

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61650; File No. SR-BATS-2010-005)

March 4, 2010

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 25, 2010, 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. BATS 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 proposes to modify its fee schedule applicable to Members<sup>5</sup> of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 26, 2010.

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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 any registered broker or dealer that has been admitted to membership in the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, on the Commission's Web site at [www.sec.gov](http://www.sec.gov), 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 applicable to use of the Exchange effective February 26, 2010, in order to (i) establish fees for executions that occur on the BATS Exchange options market ("BATS Options");<sup>6</sup> (ii) establish fees for executions routed via BATS Options to other options exchanges; and (iii) make other technical changes to the fee schedule.

(i) Fees for Executions on BATS Options

The Exchange proposes to implement fees based on the pricing model currently in place for the trading of equities via the Exchange. Specifically, the Exchange will assess fees for the execution of options contracts based upon which Member provides liquidity to the BATS Options order book and which Member takes liquidity from BATS Options order book. This

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<sup>6</sup> On January 26, 2010, the Commission approved SR-BATS-2009-031, which proposed rules for the trading of equity options on the Exchange. See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031).

model seeks to attract liquidity to BATS Options by providing credits to Members that provide liquidity, and to assess a fee to the Member whose order executes against an order that has provided liquidity. An order that provides liquidity is any order that is entered into BATS Options and is placed on the BATS Options order book for potential execution. An order that takes liquidity is one that is entered into BATS Options and that executes against an order resting on the BATS Options order book.

The Exchange is proposing to charge \$0.30 per contract for executions that remove liquidity from BATS Options and to rebate \$0.20 per contract for executions that add liquidity to BATS Options.

(ii) Routing Fees for Orders Routed Away From BATS Options

The Exchange proposes to charge the routing charges per contract as described below. All charges by the Exchange for routing away from BATS Options are applicable only in the event that an order is executed. In other words, there is no charge for orders that are routed away from the Exchange but are not filled.

BATS Options will pass through the charges assessed by other markets for the execution of options orders, plus an additional charge. Specifically, in connection with routing of orders other than directed ISOs away from BATS Options, the Exchange proposes to charge \$0.05 per contract plus all destination exchange fees incurred for the execution. In connection with routing of directed ISOs away from BATS Options, the Exchange proposes to charge \$0.10 per contract plus all destination exchange fees incurred for the execution. For instance, if the Exchange routes an order (other than a directed ISO) to another options exchange and is charged \$0.30 for the execution, then the total charge billed to the Member will be \$0.35. Similarly, if the Exchange routes a directed ISO to another options exchange and is charged \$0.30 for the execution, then the total charge billed to the Member will be \$0.40. With respect to orders that

are executed at other options exchanges without a charge to the Exchange, such orders will only be assessed the applicable additional charge (*i.e.*, \$0.05 per contract for all orders other than directed ISOs and \$0.10 per contract for all directed ISOs).

(iii) Technical Changes to Fee Schedule

The Exchange proposes to create headings to make clear which fees apply to the Exchange's pre-existing equity securities trading platform, the BATS Options trading platform, which will commence operations on February 26, 2010, or both. At this time, the Exchange is not proposing to charge for logical ports for Members who connect to BATS Options. Accordingly, the Exchange has intentionally left the portions of the fee schedule that set forth fees for logical ports classified under the new "Equities Pricing" heading. However, the Exchange's proposal to implement physical port fees, which was recently approved,<sup>7</sup> was intended to operate such that physical port fees charged by the Exchange apply to any Member or non-Member that maintains more than four (4) physical ports at either of the Exchange's data centers, regardless of their activities on the Exchange (*e.g.*, equities trading, options trading, receipt of Exchange market data or some combination of the foregoing). Accordingly the Exchange has also created a heading to make clear that such physical connection charges are applicable to all Exchange constituents.

In addition, the Exchange proposes an amendment to the description of pricing for executions on the Exchange in equity securities priced below \$1.00 to make clear that the 0.10% fee applies to executions on the Exchange that remove liquidity from the Exchange by adding the words "to remove liquidity" to the existing text.

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<sup>7</sup> See Securities Exchange Act Release No. 61545 (February 19, 2010) (SR-BATS-2009-032).

## 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>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</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. Upon launch, BATS Options will be the eighth options market in the national market system. Joining BATS Options and electing to trade options via BATS Options is entirely voluntary. Under these circumstances, the fees for trading on and through BATS Options must be competitive in order for BATS Options to attract order flow, execute orders, and grow as a market. The Exchange believes that the fees and credits proposed for BATS Options are competitive with those charged by other venues. In addition, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

### (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.

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<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder,<sup>11</sup> because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 proposal 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 No. SR-BATS-2010-005 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.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to File No. SR-BATS-2010-005. 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 Web site (<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 Web site 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 No. SR-BATS-2010-005 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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