

information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2013–088, and should be submitted on or before July 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69891; File No. SR–BYX–2013–022]

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide a Last Sale Data Feed

June 28, 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 June 25, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b–4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to make available a new data feed to data recipients.<sup>5</sup> 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 make available an additional Exchange data feed for receipt by Exchange data recipients. The Exchange currently offers all of its various data feeds free of charge, though the Exchange intends to file a proposal shortly to commence charging for certain of such feeds. The data feeds currently offered by the Exchange include: (i) TCP PITCH; (ii) Multicast PITCH; (iii) TOP; (iv) DROP; (v) Historical Data; and (vi) Latency Monitoring (collectively, the “Data Feeds”). The Exchange provides detailed and up to date technical information regarding each of the Data Feeds currently offered by the Exchange on its public Web site.<sup>6</sup> All orders and executions displayed through the Data Feeds are anonymous and do not contain the identity of the party that submitted the order.

The Exchange is proposing to amend Rule 11.22 in order to begin offering a new feed, the Last Sale Feed, to Members and non-members. The Last Sale Feed will be a direct data feed product that provides real-time, intraday trade information, including price, volume and time of executions. The Last Sale Feed will not include quotation information.

Currently, the Exchange provides real-time last sale information from its market center to the Security Information Processors (“SIPs”) for the national market system plans governing trading in NYSE listed securities (“Tape A securities”), NASDAQ listed securities (“Tape C securities”), and securities listed on exchanges other than NYSE or NASDAQ (“Tape B securities”). The SIPs then consolidate

the Exchange’s last sale information with similar information from other market centers, and disseminate the consolidated last sale data to market participants, including market data vendors. The Last Sale Feed will include last sale information regarding all Tape A securities, Tape B securities and Tape C securities with respect to activity occurring solely on the Exchange.

Various data recipients may wish to subscribe to and use the Last Sale Feed. For instance, data recipients that provide real-time market information on public Web sites or offer dynamic stock tickers, portfolio trackers, price/time graphs and other visual systems can use the Last Sale Feed in lieu of using the Exchange’s existing Data Feeds. Data recipients may prefer the BATS Last Sale Feed because the Exchange’s existing Data Feeds contain a significant amount of additional information that the data recipients may not need, which may result in unnecessary technology costs (e.g., development, telecommunications or storage costs). The Exchange notes that similar market-specific last sale data products are offered by other market centers, including an identical data feed offered by the Exchange’s affiliate, BATS Exchange, Inc. (“BATS BZX”).<sup>7</sup>

No market participant is required to subscribe to the Last Sale Feed because the same last sale prices are available in the Exchange’s other Data Feeds. Market participants can also gain access to BYX last sale prices that are integrated with the prices that other markets make available through the SIPs. Indeed, even though the Last Sale Feed may provide to some participants an efficient alternative to the consolidated price information that investors and broker-dealers can receive on a consolidated basis from the SIPs, the Exchange believes that the information that the Exchange contributes to the consolidated tape and the increasingly lower latency of the data feeds offered by the SIPs will continue to satisfy the needs of the vast majority of individual and professional investors. Although certain data recipients might supplement their data feeds by adding the Last Sale Feed, it is unlikely that data recipients or distributors will replace the consolidated last sale feed provided by the SIPs with the Last Sale Feed. The Exchange represents that it

<sup>8</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.

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

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

<sup>5</sup> Exchange data recipients include Members of the Exchange as well as non-Members that have entered into an agreement with the Exchange that permits them to receive Exchange data.

<sup>6</sup> <http://www.batstrading.com/support/>.

<sup>7</sup> See BATS BZX Rule 11.22(g); NASDAQ Stock Market Rule 7039; NASDAQ OMX BX Rule 7039; see also Securities Exchange Act Release No. 61112 (December 4, 2009), 74 FR 65569 (December 10, 2009) (File No. SR–BX–2009–077) (filing of an immediately effective rule related to introduction of a last sale feed by NASDAQ OMX BX).

will not distribute its last sale feed on a more timely basis than it makes available the data that is provided to the SIPs for consolidation and dissemination.

In addition to offering a Last Sale Feed to market participants as described above, the Exchange proposes to eliminate reference to a data feed no longer offered by the Exchange, TCP FAST PITCH. As set forth in Rule 11.22(b), the Exchange discontinued offering TCP FAST PITCH on August 1, 2011.

## 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)(5) of the Act,<sup>9</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. Specifically, the Exchange believes that this proposal is in keeping with those principles by promoting increased transparency and efficiency through the dissemination of BYX data through an additional feed.

### *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. To the contrary, the proposed amendment will allow the Exchange to offer a data feed that is similar to data feeds offered by several of the Exchange's competitors. As noted above, although certain data recipients might supplement their data feeds by adding the Last Sale Feed, it is unlikely that data recipients or distributors will replace the consolidated last sale feed provided by the SIPs with the Last Sale Feed.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

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

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may commence offering the Last Sale Feed at the same time as certain of the Exchange's other Data Feeds, which are already codified in Rule 11.22, and become subject to fees, which the Exchange has currently planned for July 1, 2013, subject to such fees being filed with the Commission. The Exchange noted that a Last Sale Feed is already available for the Exchange's affiliate, BATS Exchange, Inc. ("BATS BZX"), and stated that it believes it will help to avoid confusion and is therefore in the public interest if the Exchange is able to offer the Last Sale Feed on the same terms as of July 1, 2013. The Exchange noted that the receipt and use of the proposed Last Sale Feed is strictly voluntary and that such feed does not contain information not already made available through the Exchange' other Data Feeds. The Commission has determined that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will enable BYX to implement the proposed rule change without undue delay in a manner consistent with a proposed rule change previously approved by the Commission.<sup>12</sup> Therefore, the

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BYX has satisfied this requirement.

<sup>12</sup> See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (order approving the offering of BATS BZX's Last Sale Feed).

Commission designates the proposal operative upon filing.<sup>13</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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2013-022 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-2013-022. 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.,

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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-2013-022 and should be submitted on or before July 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69889; File No. SR-BATS-2013-035]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Competitive Liquidity Provider Program

June 28, 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 June 17, 2013, BATS Exchange, Inc. ("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. On June 24, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

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

The Exchange filed a proposal to add an Interpretation and Policy .03 to Rule 11.8 entitled "Competitive Liquidity Provider Program for Exchange Traded Products" to incentivize competitive and aggressive quoting by market makers registered with the Exchange ("Market Makers")<sup>4</sup> in Exchange-listed ETPs.<sup>5</sup> The Exchange is also proposing to make a corresponding amendment to Interpretation and Policy .02 to Rule 11.8, entitled "Competitive Liquidity Provider Program" in order to reflect the proposal to remove ETPs listed on the Exchange from the existing Competitive Liquidity Provider Program.

As proposed, the Competitive Liquidity Provider Program for Exchange Traded Products (the "Program") set forth in Interpretation and Policy .03 to Rule 11.8 will be effective for a one year pilot period beginning from the date of implementation of the program. During the pilot, the Exchange will periodically provide information to the Commission about market quality with respect to the Program.

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.

<sup>4</sup> As defined in BATS Rules, the term "Market Maker" means a Member that acts as a market maker pursuant to Chapter XI of BATS Rules.

<sup>5</sup> As proposed in Interpretation and Policy .03 (b)(4) to Rule 11.8, the term "ETP" includes Portfolio Depository Receipts, Index Fund Shares, Trust Issued Receipts, and Managed Fund Shares, which are defined in Rule 14.11(b), 14.11(c), 14.11(f), and 14.11(i), respectively, which the Exchange may propose to expand in the future as it adds products which may be listed on the Exchange. Any such expansion would require the Exchange to file a proposal with the Commission under Rule 19b-4 of the Act.

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

#### 1. Purpose

##### Background

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of securities of issuers on the Exchange.<sup>6</sup> More recently, the Exchange received approval to operate a program that is designed to incentivize certain Market Makers registered with the Exchange as Competitive Liquidity Providers to enhance liquidity on the Exchange in all Exchange-listed securities (the "CLP Program").<sup>7</sup> The Exchange subsequently adopted financial incentives for the CLP Program<sup>8</sup> and thereafter amended certain components of the CLP Program, including financial incentives and quoting requirements for Competitive Liquidity Providers in the CLP Program.<sup>9</sup>

The purpose of this filing is to propose new Interpretation and Policy .03 to Rule 11.8, which is based substantially on the CLP Program, that seeks to incentivize certain market makers registered with the Exchange as Competitive Liquidity Providers ("CLPs") to enhance liquidity on the Exchange in certain ETPs listed on the Exchange and thereby qualify to receive part of a daily rebate pursuant to the Program (a "CLP Rebate"). The Exchange is also proposing to make several related amendments to existing Interpretation and Policy .02 to Rule 11.8 in order to remove ETPs from the CLP Program so that it applies only to corporate issues.

Proposed Interpretation and Policy .03 to Rule 11.8 will be effective for a one year pilot period. The pilot period will commence when the Program is implemented by the Exchange and a CLP Company,<sup>10</sup> on behalf of a CLP

<sup>6</sup> See Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>7</sup> See Securities Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR-BATS-2011-051).

<sup>8</sup> See Securities Exchange Act Release No. 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR-BATS-2012-011).

<sup>9</sup> See Securities Exchange Act Release Nos. 67854 (September 13, 2012), 77 FR 58198 (September 19, 2012) (SR-BATS-2012-036) and 69190 (March 20, 2013), 78 FR 18384 (March 26, 2013) (SR-BATS-2013-005).

<sup>10</sup> As defined in proposed Interpretation and Policy .03(b)(2) to Rule 11.8, the term "CLP Company" means the trust or company housing the ETP or, if the ETP is not a series of a trust or company, then the ETP itself.

<sup>14</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.

<sup>3</sup> In Amendment No. 1, the Exchange made technical corrections and amended the proposed rule text to clarify that any CLP Security listed on the Exchange shall be eligible for the CLP Program for the first six months that it is listed on the Exchange, regardless of the ETP's CADV (as such terms are defined below).