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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-73236; File No. SR-BYX-2014-024]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.24 to Permit Members to Designate their Retail Orders to be Identified as Retail on the Exchange's Proprietary Data Feeds  
September 26, 2014.

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 September 17, 2014, 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 the Substance of the Proposed Rule Change

The Exchange proposed to amend Rule 11.24 to permit Users to designate that their Retail Orders<sup>5</sup> submitted under the Exchange's Retail Price Improvement ("RPI Program") be

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

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

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

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

<sup>5</sup> A Retail Order is defined as (i) an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii)

identified as Retail on the Exchange’s proprietary data feeds.<sup>6</sup> The proposed rule change is substantially similar to the existing functionality on EDGX Exchange, Inc. (“EDGX”).<sup>7</sup>

The text of the proposed rule change is available at the Exchange’s website 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

Earlier this year, the Exchange and its affiliate BATS Exchange, Inc. (“BZX”) received approval to effect a merger (the “Merger”) of the Exchange’s parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA Exchange, Inc. (“EDGA”, and together with BZX, BYX and EDGX, the “BGM Affiliated

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the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 11.24(a)(2).

<sup>6</sup> The Exchanges proprietary data feeds are set forth under Exchange Rule 11.22.

<sup>7</sup> See Footnote 4 of the EDGX fee schedule available at <https://www.directedge.com/Trading/EDGXFeeSchedule.aspx>. See also Securities Exchange Act Release No. 72292 (June 2, 2014), 79 FR 32798 (June 6, 2014) (SR-EDGX-2014-13) (Order Approving Proposed Rule Change to Amend Footnote 4 of the Exchange’s Fee Schedule to Permit Members to Designate their Retail Orders to be Identified as Retail on the EDGX Book Feed).

Exchanges”).<sup>8</sup> In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges.<sup>9</sup>

Similar to EDGX,<sup>10</sup> the Exchange established the RPI Program in an attempt to attract retail order flow to the Exchange.<sup>11</sup> Under the RPI Program, all Exchange Users<sup>12</sup> are permitted

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<sup>8</sup> See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

<sup>9</sup> The Exchange anticipates that EDGA and BZX will submit proposed rule changes in the future to add a definition for “Retail Order” and to permit members to designate that their Retail Orders be identified as Retail on their respective proprietary data feeds.

<sup>10</sup> Under the EDGX program, eligible EDGX members may qualify for a rebate under the Retail Order Tier included in Footnote 4 of the Exchange’s fee schedule. Footnote 4 of the EDGX fee schedule defines a Retail Order and provides an attestation requirement that Users must complete to send Retail Orders to the Exchange. See Footnote 4 of the Exchange’s Fee Schedule available at <http://www.directedge.com/Trading/EDGXFeeSchedule.aspx>; Securities Exchange Act Release No. 68310 (November 28, 2012), 77 FR 71860 (December 4, 2012) (SR-EDGX-2012-47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 15.1(a) and (c)); Securities Exchange Act Release No. 69378 (April 15, 2013), 78 FR 23617 (April 19, 2013) (SR-EDGX-2013-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Footnote 4 of the Exchange’s Fee Schedule Regarding Retail Orders); supra note 7.

<sup>11</sup> See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (“RPI Approval Order”) (SR-BYX-2012-019). See also Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR-BYX-2014-001) (Notice of Filing and Immediate Effectiveness [sic] to Extend the Pilot Period for the Retail Price Improvement Program); and 72730 (July 31, 2014) (SR-BYX-2014-013) (Notice of Filing and Immediate Effectiveness [sic] to Amend Rule 11.24(a)(2) to Include Riskless Principal Orders to the Types of Orders that May Qualify as Retail Orders under the Retail Price Improvement Program).

<sup>12</sup> A “User” is defined “as any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” BYX Rule 1.5(cc).

to submit Retail Price Improvement Orders (“RPI Orders”)<sup>13</sup> which are designed to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (“Protected NBB”) or the national best offer that is a Protected Quotation (“Protected NBO”, and together with the Protected NBB, the “Protected NBBO”).<sup>14</sup> Exchange Rule 11.24 defines a Retail Order<sup>15</sup> and provides an attestation requirement<sup>16</sup> that Users must complete to send Retail Orders to the Exchange.<sup>17</sup>

Currently, Users may elect that their display-eligible orders entered into the Exchange utilize Attributable Orders<sup>18</sup> to include their market participant identifier (“MPID”) with their published quotations on the Exchange’s proprietary data feeds. Under the EDGX program,

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<sup>13</sup> A “Retail Price Improvement Order” is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least \$0.001 and that is identified as such. See Rule 11.24(a)(3).

<sup>14</sup> The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (“NBB”) and national best offer (“NBO”, together with the NBB, the “NBBO”) will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

<sup>15</sup> See supra note 5.

<sup>16</sup> Users must submit a signed written attestation, in a form prescribed by the Exchange, that they have implemented policies and procedures that are reasonably designed to ensure that substantially all orders designated by the Member as a “Retail Order” comply with the above requirements. See Exchange Rule 11.24(b).

<sup>17</sup> The attestation requirements and definition of Retail Order under Exchange Rule 11.24 are substantially similar to Footnote 4 of the EDGX fee schedule. See Footnote 4 of the Exchange’s Fee Schedule available at <http://www.directedge.com/Trading/EDGXFeeSchedule.aspx>.

<sup>18</sup> An Attributable Order is defined as, “[a]n order that is designated for display (price and size) including the User’s market participant identifier (‘MPID’).” See Rule 11.9(c)(14).

eligible members may designate that their Retail Orders be identified as Retail on the EDGX book feed.<sup>19</sup> To align functionality with EDGX, the Exchange now proposes to add paragraph (i) to Rule 11.24 to permit Users to designate that their Retail Orders submitted under the Exchange's RPI Program be identified as Retail on the Exchange's proprietary data feeds, rather than by their MPID.<sup>20</sup> Users will still be permitted to designate their Retail Orders by their MPID if they do not choose this optional functionality. The Exchange proposes to allow Users to designate their orders as Retail on an order-by-order basis or by establishing a port setting such that all orders submitted through a specific order entry port are designated as Retail.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposal will benefit market participants and help to promote transparency by providing additional information regarding quotations displayed on the Exchange and disseminated via the Exchange's proprietary data feeds. Specifically, any Member who satisfies the requirement under Rule 11.24(b) that wishes to disclose via the Exchange's proprietary data feeds that their order is a Retail Order will be permitted to do so,

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<sup>19</sup> See supra note 7.

<sup>20</sup> A Member's decision on whether to identify their Retail Order as Retail under the proposed rule change will not impact that Member's eligibility to qualify as a Retail Member Organization under Rule 11.24.

<sup>21</sup> 15 U.S.C. 78f.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

and such functionality is substantially similar to that currently offered by EDGX.<sup>23</sup> The proposal also promotes transparency by disseminating additional order information from Users who may otherwise designate their order as non-attributable, and thereby not include their MPID with their published quote on the Exchange's proprietary data feeds.<sup>24</sup> As a result, the proposal will provide Users additional visibility into the types of orders they may interact with when an order is identified as a Retail Order. The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would encourage Users who wish to execute against Retail Orders to send additional orders to the Exchange. Therefore, the Exchange believes the increased liquidity would potentially stimulating further price competition for Retail Orders, deepening the Exchange's liquidity pool, supporting the quality of price discovery, and promoting market transparency.

The Exchange believes that allowing a User to designate orders as Retail on either an order-by-order or on a port-by-port basis is consistent with the Act for the same reasons as the proposal as a whole is consistent with the Act. The Exchange believes that either method of designation results in the same message being received and processed by the Exchange's systems, and thus, merely reflects a detail in connection with the implementation of the optional designation.

The proposed rule change is also generally intended to add certain system functionality currently offered by EDGX in order to provide a consistent technology offering for the Exchange

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<sup>23</sup> See supra note 7.

<sup>24</sup> The Exchange understands that, to date, EDGX has not experienced members who attribute orders by their MPID electing to instead attribute their Retail Orders as Retail on the EDGX book feed. On the contrary, the Exchange understands that EDGX members who previously did not attribute their order have chosen to do so as Retail under the EDGX program. Therefore, the Exchange does not anticipate its Members who currently utilize Attributable Orders to now elect that their Retail Orders be attributed as Retail.

and EDGX. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on EDGX. The proposed rule change would also provide Users with access to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users.

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

The Exchange believes its proposed amendments would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment will not burden intramarket competition because the ability to designate Retail Orders to be identified as Retail on the Exchange's proprietary data feeds, rather than by their MPID, would be open to all Users that wish to send Retail Orders to the Exchange. The Exchange believes the proposed rule change would increase intermarket competition by identifying orders as Retail via the Exchange's proprietary data feeds would enable the Exchange to better compete with other exchanges that offer similar retail order programs.<sup>25</sup> The Exchange believes that the amendment, by increasing the amount of disseminated information regarding Retail Orders, will increase the level of competition around retail executions resulting in better prices for retail investors.

The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange

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<sup>25</sup> See New York Stock Exchange, Inc.'s ("NYSE") Rule 107C(j). See also NYSE MKT LLC ("NYSE MKT") Rule 107C(j); NYSE Arca, Inc. ("NYSE Arca") Rule 7.44(j).

participants in that it is one of several changes necessary to achieve offering consistent functionality by the BGM Affiliated Exchanges.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>26</sup> and Rule 19b-4(f)(6) thereunder.<sup>27</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>28</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>29</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that waiver will provide

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<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>27</sup> 17 CFR 240.19b-4(f)(6).

<sup>28</sup> 17 CFR 240.19b-4(f)(6).

<sup>29</sup> 17 CFR 240.19b-4(f)(6)(iii).

market participants with additional transparency by disseminating additional order information regarding the types of orders they may interact with when an order is identified as a Retail Order in a timelier manner. The Exchange further believes that waiver will immediately encourage market participants to send additional orders to the Exchange, thereby potentially stimulating further price competition for Retail Orders, deepening the Exchange's liquidity pool, supporting the quality of price discovery, and promoting market transparency. The Commission believes that waiver of the operative delay is consistent with investor protection and the public interest. As a result, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>30</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

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<sup>30</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).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2014-024 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BYX-2014-024. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 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-2014-024, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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<sup>31</sup> 17 CFR 200.30-3(a)(12).