

### 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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will assist the Exchange in recouping costs for routing orders to another options exchange on behalf of its participants in a manner that is a better approximation of actual costs than is currently in place. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.<sup>13</sup> As stated above, 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 to be excessive or providers of routing services if they deem fee levels to be excessive.

### 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>15</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 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-BATS-2013-044 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.

All submissions should refer to File Number SR-BATS-2013-044. 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-BATS-2013-044 and should be submitted on or before September 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70192; File No. SR-BYX-2013-027]

### 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.

August 14, 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 August 1, 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 filed a proposal 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). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 2, 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

<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>13</sup> See BATS Rule 21.1(d)(8) (describing "BATS Only" orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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 applicable to use of the Exchange effective August 2, 2013, in order to modify pricing related to executions that occur on EDGA EXCHANGE, Inc. ("EDGA") through either a BYX + EDGA Destination Specific Order<sup>6</sup> or through the Exchange's TRIM routing strategies.<sup>7</sup> EDGA implemented certain pricing changes effective August 1, 2013, including modification from a rebate of \$0.0003 per share when removing liquidity to a rebate of \$0.0002 per share when removing liquidity. To maintain a direct pass through of the applicable economics for executions at EDGA, the Exchange proposes to rebate \$0.0002 per share for an order routed through its TRIM routing strategies and executed on EDGA, rather than the rebate of \$0.0003 per share that it currently offers for such orders. Similarly, because EDGA is part of the Exchange's "One Under/Better" pricing program for Destination Specific Orders, the Exchange intends to rebate \$0.0001 per share more than if a Member executed an order directly on EDGA. Accordingly, the Exchange proposes to rebate \$0.0003 per share for an order routed as a Destination Specific Order to EDGA and executed on EDGA, which is \$0.0001 per share more than EDGA rebates directly. The Exchange's "One Under/Better" pricing does not apply to securities priced below \$1.00. In addition, the Exchange will maintain the pricing currently charged by the Exchange for all other Destination Specific Orders.

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>8</sup>

Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</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 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 Exchange believes that the proposed changes to certain of the Exchange's non-standard routing fees and strategies are equitably allocated, fair and reasonable, and non-discriminatory in that they are equally applicable to all Members and are designed to mirror or provide an improvement over the rebate applicable to the execution if such routed orders were executed directly by the Member at EDGA Exchange.

*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. Because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value. For orders routed through the Exchange and executed at EDGA Exchange, the proposed fee change is designed to equal or exceed the rebate that a Member would have received if such routed orders would have been executed directly by a Member at EDGA Exchange.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>11</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 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-2013-027 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-2013-027. 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-2013-027 and should be submitted on or before September 10, 2013.

<sup>6</sup> As defined in BYX Rule 11.9(c)(12).

<sup>7</sup> As defined in BYX Rule 11.13(a)(3)(G).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

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

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. 2013-20194 Filed 8-19-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70195; File No. SR-NYSEArca-2013-61]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Units of the First Trust Gold Trust Pursuant to NYSE Arca Equities Rule 8.201

August 14, 2013.

#### I. Introduction

On June 11, 2013, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade units (“Units”) of the First Trust Gold Trust (“Trust”) pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on July 1, 2013.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Units under NYSE Arca Equities Rule 8.201,<sup>4</sup> which governs the listing and trading pursuant to unlisted trading privileges of Commodity-Based Trust Shares.<sup>5</sup> The Exchange has represented that the Units satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.<sup>6</sup> The Exchange deems the Units to be equity securities and therefore subject to the Exchange’s rules

governing the trading of equity securities.<sup>7</sup>

FT Portfolios Canada Co. will be the trustee and manager of the Trust (“Manager”),<sup>8</sup> and The Bank of Nova Scotia Trust Company will be the custodian of the Trust’s assets (“Trust Custodian”). Equity Financial Trust Company will process redemption orders and transfers for the Trust (“Transfer Agent”). CIBC Mellon Trust Company (“Valuation Agent”) will calculate the value of the net assets of the Trust on a daily basis and reconcile all purchases and redemptions of Units to determine the net asset value per Unit (“NAV”).

According to the Registration Statement,<sup>9</sup> the Trust was created to invest and hold substantially all of its assets in physical gold bullion.<sup>10</sup> The Exchange states that the Trust seeks to provide a secure, convenient, and exchange-traded investment alternative for investors interested in holding physical gold bullion.<sup>11</sup> Each outstanding Unit will represent an equal, fractional, undivided ownership interest in the Trust. Units will be redeemable monthly, directly from the Trust, for physical gold bullion or cash, as described in the Notice and Registration Statement.

Additional information regarding the Trust, including NAV calculation, operation of the Trust, restrictions, risks, expenses, and redemptions of Units, can be found in the Notice and/or Registration Statement.

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposal to list

and trade Units is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,<sup>13</sup> which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Units on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act, which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Last sale, quotation information, trading volume, closing prices and NAV for the Units from the previous day will be available via the Consolidated Tape.<sup>14</sup> The Trust’s Web site will provide an intraday indicative value (“IIV”) per share for the Units, which will be calculated by a third party financial provider and disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Core Trading Session.<sup>15</sup> The Web site also will include, on a per Unit basis, for the Trust, (1) The midpoint of the bid-ask price at the close of trading in relation to the NAV as of the time the NAV is calculated (“Bid/Ask Price”), and a calculation of the premium or discount of such price against such NAV; (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters; and (3) the Trust’s prospectus, as well as the two most recent reports to stockholders.<sup>16</sup> The Trust’s Web site

<sup>7</sup> See *id.* at 39405.

<sup>8</sup> The Manager is a company subsisting under the laws of Nova Scotia. The Manager is responsible for the day-to-day activities and administration of the Trust. The Manager manages, or causes to be managed, the Trust pursuant to the declaration of trust. See *id.*

<sup>9</sup> See the draft registration statement for the Trust on Form F-1, filed with the Commission on March 19, 2013 (File No. 377-00130) (the “Registration Statement”). According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940 nor a commodity pool for purposes of the Commodity Exchange Act.

<sup>10</sup> According to the Registration Statement, at least 90% of the net assets of the Trust will be invested in allocated kilogram bars of physical gold bullion with a fineness of 0.995 or higher that are manufactured by refiners recognized by the London Bullion Market Association for the production of good delivery bars (“Kilogram Bars”). The Trust is subject to various investment and operating restrictions (“Restrictions”) and will not invest in gold certificates or other financial instruments that represent gold or that may be exchanged for gold. The Trust will not speculate with regard to short-term changes in gold prices. See Notice, *supra* note 3, at 39400.

<sup>11</sup> See *id.*

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See Notice, *supra* note 3, 78 FR at 39404.

<sup>15</sup> See *id.* The Exchange states that IIV on a per Unit basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which will be calculated once a day. See *id.*

<sup>16</sup> See *id.*

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

<sup>13</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Securities Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399 (July 1, 2013) (“Notice”). Terms not defined herein are defined in the Notice.

<sup>4</sup> The Trust expects that Units also will be listed and traded on the Toronto Stock Exchange (“TSX”). See *id.* at 39400.

<sup>5</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust. See *id.* at 39399.

<sup>6</sup> See *id.* at 39400.