

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74043; File No. SR-BATS-2015-01)

January 13, 2015

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 January 2, 2015, 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.

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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).

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

The Exchange proposes to modify its fee schedule effective immediately in order to: (1) adopt pricing for Retail Orders, as defined below, on the Exchange, including a new Retail Order Tier; (2) add Membership Fees; and (3) make certain non-substantive clean-up changes to the fee schedule.

Retail Order Pricing

The Exchange recently adopted rules related to the Exchange's Retail Order Attribution Program.<sup>6</sup> Under such program, the Exchange allows Members to designate Retail Orders<sup>7</sup> that

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<sup>6</sup> See Securities Exchange Act Release No. 73237 (September 26, 2014), 79 FR 59537 (October 2, 2014) (SR-BATS-2014-043)

<sup>7</sup> As defined in Rule 11.25(a)(2), a "Retail Order" is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail

they enter to be identified as being Retail Orders on the Exchange's proprietary data feeds. Not all Retail Orders entered by a Member will be identified as being a Retail Order, but rather a Retail Order will only be displayed on the Exchange's proprietary data feeds as a Retail Order where the Member designates that the order be identified as such. There are not currently any pricing incentives for participation in the Retail Order Attribution Program.

The Exchange proposes to introduce new fee codes ZA and ZR in order to provide pricing specific to Retail Orders executed on the Exchange. The Exchange notes that such proposed pricing would apply to all Retail Orders and that a Retail Order would not need to be attributable in order to receive the proposed pricing. The Exchange is proposing new fee code ZA to apply to Retail Orders that add liquidity to the Exchange. A transaction with fee code ZA is proposed to be assigned a rebate of \$0.0032 per share. The Exchange is also proposing new fee code ZR to apply to Retail Orders that remove liquidity from the Exchange. A transaction with fee code ZR and is proposed to be assigned a charge of \$0.0030 per share, which is the same as the standard fee for removing liquidity from the Exchange. Proposed fee codes ZA and ZR will only apply to Retail Orders that add or remove liquidity, respectively, in executions that occur on the Exchange. Where a Retail Order is routed, executes in an auction, or executes in the Opening or Re-Opening, the appropriate fee code will apply and proposed fee codes ZA and ZR will not apply.

In addition to the proposed standard pricing for Retail Orders executed on the Exchange, the Exchange is also proposing to add a new Retail Order Tier. As proposed, the Exchange would offer a rebate of \$0.0034 per share for adding liquidity for a Retail Order executed on the

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Member Organization or "RMO" is a Member (or a division thereof) that has been approved by the Exchange under Rule 11.25 to submit Retail Orders.

Exchange where the Member adds an average daily volume of Retail Orders (fee code ZA), that is 0.07% or more of average daily TCV.<sup>8</sup>

### Membership Fees

The Exchange is also proposing to charge an Annual Membership Fee for Members of the Exchange of \$2,500, which will support their Exchange membership for the calendar year. The fee will be charged per Member firm. Beginning in January 2015, the Exchange plans to charge an Annual Membership Fee which will be assessed on all Members as of a date determined by the Exchange in January of each year. For any month in which a firm is approved for membership with the Exchange after the January renewal period, the Annual Membership Fee will be pro-rated beginning on the date on which membership is approved and based on the number of remaining trading days in that year. The fee will be assessed in the month following membership approval. For example, if a firm applies and is accepted for membership with the Exchange on February 15, 2015, the new Member will be assessed a pro-rated Annual Membership Fee for the period beginning on February 15 through the end of 2015. The fee will be assessed in the next month's billing cycle, which in this case, would be March 2015. Such fees will be non-refundable. However, where a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.8 prior to the date any Annual Membership Fee for a given year will be assessed (i.e., January 1, 2015) and the Member does not utilize the facilities of the Exchange while such voluntary termination of rights is pending, then the Member will not

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<sup>8</sup> TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day.

be obligated to pay the Annual Membership Fee. The Exchange believes this to be appropriate because there is ordinarily a 30 day waiting period before such resignation shall take effect.

#### Non-Substantive Changes

Finally, the Exchange is proposing to make certain non-substantive clean-up changes to the fee schedule. Footnote 2 relates to Step-Up Tiers in which displayed orders that add liquidity to the Exchange receive enhanced rebates where the Member meets certain thresholds related to a Member's Step-Up Add TCV.<sup>9</sup> Footnote 2 currently states that it applies to fee codes B, V, and Y, however footnote 2 does not currently appear in the Fee Codes and Associated Fees table next to fee codes V and Y (but does appear next to fee code B). As such, the Exchange is proposing to add footnote 2 to fee codes V and Y in the Fee Codes and Associated Fees table in the fee schedule. This is a non-substantive change to the fee schedule because footnote 2 states that it applies to each of fee codes B, V, and Y and the Exchange is adding the footnote to fee codes V and Y in order to make the fee schedule as consistent as possible to indicate that footnote 2 should apply to those fee codes.

The Exchange proposes to implement the amendments to its fee schedule effective January 2, 2015.

#### 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>10</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) of the Act

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<sup>9</sup> Step-Up Add TCV means ADAV as a percentage of TCV in January 2014 subtracted from current ADAV as a percentage of TCV.

<sup>10</sup> 15 U.S.C. 78f.

and 6(b)(5) of the Act,<sup>11</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 if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the new Retail Order rebate and fee code associated with adding liquidity is reasonable and equitable because it will incentivize Members to submit orders designated as Retail Orders to the Exchange which will enhance liquidity in Retail Orders on the Exchange and further incentivize Members who wish to execute against Retail Orders to send additional orders to the Exchange. The Exchange believes that this increased liquidity would potentially stimulate further price competition for Retail Orders, thereby deepening the Exchange's liquidity pool in both non-Retail and Retail Orders, supporting the quality of price discovery, and promoting market transparency, further rendering the proposal reasonable and equitable. The Exchange believes that the new Retail Order rebate is non-discriminatory because it is equally available to all Members that enter Retail Orders.

The Exchange believes that the new Retail Order fee code for removing liquidity is reasonable, equitable, and non-discriminatory because, as stated above, the fees associated with a Retail Order that removes liquidity on the Exchange is the same as the standard fee for removing liquidity for a non-Retail Order. The only difference is that the Exchange is now providing a more specific fee code in order to make it easier for Members to understand their monthly invoices, which the Exchange again believes makes the proposed change reasonable, equitable, and non-discriminatory.

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<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange also believes that its proposed new Retail Order Tier and associated enhanced rebate are reasonable and equitable because the tiers based on added Retail Order volume is intended to reward those Members that and incentivize other Members to add a larger amount of volume in Retail Orders on the Exchange by providing an additional \$0.0002 per share rebate for Members that have a add an average daily volume of Retail Orders that is 0.07% or more of average daily TCV. Further, the Exchange believes that the new Retail Order Tier is reasonable and equitable because it incentivizes and rewards Members for posting Retail Orders on the Exchange, which is consistent with the overall goal of enhancing market quality on the Exchange. The Exchange also believes that the proposed rebates [sic] associated with the tier is non-discriminatory in that it is equally available to all Members and, again, because it is consistent with the goal of enhancing market quality on the Exchange.

Volume-based rebates and fees such as the ones proposed by and maintained on the Exchange, including Step-Up Tiers, the cross-asset step-up tier, the cross-asset tier and the Retail Order Tier proposed herein, have been widely adopted in the cash equities markets and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts 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/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. The Exchange notes that it is not proposing to modify any existing tiers, but rather to add a new tier that will provide Members with additional ways to receive higher rebates, meaning that under the proposal, a Member will receive either the same or a higher rebate than they would receive today. Accordingly, the Exchange believes that the proposed additions to the Exchange's tiered pricing structure and incentives are not unfairly discriminatory because they

will apply uniformly to all Members and are consistent with the overall goals of enhancing market quality on the Exchange.

The Exchange also believes that assessing an Annual Membership Fee provides an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange makes all services and products subject to these fees available on a non-discriminatory basis to similarly situated recipients. The Exchange believes that the Annual Membership Fee is a reasonable and equitable method of ensuring that its fees fund a greater portion of the cost of regulating activity on the Exchange, and that even after assessing these fees, the overall cost of Exchange membership is reasonable as compared with the costs of membership in other SROs.<sup>12</sup> The Exchange believes that the proposed addition of an Annual Membership Fee is non-discriminatory in that it applies uniformly to all Members.

Finally, the Exchange believes that the clarifying change that adds the footnote 2 to fee codes V and Y in the Fee Codes and Associated Fees table is reasonable as it will help to avoid confusion for those that review the Exchange's fee schedule. The Exchange notes that the proposed change is not designed to amend any fee or rebate, nor alter the manner in which it assesses fees or calculates rebates. The Exchange believes that the proposed amendment is intended to make the fee schedule clearer and less confusing for investors and 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.

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<sup>12</sup> See, e.g., NASDAQ Rule 7001(a) (assessing an [sic] \$3,000 annual membership fee); see also New York Stock Exchange Price List 2015, at [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf) (assessing a \$40,000 annual trading license fee for the first two licenses held by a member organization).



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 proposed changes will allow the Exchange to compete more ably with other execution venues by providing more competitive prices for Retail Orders that add liquidity in securities traded on the Exchange, thereby making it a more desirable destination venue for its customers. Also, because the market for order execution is extremely competitive, Members may readily opt to disfavor the Exchange's routing services if they believe that alternatives offer them better value.

The Exchange's proposed membership fees will be lower than the cost of membership on other exchanges,<sup>13</sup> and therefore, may stimulate intramarket competition by attracting additional firms to become Members on the Exchange. In addition, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership and/or trading activity as a result. The proposed fee change will not impact intermarket competition because it will apply to all Members equally. 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 deemed fee structures, including Annual Membership Fees, to be unreasonable or excessive.

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

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<sup>13</sup> See id.

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>14</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>15</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.

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-2015-01 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.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-BATS-2015-01. 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-BATS-2015-01, 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>16</sup>

Brent J. Fields  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).