

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73845; File No. SR-BATS-2014-066)

December 16, 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 3, 2014, 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<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 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

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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)(ii).

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

<sup>5</sup> A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

<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 make a number of clarifying, non-substantive changes to the "Options Pricing" section of its fee schedule effective immediately, in order to convert the existing fee schedule into a chart format. The Exchange has already made similar changes to the equities portion of the fee schedule and is now proposing to make such changes as they relate to the fees and rebates applicable to activity on the Exchange's options platform ("BATS Options"). The Exchange believes that these changes will provide greater transparency to Members about how the Exchange assesses fees and calculates rebates, as well as allowing Members to more easily validate their bills on a monthly basis. The Exchange notes that none of these changes substantively amend any fee or rebate, nor do they alter the manner in which the Exchange assesses fees or calculates rebates. Specifically, the Exchange is proposing the following:

- To more clearly separate pricing applicable to BATS Options from the Exchange's current fee schedule, which will remain applicable to the Exchange's equities trading

platform (“BATS Equities”). Although the Exchange has always maintained a single fee schedule applicable to BATS Options and BATS Equities, the Exchange believes that separating the fee schedules will reduce potential confusion. Accordingly, in addition to the header of the fee schedule, the Exchange proposes to adopt a new effective date for the proposed BATS Options fee schedule but to retain the existing effective date for BATS Equities pricing.

- To make clear that rebates are indicated by parentheses.
- To state the following: the rates listed in the Standard Rates table apply unless a Member’s transaction is assigned a fee code other than a standard fee code. If a Member’s transaction is assigned a fee code other than a standard fee code, the rates listed in the Fee Codes and Associated Fees table will apply. Footnotes provide further explanatory text or, where annotated to fee codes, indicate variable rate changes, provided the conditions in the footnote are met.
- To add a section and chart titled “Standard Rates,” which will include the standard fees and rebates for Penny Pilot securities, Non-Penny Pilot securities, and Mini Options for each order capacity, including Customer, Professional, Firm, and Market Maker.
- To add a section titled “Fee Codes and Associated Fees,” which will include the fee or rebate, fee code, and a description for each possible execution that could occur on the Exchange or on another venue.
- To add a section titled “Definitions,” which will include definitions that are defined in the current fee schedule. These include the definitions listed below, which are identical to definitions contained on the Exchange’s current fee schedule, with the exception that

the Exchange has combined the definitions of Options Step-Up Add TCV and September Options Step-Up Add TCV into Options Step-Up Add TCV without specifying a baseline month. Instead, the Exchange has proposed to specify the baseline month in the portion of the fee schedule where the Options Step-Up Add TCV is applicable, which the Exchange believes will help to avoid potential confusion between applicable step-up tiers. “ADAV” means average daily added volume calculated as the number of contracts added and “ADV” means average daily volume calculated as the number of contracts added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis, excluding contracts added or removed on any day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours (“Exchange System Disruption”) and on any day with a scheduled early market close. Routed contracts are not included in ADAV or ADV calculation. With prior notice to the Exchange, a Member may aggregate ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member. “Options Step-Up Add TCV” means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. “TCV” means 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, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close. “Customer” applies to any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (“OCC”), excluding any transaction for a “Professional” as defined in Exchange Rule 16.1. “Firm” applies to

any transaction identified by a Member for clearing in the Firm range at the OCC.

“Market Maker” applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC. “Professional” applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1. “Penny Pilot Securities” are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

- To add a section titled “General Notes,” that will include the following notes: the Exchange notes that to the extent a Member does not qualify for any of the tiers listed below, the rates listed in the above section titled Fee Codes and Associated Fees will apply; and to the extent a Member qualifies for higher rebates and/or lower fees than those provided by a tier for which such Member qualifies, the higher rebates and/or lower fees shall apply.
- To add a series of footnotes describing all tiers applicable to trading on BATS Options, including Customer Penny Pilot Add Tiers, Professional and Firm Penny Pilot Add Tier, Professional, Firm and Market Maker Penny Pilot Take Tier, NBBO Setter Tiers, and Quoting Incentive Program Tiers.

To add new sections and charts titled “Options Logical Port Fees” and “Options Physical Connection Fees,” which, other than being in chart form, will be identical to the current fee schedule. As it relates to physical connection fees, the Exchange notes that such fees relate only to the total number of physical connections that a Member has to the Systems.<sup>6</sup> More specifically, this means that to the extent that a Member has a physical connection to the Exchange that they use for the purpose of connecting to both BATS Equities and BATS Options Systems, such Member would only be charged for one physical connection. Although this

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<sup>6</sup> System is defined in BATS Rule 1.5(aa) and 16.1(a)(59).

information is duplicative, the Exchange believes it is important with the proposed bifurcation of fees applicable to BATS Equities and BATS Options to include connectivity fees on the fee schedule for BATS Options so that Members that have their only or primary relationship with BATS Options have easy access to information regarding such fees.

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

The Exchange believes that the proposed changes are reasonable and equitable because they are non-substantive and the Exchange is not changing any fees or rebates that apply to trading activity on BATS Options or routed executions. Further, the changes are designed to make the fee schedule easier to read and for Members to validate the bills that they receive from the Exchange. The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all Members, and again, the Exchange is not making any changes to existing fees and rebates. Finally, the Exchange believes that the proposed fee schedule will be clearer

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<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

and less confusing for investors and will eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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. To the contrary, the Exchange believes that the changes will both make the fee schedule easier to read and simultaneously provide Members with an easier way to validate their bills on a monthly basis, both of which the Exchange believes are important components of customer service and which will allow the Exchange to better compete for order flow. The Exchange reiterates that the changes are only to the format of the fee schedule and are entirely non-substantive. 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 the deem fee structures to be unreasonable or excessive.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

### 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>9</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>10</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2014-066 on the subject line.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).



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-BATS-2014-066. 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 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-2014-066 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).