

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74968; File No. SR-BATS-2015-38)

May 14, 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 May 6, 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 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> The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

[www.batstrading.com](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, effective immediately, in order to modify pricing charged by the Exchange's options platform ("BATS Options") including: (i) add a new standard rate and a fee code NM associated with Market Maker<sup>6</sup> orders that add liquidity in non-Penny Pilot Securities;<sup>7</sup> (ii) add a new footnote 7 entitled "Market Maker Non-Penny Pilot Add Volume Tiers"; (iii) simplifying the Exchange's physical connection fees; (iv) certain corresponding changes associated with the new rebates associated with Market Maker orders in non-Penny Pilot Securities; and (v) a non-substantive, clarifying change in footnote 5.

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<sup>6</sup> "Market Maker" applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC.

<sup>7</sup> "Penny Pilot Securities" are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

### Standard Rate in Market Maker Orders in Non-Penny Pilot Securities

Currently, the Exchange offers a rebate of \$0.65 per contract for Market Maker orders that add liquidity in non-Penny Pilot Securities. The Exchange is proposing to create a new fee code NM and to change the standard rate for Market Maker orders that add liquidity in non-Penny Pilot Securities to a rebate of \$0.42 per contract. Such orders will be eligible for the enhanced rebates available under the NBBO Setter Tiers, the Quoting Incentive Program Tiers, and the new Market Maker Non-Penny Pilot Add Volume Tiers proposed below. The Exchange is not proposing to change pricing for Professional<sup>8</sup> or Firm<sup>9</sup> orders or for any Market Maker orders that do not add liquidity non-Penny Pilot Securities.

### Market Maker Non-Penny Pilot Add Volume Tiers

As described above, the Exchange currently provides a rebate of \$0.65 per contract for Market Maker orders that add liquidity in non-Penny Pilot Securities, which it proposes to change to \$0.42 per contract. The Exchange is also proposing to add new footnote 7 to its fee schedule entitled “Market Maker Non-Penny Pilot Add Volume Tiers” in order to offer enhanced rebates for Market Maker orders in non-Penny Pilot Securities to Members that meet certain thresholds. Specifically, the Exchange is proposing to: (i) provide a rebate of \$0.45 per contract where the Member has an ADV<sup>10</sup> equal to or greater than 0.30% of average TCV<sup>11</sup>; and (ii)

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<sup>8</sup> “Professional” applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1.

<sup>9</sup> “Firm” applies to any transaction identified by a Member for clearing in the Firm range at the OCC.

<sup>10</sup> “ADV” means average daily volume calculated as the number of contracts added or removed, combined, per day.

<sup>11</sup> “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

provide a rebate of \$0.52 where the Member has an ADV equal to or greater than 1.00% of average TCV. Where a Member does not meet either of these thresholds, they would receive the standard rebate of \$0.42 per contract, as proposed above.

#### Physical Connection Fees

The Exchange currently maintains a presence in two third-party data centers: (i) the primary data center where the Exchange's business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. The Exchange currently assesses fees to Members and non-Members of \$1,000 for any 1G physical port connection at either data center and of \$2,500 for any 10G physical port connection at either data center. The Exchange also provides market participants with the ability to access the Exchange's network through another data center entry point, or Point of Presence ("PoP"), at a data center other than the Exchange's primary or secondary data center.<sup>12</sup> The Exchange currently charges \$2,000 for any 1G physical port to connect to the Exchange in any data center where the Exchange maintains a PoP other than the Exchange's primary or secondary data center and \$5,000 per month for each single physical 10G port provided by the Exchange to any Member or non-member in any data center where the Exchange maintains a PoP other than the Exchange's primary or secondary data center.

The Exchange proposes to simplify its pricing structure by imposing a uniform rate for physical ports regardless of the data center in which the port connection is made. Specifically, the Exchange proposes to charge \$1,000 per month for all 1G physical port connections and

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Disruption and on any day with a scheduled early market close.

<sup>12</sup> See Securities Exchange Act Release No. 70199 (August 14, 2013), 78 FR 51250 (August 20, 2013) (SR-BATS-2013-036) (Order Approving a Proposed Rule Change to Introduce a Connectivity Option Through Points of Presence).

\$2,500 per month for all 10G physical ports in any location where the Exchange offers the ability to connect to Exchange systems, including the secondary data center and any PoP location.

#### Corresponding Changes

In conjunction with the changes proposed above, the Exchange is proposing to make certain corresponding changes, including: (i) add fee code NM references in footnotes 4 and 5; (ii) removing the reference to “MM” (short for Market Maker) from the description in fee code NA; and (iii) remove the words “Market Maker Add Volume” from both Market Maker Add Volume Tier 1 and Tier 2 in footnote 6.

#### Clarifying Change

The Exchange is proposing to add references to the fee codes PA and PF in footnote 5. While the Fee Codes and Associated Fees table indicates that footnote 5 applies to both fee codes PA and PF, the fee codes are not included in the footnote itself as fee codes to which the footnote is applicable.

#### Effectiveness Date

As noted above, the Exchange proposes to implement the amendments to its fee schedule effective immediately.

## 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>13</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>14</sup>

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<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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 to be excessive.

The Exchange believes the proposed reduction of the standard rebate for Market Maker orders in non-Penny Pilot Securities that add liquidity is a reasonable, fair and equitable allocation of fees and rebates because it will provide Members with a greater incentive to increase their participation on BATS Options in order to receive a higher rebate by meeting any of the enhanced rebate tiers for which the orders are eligible, including the NBBO Setter Tiers, the Quoting Incentive Program Tiers, and the Market Maker Non-Penny Pilot Add Volume Tiers proposed herein. Finally, while adjusting the standard rebate of \$0.65 per contract to remove liquidity to \$0.42 per share will obviously result in a reduction in rebates paid per contract to Members, the Exchange believes that any potential negative impact of this change will be outweighed by the Exchange's ability to apply the cost savings to other areas of the business, including enhanced rebates, reduced fees, and improved technology on the BATS Options. The Exchange also believes that the proposed fee change is non-discriminatory because it would apply uniformly to all Members [sic].

Volume-based rebates and fees such as the ones currently maintained on BATS Options have been widely adopted by equities and options exchanges 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 believes that the proposed addition of Market Maker Non-Penny Pilot Add Volume Tiers is a reasonable, fair and equitable allocation of fees and rebates because it will provide Members with a greater incentive to increase their participation on BATS Options in order to receive a higher rebate, which will result in enhanced market quality for all Members.

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.

#### Physical Connection Fees

The Exchange believes that providing uniform rates for all 1G and 10G physical connections to Exchange is reasonable because such change represents a reduction in fees for any Member that connects to the Exchange at a PoP location and no change to fees for any Member located in the Exchange's primary or secondary data center. The Exchange also believes that the proposal is equitably allocated and not unreasonably discriminatory because, as proposed, market participants will be able to access the Exchange at uniform rates regardless of whether such access is at the Exchange's primary or secondary data center location or another location where the Exchange offers access.

#### Corresponding and Clarifying Changes

Finally, the Exchange believes that the corresponding and clarifying changes discussed above are non-substantive and would contribute to the protection of investors and the public interest by helping to avoid confusion with respect the Exchange fee schedule.

#### 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. With respect

to the proposed new rebates for Market Maker orders that add liquidity in non-Penny Pilot Securities, particularly the enhanced rebates available under the Market Maker Non-Penny Pilot Add Volume Tiers, the Exchange does not believe that any such changes burden competition, but instead, that they enhance competition, as they are intended to increase the competitiveness of BATS Options. 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 to be unreasonable or excessive.

The Exchange does not believe that the proposed change to physical port fees represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Rather, as described above, the Exchange is simply normalizing its fees for physical access to the Exchange regardless of the location where a physical connection is made. The offering is consistent with the Exchange's own economic incentives to facilitate as many market participants as possible in connecting to its market. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

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>15</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>16</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-2015-38 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-BATS-2015-38. 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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

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 Number SR-BATS-2015-38 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>17</sup>

Robert W. Errett  
Deputy Secretary

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