for executions that remove liquidity. Under the proposed tiered pricing structure, a Member must add a daily average of at least 50,000 shares of liquidity on BYX Exchange in order to receive this rebate. As with its other current tiered pricing, the daily average in order to receive the liquidity removal rebate will be calculated based on a Member's activity in the month for which the rebates would apply. For Members that do not reach the tier to receive the liquidity removal rebate, the Exchange proposes to eliminate the rebate. The Exchange does not, however, propose to charge such Members, but rather, will provide such executions free of charge.

Consistent with the current fee structure, the fee structure for executions that remove liquidity from the Exchange described above will not apply to executions that remove liquidity in securities priced under \$1.00 per share. The fee for such executions will remain at 0.10% of the total dollar value of the execution. Similarly, as is currently the case for adding liquidity to the Exchange, there will be no liquidity rebate for adding liquidity in securities priced under \$1.00 per share.

In connection with the proposed change to the Exchange's fees to remove liquidity, the Exchange proposes to modify a footnote on its fee schedule related to its Retail Price Improvement ("RPI") program, which references the current standard liquidity removal rebate of \$0.0002 per share. This footnote was intended to make clear that applicable removal fees, and not specific RPI pricing, would apply to certain executions (Type 2 Retail Orders) that remove displayed liquidity. The Exchange proposes to modify this footnote to simply reference the applicable standard rebate or fee to access liquidity in order to remove the necessity to update the footnote any time that pricing applicable to removing displayed liquidity changes. Under the proposed pricing structure, a Member that qualifies for the \$0.0002 per share liquidity removal rebate would receive such rebate for any Type 2 Retail Order that removes displayed liquidity, and a

Member that does not qualify for the liquidity removal rebate would not receive such rebate but would instead receive the execution of a Type 2 Retail Order that removes displayed liquidity free of charge.

#### Fees To Add Liquidity

The Exchange currently maintains a tiered pricing structure for adding displayed liquidity in securities priced \$1.00 and above that allows Members to add liquidity at a reduced fee to the extent such liquidity sets the national best bid or offer (the "NBBO Setter Program"). The NBBO Setter Program is applicable to a Member's orders so long as the Member submitting the order achieves the applicable average daily volume ("ADV") requirement of at least 0.1% of the total consolidated volume ("TCV") during the month. Members that qualify for the NBBO Setter Program are charged a fee of \$0.0002 per share for executions resulting from orders that add liquidity to the BYX Exchange order book and set the NBBO. All other executions resulting from liquidity added by any Member are currently subject to a fee of \$0.0003 per share.

The Exchange proposes to increase the ADV requirement for the NBBO Setter Program to a requirement that a Member maintain ADV on the Exchange of at least 0.5% of the total TCV during the month in order to receive the reduced fee of \$0.0002 per share on orders that set the NBBO.

The Exchange also proposes to add tiered pricing for executions of orders that add liquidity but do not set a new NBBO. The Exchange proposes to use the same criteria, specifically, that a Member maintains ADV on the Exchange of at least 0.5% of the total TCV during the month, in order for a Member to receive a reduced fee on executions of orders that add liquidity but do not set the NBBO. The Exchange proposes to charge a reduced fee of \$0.00025 per share to Members that qualify based on their ADV on the Exchange, which is a slight reduction from the current standard fee to add liquidity of \$0.0003 per share.

Lastly, the Exchange proposes to charge Members that do not qualify for a reduced fee based on their volume on the Exchange a fee of \$0.0005 per share for executions resulting from orders that add liquidity to the Exchange, which is an increase from the current standard fee to add liquidity of \$0.0003 per share.

The Exchange does not propose to modify its existing definitions of ADV or TCV in connection with the changes described above. The Exchange notes that, in contrast to the tiered pricing

structure for removing liquidity, described above, which only takes into account a Member's liquidity adding activity, the definition of ADV used for the NBBO Setter Program and the proposed tiered pricing structure for other executions that add liquidity includes both a Member's liquidity adding and removing activity.

#### Routing Fees

The Exchange proposes to modify the fee charged by the Exchange for its CYCLE, RECYCLE, Parallel D and Parallel 2D routing strategies from \$0.0028 per share to \$0.0029 per share. To be consistent with this change, the Exchange proposes to charge 0.29%, rather than 0.28%, of the total dollar value of the execution for any security priced under \$1.00 per share that is routed away from the Exchange through these strategies.

Finally, the Exchange proposes to modify pricing for its SLIM<sup>6</sup> routing strategy, which is focused on seeking execution of orders while minimizing execution costs by setting a priority on routing, when possible, to low cost execution venues on the Exchange's routing table. The Exchange currently charges three different fees for executions through the SLIM routing strategy. Specifically, the Exchange charges the following fees for executions of orders routed through the SLIM routing strategy: (i) A fee of \$0.0029 per share for executions at BATS Exchange, Inc. ("BZX"), (ii) a fee of \$0.0024 per share for executions at the New York Stock Exchange LLC ("NYSE"), and (iii) a fee of \$0.0026 per share for executions at any other venue. The Exchange proposes to increase the fee for executions resulting from the SLIM routing strategy at any other venue from \$0.0026 per share to \$0.0027 per share. The Exchange does not propose any other changes to SLIM routing fees.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.<sup>7</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system

<sup>6</sup> As defined in BYX Rule 11.13(a)(3)(H).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also allowing the Exchange to continue to offer incentives to providing aggressively priced displayed liquidity. While many Members that remove liquidity from the Exchange, add liquidity to the Exchange and/or route orders through the Exchange's routing strategies will be paying higher fees or receiving lower rebates due to the proposal, the increased revenue received by the Exchange will be used to continue to fund programs that the Exchange believes will attract additional liquidity and thus improve the depth of liquidity available on the Exchange.

With respect to the proposed tiered pricing structure for removing liquidity from the Exchange, the Exchange believes that its proposal is reasonable because it will allow Members that achieve a relatively low threshold of added liquidity, and thus who contribute to the depth of liquidity generally available on the Exchange, to continue to receive the current rebate. Although Members that do not achieve the volume threshold will no longer receive the rebate to remove liquidity, the Exchange believes that its proposal is reasonable because such Members will not be charged a fee to remove liquidity but will receive such executions free of charge. Volume-based tiers such as the liquidity removal tier proposed by the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is equitably allocated and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

The Exchange believes that its proposal to modify the footnote related to the RPI program is reasonable, equitably allocated and not unfairly discriminatory because this change

merely achieves the goal of the existing language by making clear that standard pricing to remove liquidity, whatever that pricing may be, will be applied to Type 2 Retail Orders that remove displayed liquidity, and that RPI program pricing does not apply.

With respect to the Exchange's proposal to increase the threshold necessary to participate in the NBBO Setter Program, the Exchange believes that its proposal is reasonable because the tier is intended to incentivize Members to maintain or increase their participation on the Exchange. As noted above, volume-based tiers such as the threshold necessary to qualify for the NBBO Setter Program and the reduced fee to add liquidity are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process.

With respect to the fee tier for qualifying Members that add liquidity but do not set the NBBO and the higher fee for Members that do not qualify for such tier, the Exchange believes that the proposed fees are reasonable as both fees are still comparable to other market centers that charge to add displayed liquidity. The Exchange notes that at least one market center charges a higher fee to add displayed liquidity.<sup>9</sup> Although the proposed changes will result in increased fees charged to Members that do not qualify for the tier, the Exchange believes that any additional revenue it receives will allow the Exchange to devote additional capital to its operations and to continue to offer competitive pricing, which, in turn, will benefit Members of the Exchange. Further, the Exchange again notes that the tiered fee structure whereby Members meeting certain volume thresholds will receive reduced fees on their added liquidity executions is equitable and not unfairly discriminatory because it will be open to all Members on an equal basis the reduced fee is reasonably related to the value to the Exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of

higher volumes of orders into the price and volume discovery process.

The Exchange believes that its increase to the standard routing fee is reasonable in that it will align the Exchange's standard routing fee with that charged by the Exchange's affiliate, BZX, and is consistent with routing fees charged with others for routing services. The proposed increase is also equitable and non-discriminatory in that it will be increased equally for all Members. The Exchange also notes that it operates in a highly competitive market in which market participants can readily choose amongst market participants that provide routing services, and believes that market participants will simply not use the Exchange for routing services if they deem the fee levels set to be excessive.

Finally, the Exchange believes that the proposed changes to the Exchange's SLIM routing strategy is reasonable, equitable and non-discriminatory in that it is proposed in order to account for certain increased costs to the Exchange in providing routing services, the fee will be increased equally for all Members, and the SLIM routing strategy is a completely optional routing service that Members must affirmatively choose to use. The Exchange also notes that the increased fee is still lower than its standard routing fee, thus providing savings to Members that prefer to include access fee cost savings as a factor in their routing determinations.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Because the market for order execution is extremely competitive, Members may choose to preference other market centers ahead of the Exchange if they believe that they can receive better fees or rebates elsewhere. Similarly, because the market for order routing services is also competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. Because certain of the proposed changes are intended to provide incentives to Members that will result in increased activity on the Exchange, such changes are necessarily competitive. However, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange does not believe that any of the changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors.

<sup>9</sup> NASDAQ OMX BX charges up to \$0.0018 per share, with the potential for a slightly lower fee to the extent a participant meets certain quoting criteria.

*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<sup>10</sup> and Rule 19b-4(f)(2) thereunder,<sup>11</sup> 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2013-001 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-BYX-2013-001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BYX-2013-001, and should be submitted on or before February 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-01221 Filed 1-22-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68672; File No. SR-NASDAQ-2012-117]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change With Respect to INAV Pegged Orders for ETFs

January 16, 2013.

#### I. Introduction

On October 2, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NASDAQ Rule 4751(f)(4) to adopt a new Intraday Net Asset Value ("INAV") Pegged Order for Exchange-Traded Funds ("ETFs") where the component stocks underlying the ETFs are U.S. Component Stocks (as defined by NASDAQ Rule 5705(a)(1)(C) and

5705(b)(1)(D))<sup>3</sup> ("U.S. Component Stock ETFs"). The proposed rule change was published for comment in the **Federal Register** on October 18, 2012.<sup>4</sup> The Commission received one comment letter on the proposal.<sup>5</sup> On November 21, 2012, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>7</sup> On January 15, 2013, the Commission received the Exchange's response to the comment letter.<sup>8</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>9</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend NASDAQ Rule 4751(f)(4) to establish INAV Pegged Orders that would be available only for U.S. Component Stock ETFs. The INAV Pegged Order type would be available for all U.S. Component Stock ETFs where there is dynamic INAV data. The INAV Pegged Order would be priced relative to the INAV of the fund's underlying portfolio. According to the Exchange, the INAV is intended to approximate the fair value of the securities held in the portfolio by an ETF,<sup>10</sup> and the Exchange represents that the INAV should closely represent the value of the fund during the trading

<sup>3</sup> Rule 5705 contains NASDAQ's listing standards for ETFs (which include Portfolio Depository Receipts and Index Fund Shares).

<sup>4</sup> See Securities Exchange Act Release No. 68042 (October 12, 2012), 77 FR 64167 ("Notice").

<sup>5</sup> See Letter from Dorothy Donohue, Deputy General Counsel, Investment Company Institute, to Elizabeth M. Murphy, Secretary, Commission, dated November 8, 2012 ("ICI Letter").

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Securities Exchange Act Release No. 68279 (November 21, 2012), 77 FR 70857 (November 27, 2012). See also Securities Exchange Act Release No. 68279A (December 4, 2012), 77 FR 73716 (December 11, 2012) (correcting certain typographical errors). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated January 16, 2013 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>8</sup> See Letter from Stephen Matthews, Senior Associate General Counsel, NASDAQ OMX, to Elizabeth M. Murphy, Secretary, Commission, dated January 15, 2013 ("Response Letter").

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>10</sup> The Exchange states that investors should note that the INAV is only an estimation of a fund's value, and this might differ from the end of day net asset value, which is more definitive and disseminated on a daily basis at the end of the trading day. See Notice, *supra* note 4, at 64169.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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

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

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