

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65473; File No. SR-BATS-2011-043)

October 3, 2011

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.

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 September 30, 2011, 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 Act³ 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.

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

The Exchange proposes amend the fee schedule applicable to Members⁵ 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 October 3, 2011.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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

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

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

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

1. Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule to: (i) decrease the fees applicable to Customer⁶ orders that remove liquidity from the BATS options market ("BATS Options"); (ii) eliminate a pricing structure that provides a Firm⁷ or Market Maker⁸ a reduced fee to remove liquidity if such Firm or Market Maker satisfies certain volume thresholds; (iii) increase the rebate applicable to Customer orders that add liquidity to BATS Options; (iv) modify the rebates paid, subject to average daily volume requirements, for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO"); and (v)

⁶ As defined on the Exchange's fee schedule, a "Customer" order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation ("OCC").

⁷ As defined on the Exchange's fee schedule, a "Firm" order is any transaction identified by a Member for clearing in the Firm range at the OCC.

⁸ As defined on the Exchange's fee schedule, a "Market Maker" order is any transaction identified by a Member for clearing in the Market Maker range at the OCC.

modify a program intended to incentivize sustained, aggressive quoting in certain specified options series (the “Quoting Incentive Program” or “QIP”).

(i) Decrease to Customer Liquidity Removal Fees

The Exchange currently charges standard fees of \$0.32 per contract for Customer orders that remove liquidity from BATS Options. The Exchange proposes to decrease this fee to \$0.30 per contract, subject to potential reduction for any Member with an ADV of 0.30% or more of average TCV on BATS Options, as described below.

The Exchange currently maintains a tiered pricing structure through which Members can realize lower liquidity removal fees if such Members have an average daily volume (“ADV”)⁹ equal to or greater than 0.30% of average total consolidated volume (“TCV”).¹⁰ For Members reaching this volume threshold, the Exchange currently charges a fee of \$0.29 per contract for Customer orders. Thus, such Members currently save \$0.03 per contract as compared to the standard fee to remove liquidity. While the Exchange proposes to maintain this \$0.03 savings per contract for Customer orders for Members that reach the volume tier, due to the proposed decrease described above for standard liquidity removal, the Exchange proposes to decrease liquidity removal fees for Members that reach the volume tier by \$0.02 per contract for Customer orders. Accordingly, for Members reaching the volume threshold, the Exchange will charge a fee of \$0.27 per contract for Customer orders.

(ii) Elimination of Liquidity Removal Discount for Firms and Market Makers

⁹ As defined on the Exchange’s fee schedule, ADV is average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. The fee schedule also provides that routed contracts are not included in ADV calculation.

¹⁰ As defined on the Exchange’s fee schedule, TCV is total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

As explained above, the Exchange currently maintains a tiered pricing structure through which Members can realize lower liquidity removal fees if such Members have an ADV equal to or greater than 0.30% of average TCV. For Members reaching this volume threshold, the Exchange currently charges a fee of \$0.39 per contract for Firm and Market Maker orders, which is \$0.03 less than the standard fee of \$0.42 for such orders. The Exchange proposes to eliminate the reduced liquidity removal fee for Firm and Market Maker orders of Members that reach the volume threshold. Accordingly, the Exchange proposes to charge a fee of \$0.42 per contract for all Firm and Market Maker orders that remove liquidity from BATS Options.

(iii) Increase to Customer Rebates to Add Liquidity

The Exchange currently provides a rebate of \$0.22 per contract for Customer orders. The Exchange proposes to increase this rebate to \$0.30 per contract. As is the case under the current pricing structure, the removing Member's fee will be determined without regard to the capacity of the adding party.

(iv) Modified Rebates for NBBO Setter Rebate Program

The Exchange currently offers a rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the "NBBO Setter Rebate"),¹¹ subject to certain volume requirements. The NBBO Setter Rebate currently offered by the Exchange to such Members is \$0.35 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and \$0.45 per contract for Members with an ADV equal to or greater than 1% of TCV. The NBBO Setter Rebate is currently an exclusive rebate structure, in that qualifying executions receive the applicable rebate irrespective of any other condition. For

¹¹ An order that is entered at the most aggressive price both on the BATS Options book and according to then current OPRA data will be determined to have set the NBB or NBO for purposes of the NBBO Setter Rebate without regard to whether a more aggressive order is entered prior to the original order being executed.

instance, an execution that qualifies for both the NBBO Setter Rebate and the Quoting Incentive Program (as described below), would simply receive the NBBO Setter Rebate and the Quoting Incentive Program would not alter the amount of the rebate. The Exchange proposes to modify the NBBO Setter Rebate such that it is additive, and thus, can be combined with other incentives and structures offered by the Exchange. Specifically, the Exchange proposes to provide an additional \$0.06 per contract for executions that qualify for the NBBO Setter Rebate by Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and an additional \$0.10 per contract for qualifying executions by Members with an ADV equal to or greater than 1% of TCV. Accordingly, a Member with an execution in an option that qualifies for both an NBBO Setter Rebate and a QIP rebate (as described below) will receive the applicable initial rebate of \$0.22, \$0.30, or \$0.32 (depending on the capacities of the party or parties to the trade), plus the proposed QIP rebate of \$0.05 per contract plus the applicable NBBO Setter Rebate of either \$0.06 per contract or \$0.10 per contract. As such, whether the NBBO Setter Rebate is an increase or decrease for any particular Member or any particular transaction depends on a number of factors, including the level of a Member's monthly trading activity on the Exchange, whether such Member qualifies for the QIP in the applicable option, the capacity of the orders sent by the Member and, in the case of Firms and Market Makers, the capacity of the party against which such orders execute.

(v) Modification of Quoting Incentive Program (QIP)

BATS Options currently offers a Quoting Incentive Program (QIP), through which Members receive a rebate of \$0.03 per contract, in addition to any other liquidity rebate other than an NBBO Setter Program liquidity rebate, for executions subject to the QIP. The QIP currently applies only to executions in options overlying XLF, CSCO, PFE, ORCL, and XRT.

To qualify for the QIP a BATS Options Market Maker must be at the NBB or NBO 70% of the time for series trading between \$0.03 and \$5.00 for the front three (3) expiration months in that underlying during the current trading month. A Member not registered as a BATS Options Market Maker can also qualify for the QIP by quoting at the NBB or NBO 80% of the time in the same series.

The Exchange proposes two changes to the QIP. First, the Exchange proposes to increase the rebate provided pursuant to the QIP from \$0.03 per contract to \$0.05 per contract. Second, the Exchange proposes to expand the QIP from executions in options overlying specified securities (XLF, CSCO, PFE, ORCL, and XRT) to all options traded on BATS Options. All other aspects of the QIP currently in place will remain the same, though the Exchange does propose changing the description of the QIP on the Exchange's fee schedule because, as described above, the Exchange proposes to permit QIP rebates to be combined with NBBO Setter Rebates. Accordingly, a Member with an execution in an option that qualifies for both the QIP and an NBBO Setter Rebate will receive the applicable initial rebate of \$0.22, \$0.30, or \$0.32 (depending on the capacities of the party or parties to the trade), plus the \$0.05 per contract QIP rebate plus the applicable NBBO Setter Rebate of either \$0.06 per contract or \$0.10 per contract.

As is true under the current operation of the QIP, the Exchange will determine whether a market maker qualifies for QIP rebates at the end of each month by looking back at each Member's (including BATS Options Market Makers) quoting statistics during that month. If at the end of the month a Market Maker meets the 70% criteria or a Member that is not registered as a BATS Options Market Maker meets the 80% criteria, the Exchange will provide the additional rebate for all executions subject to the QIP executed by that Market Maker or Member

during that month. The Exchange will provide Members with a report on a daily basis with quoting statistics so such Members can determine whether or not they are meeting the QIP criteria. The Exchange is not proposing to impose any ADV requirements in order to qualify for the QIP at this time.

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.¹² Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹³ 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 changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating incentives to providing aggressively priced displayed liquidity. The proposed changes to Customer pricing, including the increase to the rebate provided for Customer orders and decrease to the fee to take liquidity from the Exchange are designed to incentivize firms to send additional Customer orders to the Exchange. While certain Members that currently reach the volume threshold and remove liquidity from the Exchange with Firm and Market Maker orders will pay higher fees due to the proposal, the increased revenue received by the Exchange will be

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4).

used to fund programs that the Exchange believes will attract additional liquidity, including Customer liquidity, and thus improve the depth of liquidity available on the Exchange.

Accordingly, the Exchange believes that the higher access fees for Firm and Market Maker orders will benefit Members' results in trading on the Exchange to the extent the pricing structure offered by the Exchange with respect to Customer orders, the continued operation of the NBBO Setter Program, and the expansion to the Quoting Incentive Program (QIP) incentivize liquidity providers to provide more aggressively priced liquidity.

Despite the increase in fees for Members that currently receive a discount when removing liquidity with Firm or Market Maker orders, the Exchange also believes that its proposed fee structure is fair and equitable as the Exchange's standard fees generally still remain lower than standard fees charged by other markets with similar fee structures, such as NYSE Arca and Nasdaq.

The Exchange believes that continuing to base its tiered fee structure and NBBO Setter Program based on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing. Volume-based tiers such as the tiers in place on the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process.

Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Additionally, the Exchange believes that the proposed expansion of the Quoting Incentive Program, which is similar to a fee structure in place on at least one of the Exchange's competitors,¹⁴ will further incentivize the provision of competitively priced, sustained liquidity that will create tighter spreads, benefitting both Members and public investors. The Exchange also believes that conditioning a Member's ability to receive the QIP's additional rebate on reaching one of the Exchange's quoting tiers is consistent with the Act for the reasons described above with respect to volume-based tiers. The Exchange also believes that providing a slightly lower threshold for meeting the QIP to registered BATS Options Market Makers appropriately incentivizes Members of BATS Options to register with the Exchange as Options Market Makers. While the Exchange does wish to allow participation in the QIP by all Members, the Exchange believes that registration by additional Members as Market Makers will help to continue to increase the breadth and depth of quotations available on the Exchange. The Exchange notes that in addition to the fact that the QIP will be available to all Members, the proposal is not unfairly discriminatory despite a slightly higher quotation requirement for non-Market Makers due to the fact that registration as a BATS Options Market Maker is equally available to all Members.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

¹⁴ See Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25) (notice of filing and immediate effectiveness of changes to fees and rebates including adoption of specific rebates for market makers qualifying for the Market Maker Plus program).

No written comments were solicited or received.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and Rule 19b-4(f)(2) thereunder,¹⁶ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2011-043 on the subject line.

Paper Comments:

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

- 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-BATS-2011-043. 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, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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 No. SR-BATS-2011-043 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Elizabeth M. Murphy
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).