SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69935; File No. SR–BYX–2013–23]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Impose Fees for Market Data

July 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2013, BATS Y-Exchange, Inc. (''BYX'' or the ''Exchange'') 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 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 with the Commission a proposed rule change to amend its fee schedule applicable to Exchange Members [3] and other market data recipients to assess market data fees for internal and external distribution of the BYX PITCH (including both TCP PITCH and Multicast PITCH), BYX TOP, and BYX Last Sale Feed data feed products (PITCH, TOP and Last Sale Feed collectively referred to in this proposal as the ''Data Feeds''). Although changes to the fee schedule pursuant to this proposal are effective upon filing, the Exchange will implement the proposed revised fees on July 1, 2013.

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 aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the BYX fee schedule with respect to the fees for the BYX PITCH (including both TCP PITCH and Multicast PITCH), BYX TOP and BYX Last Sale Feed data products. For BYX PITCH, data recipients would pay a single fee, regardless if the data recipient receives BYX TCP PITCH, BYX Multicast PITCH, or both. The Exchange's other data products will continue to be offered free of charge. Below is a description of each of the Data Feeds, as well as a brief description of the other data products offered by the Exchange that are impacted by this proposal.

(i) TCP PITCH

The BYX TCP PITCH data feed provides Exchange data recipients with depth of book quotations and execution information. The PITCH feeds offered by BYX (including Multicast PITCH) are the data feeds through which Exchange data recipients can receive full, real-time quotation and execution information. Each PITCH message reflects the addition, deletion or execution of an order in the System.[4] TCP PITCH is the data feed used by Exchange data recipients to receive BYX PITCH information via a TCP/IP connection.

(ii) Multicast PITCH

The BYX Multicast PITCH data feed, like TCP PITCH, offers depth of book quotations and execution information, however, unlike TCP PITCH, this data feed is transmitted in a manner that can be processed more efficiently by recipients. This is achieved by using binary messages. BYX offers both WAN-shaped and Gig-shaped versions of the Multicast feed. Exchange data recipients may choose one or more Multicast PITCH feed options depending on their location and connectivity to BYX.

(iii) TOP

The BYX TOP data feed offers top of book quotations and last sale execution information. By only providing top of book quotations and last sale information, TOP offers data recipients a significant reduction in required bandwidth and processing when compared to BYX's standard TCP PITCH data feed. The quotations made available via TOP provide an aggregated size and do not indicate the size or number of individual orders at the best bid or ask.

(iv) Last Sale Feed

The BYX Last Sale Feed offers real-time, intraday trade information, including price, volume and time of executions. Because quotes are not shown, the BYX Last Sale Feed results in much less data than other BYX data feeds and requires less technology development for data recipients.

(v) Other BYX Data Feeds

The Exchange will continue to offer certain other market data products to Members and other market data recipients free of charge. These data products include (i) Multicast Latency Feed, which offers real-time latency information; (ii) DROP, which contains order execution and other information (*e.g.,* modifications and cancellations) specific to the Exchange activity of one or more Users; and (iii) BYX Historical Data (PITCH, TOP and Last Sale Feed), which offers up to three months of data on a T+1 basis available via download from the BYX Web site or additional data beyond three months available via an external hard drive.

Upon the Exchange's initial offering of the BYX PITCH (including both TCP PITCH and Multicast PITCH) and BYX TOP data products, such services were provided at no cost. In SR–BYX–2011–012, the Exchange stated that ''should the Exchange determine to charge fees associated with [BYX PITCH (including both TCP PITCH and Multicast PITCH) and BYX TOP], the Exchange will submit a proposed rule change to the Commission in order to implement those fees.'' [5] Although the Exchange has not previously made a BYX Last Sale Feed available to market data recipients, the Exchange recently filed a rule change with the Commission to add the BYX Last Sale Feed data product to the list of data products made available

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

[4] As defined in BYX Rule 1.5(aa), the term ''System'' means ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' As defined in BYX Rule 1.5(cc), the term ''User'' means ''any Member or Sponsored Participant who is authorized to obtain access to the [Exchange's] System pursuant to Rule 11.3.''

[5] Securities Exchange Act Release No. 34–64444 (May 9, 2011) 76 FR 28115 (May 13, 2011) (File No. SR–BYX–2011–012).

by BYX, as set forth in Rule 11.22,[6] and is proposing to charge a fee for such data feed through this proposal.

This proposal is designed to implement fees for the receipt of PITCH (including both TCP PITCH and Multicast PITCH), TOP and Last Sale Feed data products.

The proposed amendment to the BYX fee schedule codifies such fees associated with the receipt of PITCH (including both TCP PITCH and Multicast PITCH), TOP and Last Sale Feed. The Exchange, like other market centers and other data providers, intends to assess fees for individuals and entities that receive real-time market data directly or indirectly and act as either internal or external distributors of such market data.

A ''Data Recipient'' of Exchange data is any entity that receives a Data Feed directly from the Exchange or indirectly through another entity and then distributes such data internally (within that entity) to ''Internal Subscribers'' or externally (outside that entity) to ''External Subscribers'' or ''Data Feed Subscribers.'' An ''Internal Subscriber'' is any end-user of the Exchange data affiliated with the Data Recipient where the Data Recipient can substantially control the Exchange data for purpose of reporting usage or qualification of the end-user. An ''External Subscriber'' is any end-user of the Exchange data not affiliated with the Data Recipient where the Data Recipient can substantially control the Exchange data for purpose of reporting usage or qualification of the end-user. A ''Data Feed Subscriber'' is any end-user of the Exchange data outside of the Data Recipient that receives the Exchange data from a Data Recipient for which the Data Recipient cannot substantially control the Exchange data for the purpose of reporting usage or qualification of the end-user.

All Data Recipients and Data Feed Subscribers must execute a BATS Global Markets, Inc. Data Agreement with BATS Global Markets, Inc., acting on behalf of itself and the Exchange, and, as a result, would be charged the applicable monthly access fee described below. All External Subscribers must execute a BATS Global Markets, Inc. Subscriber Agreement or equivalent with the Data Recipient that is distributing the Exchange data to such External Subscriber; however, neither External Subscribers nor Internal Subscribers would be charged the monthly access fee described below for the receipt of such data.

Data Recipients (including Data Feed Subscribers) would be charged a separate monthly access fee to access: (i) The BYX PITCH data product; (ii) the BYX TOP data product; and/or (iii) the BYX Last Sale Feed data product. The amount of the monthly access fees would depend on whether the Data Recipient is distributing the Exchange data internally or externally. Data Recipients distributing the Exchange data internally are proposed to be charged $500 per month for access to the BYX PITCH data product, $500 per month for access to the BYX TOP data product, and $500 per month for access to the BYX Last Sale Feed data product. Data Recipients distributing the Exchange data externally are proposed to be charged $2,500 per month for access to the BYX PITCH data product, $2,500 per month for access to the BYX TOP data product, and $2,500 for access to the BYX Last Sale Feed data product. The fee paid by a Data Recipient distributing the Exchange data externally includes the fee for distributing the Exchange data internally and thus permits a Data Recipient distributing the Exchange data externally to also provide the data internally (*i.e.,* to users within their own organization) for a single access fee. The Exchange does not propose to charge Data Recipients a per user fee for internal or external distribution of Exchange Data.

The Exchange will use commercially reasonable efforts to provide at least 60 days advance notice to Data Recipients (delivered via email and posted to BYX' Web site) of any changes to fees for the Exchange data, provided, however, that such notice shall be not less than 30 days prior to the effectiveness of the change. Receipt or use of the Exchange data after the applicable notice period will constitute acceptance of such fees.

Data Recipients will only pay one access fee, regardless of the number of locations or users to which the Data Feeds are received or distributed. In addition, neither Data Recipients nor their end-users will be charged per-user device fees when used to receive the Data Feeds, nor will they be charged per-user display fees when used to present the Data Feeds.

If a Data Recipient desires to have one or more of its affiliates[7] be bound by the terms and conditions of the BATS Global Markets, Inc. Data Agreement, the Data Recipient may submit a list of any such affiliate(s) to BATS Global Markets, Inc. Including affiliates under the same data agreement would entitle any such affiliate to access and use data from the Exchange for no additional fee (assuming either (i) the Data Recipient and the affiliate each are distributing the data internally, or (ii) the Data Recipient is distributing the data externally and the affiliate is distributing the data either internally or externally). One or more of the entities (each a ''Connected Entity'') that is part of the group comprised of the Data Recipient and the affiliates included under the same agreement (collectively, the ''Affiliate Group'') is permitted to own connectivity directly with BYX. Further, any member of the Affiliate Group that, in addition to receiving Exchange data directly from BYX, also receives uncontrolled Exchange data indirectly from another Data Recipient (in addition to the Connected Entity) is not required to execute a separate data agreement; rather, that entity is bound by the same data agreement executed by the applicable member of the Affiliate Group. Lastly, if a Data Recipient is receiving Exchange data from (i) multiple third-party distributors or (ii) from one or more third-party distributors and the Exchange, the Data Recipient would only be required to pay one access fee—either the internal distribution access fee or the external distribution access fee—depending on whether the Data Recipient is distributing the Exchange data internally or externally.

The Exchange intends to implement the proposed fees on July 1, 2013.

2. Statutory Basis

The Exchange believes that 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.[8] Specifically, the Exchange believes that the proposed change is consistent with Section 6(b)(4) and 6(b)(5) of the Act,[9] because it provides an equitable allocation of reasonable fees among its Members and other recipients of Exchange data and is not designed to permit unfair discrimination between them. The Exchange believes that its proposed fees

[6] *See* SR–BYX–2013–022, filed June 24, 2013, *available at: http://cdn.batstrading.com/resources/regulation/rule_filings/approved/2013/SR–BYX–2013–022_approved.pdf.*

[7] An ''affiliate'' of a Data Recipient includes any entity that, from time to time, directly or indirectly Controls, is Controlled by, or is under common Control with the Data Recipient. ''Control'' means the power to direct or cause the direction of the management of policies of another entity, whether through the ownership of voting securities, by contract, or otherwise.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

for the data products described herein are reasonable in light of the benefits to data recipients and the fact that certain other Exchange data feeds will continue to be provided free of charge.

As described in more detail below, the proposed fees are based on pricing conventions and distinctions that exist in the fee schedules of other exchanges. These distinctions (depth-of-book versus top-of-book and internal distribution versus external distribution) are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

For example, NASDAQ Exchange (''NASDAQ'') charges data recipients of its NASDAQ TotalView data feed $2,000 per month for NASDAQ-listed security depth entitlements and $1,000 per month for non NASDAQ-listed security depth entitlements to receive the data feed directly from NASDAQ. If the data recipient then distributes the data, it pays an additional internal or external distribution fee depending on the method of distribution. NASDAQ charges $1,000 per month for internal distribution of NASDAQ-listed security depth entitlements and $500 per month for internal distribution of non NASDAQ-listed security depth entitlements, and $2,500 per month for external distribution of NASDAQ-listed security depth entitlements and $1,250 per month for external distribution of non NASDAQ-listed security depth entitlements. NASDAQ also charges end-user fees per professional and non-professional subscriber for NASDAQ TotalView.[10]

NASDAQ charges data recipients that distribute its NASDAQ Basic data feed $1,500 per month for best bid and offer and last sale information for all U.S. exchange-listed securities. Data recipients that subscribe to the NASDAQ Basic web service must pay a fee of $1,500 per month, plus the applicable distribution and subscriber fees. NASDAQ also charges end-user fees per professional and non-professional subscriber or, in the alternative, NASDAQ charges per query fees for NASDAQ Basic.[11]

NASDAQ OMX PSX (''PSX'') charges data recipients of its book feed, PSX TotalView, a $1,000 monthly fee to receive its data feed directly from PSX. If the data recipient then distributes the data, it pays an additional internal or external distribution fee depending on the method of distribution. These distribution fees are $500 per month for internal distribution and $1,250 per month for external distribution. PSX also charges end-user fees per professional and non-professional subscriber for PSX TotalView.[12] NASDAQ OMX BX (''BX'') charges data recipients of its book feed, BX TotalView, the same access fees and distribution fees as PSX, and also charges end-user fees per professional and non-professional subscriber for BX TotalView.[13]

NYSE charges data recipients of its book feed, NYSE OpenBook, a $5,000 monthly fee to receive its data feed directly or indirectly from NYSE. NYSE also charges end-user fees per professional and non-professional subscriber for NYSE OpenBook. NYSE charges data recipients of its last sale feed, NYSE Real-Time Reference Prices, a $60,000 monthly fee to receive this feed containing only NYSE data directly or indirectly from NYSE. If a data recipient wishes to receive NYSE, NYSE Arca and NYSE MKT data, NYSE charges the data recipient a $100,000 monthly fee to receive this feed.[14]

Each of EDGX Exchange (''EDGX'') and EDGA Exchange (''EDGA'') charge $500 per month for internal distribution and $2,500 per month for external distribution of their EDGX and EDGA book feeds, respectively. In addition, each of EDGX and EDGA charge $2,500 per month for internal distribution and $5,000 per month for external distribution of their EdgeBook Attributed feeds.[15] Neither EDGX nor EDGA charge a per user fee for internal or external distribution of its data.

Revenue generated from Exchange data fees will help offset the costs that the Exchange incurs in operating and regulating a highly efficient and reliable platform for the trading of U.S. equities. This increased revenue stream will permit the Exchange to offer an innovative service at a reasonable rate, structured in a manner comparable to and consistent with other market centers that provide similar market data products.[16]

The Exchange will continue to make such data available until such time as it changes its rule.

The Exchange believes that the proposal is also consistent with Section 6(b)(8) of the Act[17] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The fees charged would be the same for all similarly-situated market participants, and therefore do not unreasonably discriminate among market participants.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers and also spur innovation and competition for the provision of market data.

The Exchange believes that its Data Feeds are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[18]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barak [sic] Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are

[10] *See* NASDAQ OMX Rule 7019 and NASDAQ OMX Rule 7023.

[11] *Id.*

[12] *See* NASDAQ PSX Pricing Schedule.

[13] *See* NASDAQ OMX BX Rule 7019 and NASDAQ OMX BX Rule 7023.

[14] *See* NYSE Schedule of Fees.

[15] *See* EDGX Exchange Fee Schedule; *See also* EDGA Exchange Fee Schedule.

[16] *See infra* note 21 and accompanying text.

[17] 15 U.S.C. 78f(b)(8).

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' '' [19] The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [20]

The Exchange believes that the proposed fees are fair and equitable, and not unreasonably discriminatory. Specifically, the Exchange believes that the fees proposed for the Data Feeds are fair and equitable in that they are optional and apply uniformly to all data recipients irrespective of each recipient's relationship to the Exchange (*e.g.,* Member, non-Member data recipient, etc.) except with respect to reasonable distinctions as between internal and external distribution.[21] The proposed fees are based on pricing conventions and distinctions (*e.g.,* internal versus external distribution and controlled versus uncontrolled data feed) based on established principles of fairness and equity that have helped to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

Regardless of a Data Recipient's reasons for subscribing to the Data Feeds, the fees for such feeds apply equally to all Data Recipients that wish to use the feeds for internal use only and equally to all Data Recipients that wish to redistribute the feeds.

The Exchange proposes charging Data Recipients that distribute Exchange data externally more than Data Recipients that distribute Exchange data internally because of higher administrative costs associated with monitoring methods of distribution and ongoing reporting by those Data Recipients distributing the data externally, as required in the BATS Global Markets, Inc. Data Agreement and Exchange requirements referenced therein. The Exchange believes that the access fees for the Data Feeds are reasonable and fair in light of alternatives offered by other market centers, as described above.

Efficiency is promoted when Members who do not need the Data Feeds are not required to receive (and pay for) such data. The Exchange also believes that efficiency is promoted when Members may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data. Only those consumers that deem such products to be of sufficient overall value and usefulness will purchase them. The Exchange is not required to make the Data Feeds available or to offer specific pricing alternatives for potential purchases. The Exchange has chosen to make the Data Feeds available to improve market quality, attract order flow, and increase transparency. The Exchange can discontinue offering a pricing alternative and firms can discontinue their use at any time and for any reason, including due to their assessment of the reasonableness of fees charged.

Lastly, competition is promoted as the Exchange cannot set unreasonable fees without losing business to its competitors.[22] The Exchange continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among data recipients. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data.

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

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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. The Exchange believes that a record may readily be established to demonstrate the competitive nature of the market in question.

The proposal is, as described below, pro-competitive. There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example [sic] of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without orders entered and trades executed, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

[19] *NetCoalition,* at 535 (quoting H.R. Rep. no. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

[20] *Id.*

[21] The Exchange notes that distinctions based on internal versus external distribution have been previously filed with the Commission by NASDAQ, BX, PSX, and EDGX. *See* Nasdaq Rule 7019(b). *See also* Securities Exchange Act Release Nos. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (File No. SR–PHLX–2010–120); 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (File No. SR–NASDAQ–2010–110); 63442 (December 6, 2010), FR 77029 (December 10, 2010) (File No. SR–BX–2010–081); 66864 (April 26, 2012), 77 FR 26064 (May 2, 2012) (File No. SR–EDGX–2012–14).

[22] *See infra* discussion in Section 4 [sic], ''Self-Regulatory Organization's Statement on Burden on Competition.''

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it.

Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable. Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products.

''No one disputes that competition for order flow is 'fierce'.'' [23] However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint product. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

BDs currently have numerous alternative venues for their order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including, but not limited to, NASDAQ, NYSE, NYSE MKT, NYSE Arca, Direct Edge and International Securities Exchange.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as the Exchange and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of the Data Feeds, the data provided through these products appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products

[23] *NetCoalition,* at 24 [sic].

with a 15-minute delay, and find close substitutes in products of competing venues.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data that they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, the Exchange believes that products such as the Data Feeds can enhance order flow to the Exchange by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the Internet and television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants, including the Exchange, that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

Competition among platforms has driven the Exchange continually to improve its market data offerings and to cater to customers' data needs. For example, the Exchange has developed and maintained multiple delivery mechanisms that enable customers to receive data in the form and manner they prefer and at the lowest cost to them.

The Exchange offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. Despite these enhancements and a dramatic increase in message traffic, to date the Exchange has been able to offer most of its market data without charge. Moreover, platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the last few years. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for the proposed data is highly competitive and continually evolves as products develop and change.

In establishing the fees for the Data Feeds, the Exchange considered the competitiveness of the market for the type of data being offered and all of the implications of that competition. The Exchange believes that it has considered all relevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Data Feeds, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives.

C. 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[24] and Rule 19b–4(f)(2) thereunder,[25] because it establishes a due, fee, or other charge imposed by BYX.

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. 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 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*. Please include File Number SR–BYX–2013–23 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–2013–23. 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

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 240.19b–4(f)(2).

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 the filing also will be available for inspection and copying at the principal office of BYX. 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–2013–23 and should be submitted on or before July 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Elizabeth M. Murphy,

Secretary.

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[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69933; File No. SR–BATS–2013–040]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

July 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on July 1, 2013.

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 purpose of the proposed rule change is to begin charging a monthly fee for the Multicast PITCH Spin Server Port and GRP Port, each of which are logical ports[6] used to receive data from the Exchange.[7] Currently, the Exchange charges a monthly fee for all other port types used to enter orders in the Exchange's system and to receive data from the Exchange;[8] however, for both BATS Equities and BATS Options,[9] the Exchange provides 32 primary Multicast PITCH Spin Server Ports free of charge (32 ports currently makes a complete set of Spin Server Ports) and, if such ports are used, one free primary GRP Port. In addition, all redundant Multicast PITCH Spin Server Ports and GRP Ports are provided free of charge.[10] Currently, the Exchange charges $400 per month per additional set of primary Multicast PITCH Spin Server Ports and $400 per month per additional primary GRP Port.

Beginning July 1, 2013, the Exchange proposes to charge $400 per month per set of primary Multicast PITCH Spin Server Ports and $400 per month per primary GRP Port for BATS Equities and BATS Options. The Exchange is also proposing to eliminate the reference to the exact number of ports that makes a complete set of Multicast Spin Server Ports, as this number has changed in the past and could again change in the future. A complete set of Multicast Spin Server Ports is the number of ports necessary to get one full set of information from the Exchange based on load balancing by the Exchange.[11] The Exchange believes that this concept is clearly understood amongst recipients of Multicast data, and, therefore, does not believe that eliminating the fee schedule reference to the exact number of ports necessary to receive Exchange PITCH data via Multicast will cause

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

[4] 17 CFR 240.19b–4(f)(2).

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

[6] A logical port is commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or Multicast PITCH data receipt. Logical port fees are limited to logical ports in the Exchange's primary data center and no logical port fees are assessed for redundant secondary data center ports.

[7] BATS FIX ports are the only ports that may be used to send orders and related instructions to the Exchange. All other port types, including the Multicast PITCH Spin Server Port and GRP Port, permit Members and non-members to receive information from the Exchange.

[8] The Exchange currently charges a monthly fee for all other Exchange FIX, FIXDROP, BOE, DROP, TCP PITCH, and TOP ports.

[9] BATS Equities is the Exchange's platform for trading cash equity securities whereas BATS Options is the Exchange's platform for trading equity options.

[10] Exchange Multicast PITCH data feed for both BATS Equities and BATS Options is currently offered through two primary feeds, identified as the ''A feed'' and the ''C feed'', which contain the same information but differ only in the way such feeds are received. The Exchange offers for free the ports necessary to receive the Exchange's redundant Multicast ''B feed'' and ''D feed'', as well as all ports made available in the Exchange's secondary data center. Accordingly, this proposal only applies to ports used to receive an Exchange primary Multicast Feed at the Exchange's primary data center.

[11] The Exchange load balances information regarding securities traded on the Exchange across multiple channels (today 32) with each channel requiring a separate Multicast PITCH Spin Server Port.