

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75158; File No. SR-BATS-2015-44)

June 11, 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 June 9, 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.<sup>3</sup> 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>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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 its fees and rebates applicable to Members<sup>6</sup> of the Exchange pursuant to Rule 15.1(a) and (c) (“Fee Schedule”) to: (i) increase the rebate from \$0.0004 per share to \$0.0015 per share for orders that yield fee code A, which routes to the

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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> The Commission notes that a previous version of the proposal was filed as SR-BATS-2015-41. The proposal was withdrawn on June 9, 2015.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</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).

Nasdaq Stock Market LLC (“Nasdaq”) and adds liquidity; and (ii) adopt fees for the use of a communication and routing service known as BATS Connect.

The text of the proposed rule change is available at the Exchange’s website at [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: (i) increase the rebate from \$0.0004 per share to \$0.0015 per share for orders that yield fee code A, which routes to Nasdaq and adds liquidity; and (ii) adopt fees for the use of a communication and routing service known as BATS Connect.

Fee Code A

In securities priced at or above \$1.00, the Exchange currently provides a rebate of \$0.0004 per share for Members’ orders that yield fee code A, applicable to orders routed to Nasdaq that add liquidity. The Exchange proposes to amend its Fee Schedule to increase this rebate to \$0.0015 per share for Members’ orders that yield fee code A. The proposed change represents a pass through of the rate that BATS Trading, Inc. (“BATS Trading”), the Exchange’s affiliated routing broker-dealer, will be rebated for routing orders to Nasdaq when it does not

qualify for a volume tiered rebate. The Exchange notes that the proposed change is in response to Nasdaq's June 2015 fee change where Nasdaq will no longer offer a rebate of \$0.0004 per share for orders in select symbols ("Nasdaq's Select Symbol Program") to its customers, such as BATS Trading, and such orders will be subject to the regular Nasdaq Pricing Schedule.<sup>7</sup> Accordingly, when BATS Trading routes to Nasdaq in any symbol, it will be rebated a standard rate of \$0.0015 per share. BATS Trading will pass through this rate on Nasdaq to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

#### BATS Connect

On May 26 [sic], 2015, the Exchange filed a proposed rule change with the Commission to adopt a communication and routing service known as BATS Connect.<sup>8</sup> The Exchange now proposes to adopt fees related to the use of BATS Connect that are equal to the fees charged for an identical service, also called BATS Connect, offered by the Exchange's affiliate, EDGX.<sup>9</sup> BATS Connect is offered by the Exchange on a voluntary basis in a capacity similar to a vendor. In sum, BATS Connect is a communication service that provides subscribers an additional means to receive market data from and route orders to any destination connected to the Exchange's network. BATS Connect does not provide any advantage to subscribers for connecting to the Exchange's affiliates<sup>10</sup> as compared to other method of connectivity available to subscribers.

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<sup>7</sup> See Nasdaq Equity Trader Alert #2015-70, Nasdaq Ends Access Fee Experiment, available at <http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2015-70>.

<sup>8</sup> See file no. SR-BATS-2015-40.

<sup>9</sup> See the EDGX fee schedule available at [http://batstrading.com/support/fee\\_schedule/edgx/](http://batstrading.com/support/fee_schedule/edgx/). See also Securities Exchange Act Release No. 73780 (December 8, 2014), 79 FR 73942 (December 12, 2014) (SR-EDGX-2014-28) and file no. SR-EDGX-2015-27.

<sup>10</sup> The Exchange's affiliated exchanges are EDGX, EDGA Exchange, Inc. ("EDGA"), and BATS Y-Exchange, Inc. ("BYX"). The Exchange understands that its affiliated

The servers of the subscriber need not be located in the same facilities as the Exchange in order to subscribe to BATS Connect. Subscribers may also seek to utilize BATS Connect in the event of a market disruption where other alternative connection methods become unavailable.

The Exchange will charge a monthly connectivity fee to subscribers utilizing BATS Connect to route orders to other exchanges and broker-dealers that are connected to the Exchange's network. The amount of the connectivity fee varies based solely on the bandwidth selected by the subscriber. Specifically, the Exchange proposes to charge \$350 for 1 Mb, \$700 for 5 Mb, \$950 for 10 Mb, \$1,500 for 25 Mb, \$2,500 for 50 Mb, and \$3,500 for 100 Mb.

BATS Connect would also allow subscribers to receive market data feeds from the exchanges connected to the Exchange's network. In such case, the subscriber would pay the Exchange a connectivity fee, which varies and is based solely on the amount of bandwidth required to transmit the selected data product to the subscriber. The proposed connectivity fees are set forth in the Exhibit 5 attached hereto and range from no charge to \$11,500 based on the market data product the subscriber selects.

The Exchange also proposes to adopt a discounted fee of \$4,160 per month for subscribers who purchase connectivity to a bundle of select market data products. The following market data products would be included in the bundle: UQDF/UTDF/OMDF, CQS/CTS, Nasdaq TotalView, Nasdaq BX TotalView, Nasdaq PSX TotalView, NYSE ArcaBook, NYSE MKT OpenBook Ultra, and BBS/TTDS. Absent the discount, a subscriber purchasing connectivity through BATS Connect for each of these market data products would pay a total

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exchanges intend to file identical proposed rule changes to adopt the fees for the BATS Connect service with the Commission. The Exchange also notes that its affiliated exchanges have also filed proposed rule changes with the Commission to adopt rules describing the BATS Connect service.

monthly fee of \$5,200. As proposed, a subscriber who purchases connectivity to each of the above market data products would be charged a monthly fee of \$4,160, which represents a 20% discount. The subscribers would pay any fees charged by the exchange providing the market data feed directly to that exchange.

The Exchange notes that it will not charge a fee to subscribers utilizing BATS Connect to route orders to or receive market data products from the Exchange's affiliates, EDGX, EDGA, and BYX. BATS Connect provides subscribers a means to access exchanges and market centers on the Exchange's network. In all cases, BATS Connect subscribers would be continue to be liable for the necessary fees charged by that exchange or market center, including any required connectivity fees. Market participants who chose a method other than BATS Connect to connect to another exchange or market center would also pay any required connectivity fees directly to that exchange or market center. Likewise, BATS Connect subscribers would be liable for any connectivity fees charged by the Exchange's affiliate.

#### Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule immediately.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>12</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it

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<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

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 proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

#### Fee Code A

The Exchange believes that its proposal to increase the pass through rebate for Members' orders that yield fee code A from \$0.0004 to \$0.0015 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. Under Nasdaq's Select Symbol Program, Nasdaq provided BATS Trading a rebate of \$0.0004 per share for orders executed in select symbols, which BATS Trading passed through to the Exchange and the Exchange passed through to its Members, not only for orders routed in select symbols but in all securities. In June 2015, Nasdaq will terminate its Select Symbol Program, thereby increasing the rebate it provides its customers, such as BATS Trading, in select symbols from a rebate of \$0.0004 per share to its standard rebate of \$0.0015 per share for orders that are routed to Nasdaq.<sup>13</sup> Therefore, the Exchange believes that the proposed change in fee code A from a rebate of \$0.0004 per share to a rebate of \$0.0015 per share is equitable and reasonable because it accounts for the pricing changes on Nasdaq. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to Nasdaq. The Exchange notes that routing through BATS Trading is voluntary. Lastly, the

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<sup>13</sup> See supra note 6.

Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

### BATS Connect

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act,<sup>14</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. First, the Exchange will charge a connectivity fee to subscribers utilizing BATS Connect to route orders to other exchanges and market centers that are connected to the Exchange's network, which varies based solely on the amount of bandwidth selected by the subscriber. The amounts of the connectivity fees are also reasonable as compared to similar fees charged by other exchanges. For purposes of order routing, the Exchange proposes to charge \$350 for 1 Mb, \$700 for 5 Mb, \$950 for 10 Mb, \$1,500 for 25 Mb, \$2,500 for 50 Mb, and \$3,500 for 100 Mb. The New York Stock Exchange, Inc. ("NYSE") currently charges \$300 for 1 Mb, \$700 for 5 Mb, \$900 for 10 Mb, \$1,500 for 25 Mb, \$2,000 for 50 Mb, and \$2,600 for 100 Mb.<sup>15</sup> The Exchange notes that, overall, the connectivity fee for routing of orders to other market centers proposed by the Exchange is similar to that charged by the NYSE.

Second, with regard to utilizing BATS Connect to receive market data products from other exchanges, the Exchange would only charge subscribers a connectivity fee, the amount of which is based solely on the amount of bandwidth required to transmit that specific data product to the subscribers. The amounts of the connectivity fees are also reasonable as compared to similar fees charged by other exchanges. For example, for market data connectivity, the Nasdaq

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

<sup>15</sup> See NYSE's SFTI Americas Product and Service List available at <http://www.nyxdata.com/docs/connectivity>.

Stock Market LLC (“Nasdaq”) charges \$1,412 per month for CQS/CTS data feed, and the Exchange proposes to charge \$1,000 per month connectivity for CQS/CTS data feed.<sup>16</sup> The Exchange notes that, overall, the connectivity fee for receipt of other market centers’ data feed proposed by the Exchange is similar to that charged by Nasdaq.

The Exchange believes it is reasonable to offer such discounted pricing to subscribers who purchase connectivity to a bundle of market data products as it would enable them to reduce their overall connectivity costs for the receipt of market data. As stated above, BATS Connect is offered and purchased on a voluntary basis and subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Moreover, the Exchange believes the proposed fees are reasonable and equitable because they continue to be based on the Exchange’s costs to cover the amount of bandwidth required to provide connectivity to the select bundle of data feeds. The proposed fees will continue to allow the Exchange to recoup this cost, while providing subscribers with an alternative means to connect to the select bundle of data feeds at a discounted rate.

The subscribers would pay any fees: (i) charged by the exchange providing the market data feed directly to that exchange (ii) charged by a market center to which they routed an order and an execution occurred directly to that market center. The Exchange itself would not charge any additional fees.<sup>17</sup> BATS Connect is offered and purchased on a voluntary basis, in that neither the Exchange nor subscribers are required by any rule or regulation to make this product available. Accordingly, subscribers can discontinue use at any time and for any reason,

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<sup>16</sup> See Nasdaq Rule 7034 (setting forth Nasdaq’s connectivity fees for receipt of third party market data products).

<sup>17</sup> The Exchange’s rules and fees would not address the fees or manner of operation of any destination to which the subscriber asked that an order be routed.



including due to an assessment of the reasonableness of fees charged.

Moreover, the Exchange believes the proposed fees are reasonable and equitable because they are based on the Exchange's costs to cover hardware, installation, testing and connection, as well as expenses involved in maintaining and managing the service. The proposed fees allow the Exchange to recoup these costs, while providing subscribers with an alternative means to connect to other exchange and market centers. The Exchange believes that the proposed fees are reasonable and equitable in that they reflect the costs and the benefit of providing alternative connectivity.

The Exchange also believes it is equitable and reasonable to provide BATS Connect to subscribers for no charge to route orders to or receive market data products from the Exchange's affiliates. BATS Connect provides subscribers a means to access exchanges and market centers on the Exchange's network. In all cases, BATS Connect subscribers would be continue to be liable for the necessary fees charged by the Exchange, its affiliate, or another exchange or market center, including any required connectivity fees. As stated above, BATS Connect is offered and purchased on a voluntary basis, and subscribers and market participants may choose an alternative method to connect to the Exchange, its affiliates, or another exchange or market center connected to the Exchange's network. Such other services may also offer at no charge connectivity to certain exchanges or a group of exchanges.<sup>18</sup> Therefore, the Exchange believes that the [sic] providing BATS Connect to subscribers at no charge to route orders to or receive market data products from the Exchange's affiliates is reasonable and equitable as they will continue to be liable to the Exchange or its affiliate for any required connectivity fees.

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<sup>18</sup> See NYSE's SFTI Americas Product and Service List [available at http://www.nyxdata.com/docs/connectivity](http://www.nyxdata.com/docs/connectivity) (offering at no charge connectivity to the NYSE, NYSE MKT LLC, and NYSE Arca, Inc.).

Lastly, the Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all subscribers. All subscribers that voluntarily select various service options will be charged the same amount for the same services. All subscribers have the option to select any connectivity option, and there is no differentiation among subscribers with regard to the fees charged for the service. Further, the benefits of selecting such services are the same for all subscribers, irrespective of whether their servers are located in the same facility as the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. 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.

Fee Code A

The Exchange believes that its proposal to pass through a rebate of \$0.0015 per share for Members' orders that yield fee code A would increase intermarket competition because it offers customers an alternative means to route to Nasdaq for a similar rate as entering orders in certain symbols on Nasdaq directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

BATS Connect

The Exchange does not believe the proposed fees for BATS Connect will result in any

burden on competition. The proposed rule change is designed to provide subscribers with an alternative means to access other market centers on the Exchange's network if they choose or in the event of a market disruption where other alternative connection methods become unavailable. BATS Connect is not the exclusive method to connect to these market centers and subscribers may utilize alternative methods to connect to the product if they believe the Exchange's proposed pricing is unreasonable or otherwise. Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

(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 unsolicited 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>19</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>20</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.

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f).

#### 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-2015-44 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.

All submissions should refer to File Number SR-BATS-2015-44. 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 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-2015-44 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>21</sup>

Robert W. Errett  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).