

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65076; File No. SR-BATS-2011-024)

August 9, 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 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 29, 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 member 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 [sic] amend the 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 August 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, at the Commission's Public Reference Room, and on the Commission's website at www.sec.gov.

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 to: (i) increase the fees applicable to removing liquidity from the BATS options market ("BATS Options"); (ii) decrease the rebates applicable to adding liquidity to BATS Options; (iii) decrease the rebates paid, subject to average daily volume requirements, for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO"); (iv) adopt a program to incentivize sustained, aggressive quoting in certain specified options series (the "Quoting Incentive Program" or "QIP"); and (v) adopt a change to the standard routing fee for the

CYCLE, RECYCLE, Parallel D, Parallel 2D, and Destination Specific routing strategies⁶ charged for routing Customer⁷ orders to certain markets.

(i) Increase to Liquidity Removal Fees

The Exchange currently charges standard fees of \$0.30 per contract for Customer orders and \$0.40 per contract for Firm and Market Maker⁸ orders that remove liquidity from BATS Options. The Exchange proposes to increase this fee to \$0.32 per contract for Customer orders and \$0.42 per contract for Firm and Market Maker orders that remove liquidity from BATS Options, subject to potential reduction for any Member with an ADV of 0.30% or more of average TCV on BATS Options, as described below.

The Exchange currently maintains a tiered pricing structure through which Members can realize lower liquidity removal fees if such Members have an average daily volume (“ADV”)⁹ equal to or greater than 0.30% of average total consolidated volume (“TCV”).¹⁰ For Members reaching this volume threshold, the Exchange currently charges a fee of \$0.27 per contract for Customer orders and \$0.37 per contract for Firm and Market Maker orders. Thus, such Members currently save \$0.03 per contract as compared to the standard fee to remove liquidity. While the

⁶ As defined in BATS Rules 21.1(d)(7) and 21.9(a)(2).

⁷ As defined on the Exchange’s fee schedule, a “Customer” order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (“OCC”).

⁸ As set forth on the Exchange’s fee schedule, and consistent with the definition of a Customer order, classification as Firm and Market Maker orders depends on the identification by a Member of the applicable clearing range at the OCC.

⁹ As defined on the Exchange’s fee schedule, ADV is average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. The fee schedule also provides that routed contracts are not included in ADV calculation.

¹⁰ As defined on the Exchange’s fee schedule, TCV is 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.

Exchange proposes [sic] maintain this \$0.03 savings per contract for those reaching the volume tier, due to the proposed increase described above for standard liquidity removal, the Exchange proposes to increase liquidity removal fees for Members that reach the volume tier by \$0.02 per contract. Accordingly, for Members reaching the volume threshold, the Exchange will charge a fee of \$0.29 per contract for Customer orders and \$0.39 per contract for Firm and Market Maker orders.

(ii) Decrease to Liquidity Adding Rebate

The Exchange currently provides a rebate of \$0.25 per contract for all Customer orders that add liquidity to BATS Options. The Exchange proposes to reduce the rebate for adding liquidity to \$0.22 for Customer orders.

The Exchange currently provides a rebate of \$0.25 per contract for Firm and Market Maker orders that are removed by Customer orders and \$0.35 per contract for orders that are removed by Firm or Market Maker orders. The removing Member's fee is determined without regard to the capacity of the adding party. Consistent with the reduction of Customer rebates described above, the Exchange proposes to reduce each of these liquidity adding rebates by \$0.03. Accordingly, the Exchange proposes to provide a rebate of \$0.22 per contract for Firm and Market Maker orders that are removed by Customer orders and \$0.32 per contract for orders that are removed by Firm or Market Maker orders. As is the case under the current pricing structure, the removing Member's fee will be determined without regard to the capacity of the adding party.

The Exchange believes that, because Members can neither see the capacity of orders in the Exchange's order book nor determine the capacity of the Member that removes an order, the proposal will not disadvantage public investors or Members. Lastly, the Exchange believes that

the proposed change to the fee schedule is substantively similar to a pricing plan in place at NASDAQ OMX PHLX.¹¹

(iii) Decrease to Rebates for NBBO Setter Rebate Program

The Exchange currently offers a rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the “NBBO Setter Rebate”),¹² subject to certain volume requirements. The NBBO Setter Rebate currently offered by the Exchange to such Members is \$0.40 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and \$0.50 per contract for Members with an ADV equal to or greater than 1% of TCV. The Exchange proposes to reduce the rebates paid to Members under the NBBO Setter Program by \$0.05 per contract. Accordingly, the Exchange will provide an NBBO Setter Rebate of \$0.35 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and \$0.45 per contract for Members with an ADV equal to or greater than 1% of TCV.

(iv) Adoption of Quoting Incentive Program (QIP)

BATS Options proposes to introduce a Quoting Incentive Program (QIP), through which BATS Options will provide a rebate of \$0.03 per contract, in addition to any other liquidity rebate other than an NBBO Setter Program liquidity rebate, for executions subject to the QIP. The QIP will only apply to executions in options overlying XLF, CSCO, PFE, ORCL, and XRT. To qualify for the QIP a BATS Options Market Maker must be at the NBB or NBO 70% of the

¹¹ See Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR-Phlx-2008-08)(notice of filing and immediate effectiveness to amend fees applicable to the Philadelphia Stock Exchange, including adopting a tiered subsidy that does not apply to Customer-to-Customer transactions).

¹² An order that is entered at the most aggressive price both on the BATS Options book and according to then current OPRA data will be determined to have set the NBB or NBO for purposes of the NBBO Setter Rebate without regard to whether a more aggressive order is entered prior to the original order being executed.

time for series trading between \$0.03 and \$5.00 for the front three (3) expiration months in that underlying during the current trading month. A Member not registered as a BATS Market Maker can also qualify for the QIP by quoting at the NBB or NBO 80% of the time in the same series.

The Exchange will determine whether a market maker qualifies for QIP rebates at the end of each month by looking back at each Member's (including BATS Options Market Makers) quoting statistics during that month. If at the end of the month a Market Maker meets the 70% criteria or a Member that is not registered as a BATS Options Market Maker meets the 80% criteria, the Exchange will provide the additional rebate for all executions subject to the QIP executed by that Market Maker or Member during that month. The Exchange will provide Members with a report on a daily basis with quoting statistics so such Members can determine whether or not they are meeting the QIP criteria. As noted above, the QIP will not be additive to NBBO Setter Program rebates. The Exchange is not proposing to impose any ADV requirements in order to qualify for the QIP at this time.

(v) Change to Standard Routing Fee

The Exchange currently charges a flat fee per contract of \$0.06 for all executions of Customer orders routed through the CYCLE, RECYCLE, Parallel D, Parallel 2D and Destination Specific routing strategies in non-“Make/Take” issues,¹³ 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. The Exchange's current fee of \$0.06 per contract is the same amount per contract as the direct clearing costs paid by the

¹³ 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.

Exchange in connection with the routing of Customer orders. However, there are additional infrastructure costs, including membership fees and connectivity costs, that are not captured by this fee. In order to recover additional fees to account for infrastructure costs related to routing, the Exchange proposes to increase this routing fee to \$0.10 per contract. In contrast to Customer orders, the Exchange's fees for Firm and Market Maker orders already provide the Exchange with some additional revenue to cover infrastructure costs. Accordingly, the Exchange is not proposing to adjust its fees for routed Firm or Market Maker orders at this time.

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.¹⁴ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ 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 changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating incentives to providing aggressively priced displayed liquidity. While Members that remove liquidity from the Exchange and/or route Customer orders through the Exchange's standard routing strategies will pay higher fees and Members that add liquidity to the Exchange

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

will receive lower rebates due to the proposal, the increased revenue received by the Exchange will be used to fund programs that the Exchange believes will attract additional liquidity and thus improve the depth of liquidity available on the Exchange. Accordingly, the Exchange believes that the higher access and routing fees and lower rebates will benefit Members' results in trading on the Exchange to the extent the tiered rebate structure offered by the Exchange for adding liquidity, the continued operation of the NBBO Setter Program, and the adoption of the Quoting Incentive Program (QIP) incentivize liquidity providers to provide more aggressively priced liquidity.

Despite the increase in fees and decrease in rebates for all Members, the Exchange also believes that its proposed fee structure is fair and equitable as the Exchange's standard fees generally still remain lower, and standard rebates generally still remain higher, than standard fees charged and rebates paid by other markets with similar fee structures, such as NYSE Arca and Nasdaq. The Exchange further believes that the proposed change to the Exchange's standard routing fee for Customer orders to certain venues is competitive, fair and reasonable, and non-discriminatory in that the increase will allow the Exchange to cover additional infrastructure costs attendant with offering routing services. The Exchange also notes that 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. Additional revenue generated through the increased liquidity removal and routing fees as well as reduction of certain rebates, as described above, will allow the Exchange to offer competitive pricing and incentives, such as the NBBO Setter Program and QIP.

The Exchange believes that continuing to base its tiered fee structure and NBBO Setter Program based on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing. Volume-based tiers such as the tiers in place on the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates 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 introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Additionally, the Exchange believes that the proposed Quoting Incentive Program, similar to a fee structure in place on at least one of the Exchange's competitors,¹⁶ will incentivize the provision of competitively priced, sustained liquidity that will create tighter spreads, benefitting both Members and public investors. The Exchange further believes that conditioning a Member's ability to receive the QIP's additional rebate on reaching one of the Exchange's quoting tiers is consistent with the Act for the reasons described above with respect to volume-based tiers. The Exchange also believes that providing a slightly lower threshold for meeting the QIP to registered BATS Options Market Makers appropriately incentivizes Members of BATS Options to register with the Exchange as Options Market Makers. While the Exchange does wish to allow participation in the QIP by all Members, the Exchange believes that registration by additional Members as Market Makers will help to continue to increase the breadth and depth of

¹⁶ See Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25) (notice of filing and immediate effectiveness of changes to fees and rebates including adoption of specific rebates for market makers qualifying for the Market Maker Plus program).

quotations available on the Exchange. The Exchange notes that in addition to the fact that the QIP will be available to all Members, the proposal is not unfairly discriminatory despite a slightly higher quotation requirement for non-Market Makers due to the fact that registration as a BATS Options Market Maker is equally available 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.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁷ and Rule 19b-4(f)(2) thereunder,¹⁸ 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.

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.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

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-2011-024 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.

All submissions should refer to File Number SR-BATS-2011-024. 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-2011-024 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.¹⁹

Elizabeth M. Murphy
Secretary

¹⁹ 17 CFR 200.30-3(a)(12).