SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68659; File No. SR-BATS-2013-002)

January 15, 2013

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 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 7, 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.

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

The Exchange proposes to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

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

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).

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 adopt pricing for orders routed by the Exchange to a new options market, the MIAX Options Exchange ("MIAX"), and to modify pricing for orders routed by the Exchange to NASDAQ OMX PHLX LLC ("PHLX") and NASDAQ OMX BX, Inc. ("BX Options"), as further described below.

The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (i.e., clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, "Routing Costs").

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

Based on applicable Routing Costs, the Exchange currently charges $0.11 per contract for Customer orders executed at NYSE MKT LLC ("AMEX"), BOX Options Exchange LLC ("BOX"), Chicago Board Options Exchange, Inc. ("CBOE"), BX Options, International Securities Exchange, LLC ("ISE") (Classic issues), and PHLX (Classic issues). The Exchange currently charges $0.57 per contract for Professional, Firm, and Market Maker orders executed at AMEX, BOX, CBOE, BX Options, ISE (Classic issues), and PHLX (Classic issues).

Based on fees at MIAX, the Exchange believes that MIAX would be appropriately grouped with the Exchanges listed above, as MIAX now has fees that are approximately the same as these markets. Accordingly, the Exchange proposes to charge $0.11 per contract for Customer orders executed at MIAX and $0.57 per contract for Professional, Firm, and Market Maker orders executed at MIAX.

As noted above, the Exchange currently charges $0.11 per contract for Customer orders and $0.57 per contract for Professional, Firm, and Market Maker orders executed at BX Options. Based on changes to pricing at BX Options that differentiates between options classes subject to the penny pilot program ("Penny Pilot Securities") and those that are not ("Non-Penny Pilot Securities"), the Exchange proposes to add additional pricing for executions of Non-Penny Pilot Securities resulting from orders routed to BX Options. The Exchange will maintain the current pricing structure for Penny Pilot Securities. The Exchange proposes to provide executions of Customer orders in Non-Penny Pilot Securities without imposing a fee and to charge $0.95 per contract for Professional, Firm and Market Maker orders.

As noted above, the Exchange currently charges $0.11 per contract for Customer orders executed at PHLX in Classic issues and $0.52 per contract for Customer orders executed at PHLX in Make/Take issues.[6] The differentiation between Classic and Make/Take issues was based on divergent pricing at PHLX for Customer orders between such types of options. Specifically, PHLX has previously charged increased rates to remove liquidity in specified symbols identified by the Exchange as Make/Take issues (identified as "Select Symbols" at PHLX). With changes to Select Symbol pricing that became effective on January 2, 2013, PHLX no longer assesses a higher fee for executions of Customer orders in Select Symbols. Accordingly, the Exchange believes that the pricing applicable to Make/Take issues at PHLX is no longer necessary, and that all Customer executions resulting from orders routed to PHLX should be charged $0.11 per contract. Despite identical fees, the Exchange is maintaining separate references to Make/Take and Classic pricing for orders routed to and executed [sic] PHLX because it believes that participants that are accustomed to this distinction will be less confused if it continues to separately list each category.

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

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6 As defined on the fee schedule, Make/Take pricing refers to executions at the identified exchange under which "Post Liquidity" or "Maker" rebates ("Make") are credited by that exchange and "Take Liquidity" or "Taker" fees ("Take") are charged by that exchange. "Classic" issues includes all executions not subject to Make/Take pricing at the identified exchange.

Act.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] 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 or providers of routing services if they deem fee levels to be excessive.

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to adopt routing fees to MIAX and modify fees to PHLX and BX Options is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for orders routed to and executed at MIAX, PHLX and BX Options. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange also believes that the proposed fee structure for orders routed to and executed at these away options exchanges

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7 15 U.S.C. 78f.

8 15 U.S.C. 78f(b)(4).

is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange notes that under its new pricing model, BX Options will provide rebates for Customer orders in Non-Penny Pilot Securities that the Exchange is not proposing to pass on to the entering Member; instead, the Exchange proposes to provide such executions free of charge. The Exchange specifically believes that its pricing structure for Customer orders in Non-Penny Pilot Securities routed to BX Options is reasonable because, although not an approximation of the cost of routing per se, Customer orders will still receive executions free of charge, whereas all other routed orders are charged a fee that includes applicable Routing Costs. The Exchange believes that pricing for Customer orders in Non-Penny Pilot Securities is fair and equitable and non-discriminatory because it will apply equally to all Members, and because Members can and will likely route directly to BX Options to the extent they are specifically seeking the rebate provided for such orders. The Exchange reiterates 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. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit from routing to another options exchange.

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 other options exchanges on behalf of its participants. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[9] 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

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 Act[10] and Rule 19b-4(f)(2) thereunder,[11] 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

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9 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).

10 15 U.S.C. 78s(b)(3)(A)(ii).

11 17 CFR 240.19b-4(f)(2).

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-2013-002 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-BATS-2013-002. 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 the 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-2013-002 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.[12]

Kevin M. O'Neill
Deputy Secretary

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12 17 CFR 200.30-3(a)(12).