

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63857; File No. SR-BATS-2011-004)

February 7, 2011

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 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on January 31, 2011, 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 due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 Members⁵ and non-members 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 1, 2011.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ 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 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 February 1, 2011, in order to: (i) adjust fees for "logical" ports used for order entry or receipt of Exchange data; and (ii) adjust the fees for orders executed at other options exchanges through Exchange-offered routing strategies in order to more closely reflect the Exchange's cost of executing orders at such away markets.

(i) Fees for Logical Ports

The Exchange proposes to raise the fee for each pair⁶ of logical ports from \$250 each month to \$400 each month. A logical port is also commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and

⁶ Each pair of ports consists of one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

grants that Member or non-member the ability to operate a specific application, such as FIX order entry or PITCH data receipt.

The proposed fee increase for each pair of logical ports is designed to help offset increasing infrastructure costs associated with the implementation of internally developed real-time latency monitoring on all FIX order entry ports. The latency monitoring offered by the Exchange beginning February 1, 2011 will be similar to that provided by other exchanges through outside vendors, except that the Exchange does not currently propose to charge any additional fees for latency monitoring on FIX ports.

As proposed, the change applies to Members that obtain ports for direct access to the Exchange, Sponsored Participants⁷ sponsored by Members to receive direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, and market data recipients. While the proposal would represent an increase in the monthly fee assessed by the Exchange for all logical ports (including logical ports unaffected by the Exchange's offering of latency monitoring on FIX ports), the Exchange's overall connectivity fees remain lower than those of its primary competitors.

(ii) Routing Pricing

The Exchange proposes to adjust its fees for options order routing. Rather than continuing to subsidize its Members' routing strategies, the Exchange proposes to adjust routing fees to more closely reflect the Exchange's cost of executing those orders at away markets. Specifically, the Exchange proposes to assess the following per contract fees for Customer orders

⁷ A "Sponsored Participant" is a firm that is sponsored by a Member of the Exchange to access the Exchange and that meets the criteria of Exchange Rule 11.3.

that are routed to the named away exchange: \$0.06 for all orders in non-“Make/Take” issues,⁸ if applicable, routed to NYSE Amex, NYSE Arca, the Boston Options Exchange, the Chicago Board Options Exchange, the International Securities Exchange, or NASDAQ OMX PHLX; \$0.30 for all orders routed to the Chicago Board Options Exchange 2, the International Securities Exchange in Make/Take issues, or NASDAQ OMX PHLX in Make/Take issues; and \$0.50 for all orders routed to Nasdaq Options Market or NYSE Arca in Make/Take issues. The Exchange also proposes to assess a routing fee of \$0.55 per contract for all Firm and Market Maker orders that are routed to any away exchange pursuant to the order routing strategies offered by the Exchange.

The Exchange believes that the proposed routing fees are competitive, fair and reasonable, and non-discriminatory in that they approximate the cost to the Exchange of executing routed orders at an away market and are similar to those fees charged by other exchanges.

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.⁹ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ in that it provides for the equitable allocation of reasonable dues, fees and other charges among

⁸ As defined on the fee schedule, Make/Take pricing refers to executions at the identified Exchange under which “Post Liquidity” or “Maker” rebates (“Make”) are credited by that exchange and “Take Liquidity” or “Taker” fees (“Take”) are charged by that exchange.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

members and other persons using any facility or system which the Exchange operates or controls.

With respect to the increase in logical port fees, 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 its fees are competitive with those charged by other venues, and that its fees for connectivity are still less expensive than its primary competitors. In addition, at the same time as the Exchange is increasing its fee per logical port, the Exchange is making available to its Members real-time latency monitoring without any additional fee. Accordingly, the Exchange believes that the increase to port fees will help the Exchange to continue to maintain and improve its infrastructure, while also encouraging Exchange customers to request and enable only the ports that are necessary for their operations related to the Exchange.

With respect to the increase in routing fees for BATS Options, although routing options are available to all Members, Members are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and non-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.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2) thereunder,¹² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.¹³

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. Please include File Number SR-BATS-2011-004 on the subject line.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

¹³ See Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both.

Paper comments:

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

All submissions should refer to File Number SR-BATS-2011-004. 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 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-2011-004 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.¹⁴

Cathy H. Ahn
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).