

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65407; File No. SR-BATS-2011-037)

September 27, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 19, 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 and II 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 proposes 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). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 23, 2011.

---

<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>, 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 September 23, 2011, in order to: (1) discontinue payment of a liquidity rebate for any order subject to price sliding that adds liquidity to the Exchange and receives price improvement over its ranked price when executed; and (2) modify the "Options Pricing" section of its fee schedule to impose a fee for newly available logical ports with bulk-quoting capabilities, as further described below.

Orders Subject to Price Sliding

The Exchange proposes to discontinue payment of a liquidity rebate for any order subject to price sliding that adds liquidity to the Exchange and receives price improvement over its ranked price when executed. Pursuant to Exchange price sliding, an order that would lock or cross a protected quotation is ranked on the Exchange's order

book at the locked price and then displayed at one minimum price level less aggressive than the locking price. For bids, this means that a price slid order is displayed at one minimum price variation less than the current national best offer (“NBO”), and for offers, this means that a price slid order is displayed at one minimum price variation more than the current national best bid (“NBB”).

The Exchange received approval in June of a rule change to allow a non-displayed order or an order subject to the price sliding process that is not executable at its most aggressive price to be executed at one-half minimum price variation less aggressive than the price at which it is ranked.<sup>6</sup> The Exchange immediately implemented the change for non-displayed orders, but delayed the implementation related to orders subject to price sliding in order to complete development of the necessary system functionality. On September 23, 2011, the Exchange plans to implement the systems change to allow an order subject to price sliding to execute at one-half minimum price variation less aggressive than the price at which such order is ranked. Specifically, in the event an order submitted to the Exchange on the side opposite such a price slid order is a market order or a limit order priced more aggressively than the locking price, the Exchange will execute the resting order subject to price sliding at, in the case of a resting bid, one-half minimum price variation less than the locking price, and, in the case of a resting offer, at one-half minimum price variation more than the locking price. Based on the functionality, orders executed as described above will receive price improvement over the price at which such orders are ranked. Because price slid orders subject to the order

---

<sup>6</sup> See Securities Exchange Act Release No. 64754 (June 27, 2011), 76 FR 38712 (July 1, 2011) (SR-BATS-2011-01 [sic]) (Order Approving a Proposed Rule Change to Amend BATS Rule 11.9, entitled “Orders and Modifiers” and BATS Rule 11.13, entitled “Order Execution”).

handling process described above will receive price improvement, the Exchange proposes to eliminate the payment of a liquidity rebate for such executions, which is the same fee structure applied to executions of non-displayed orders that receive price improvement when executed. The Exchange believes that price improvement received for executions of orders subject to price sliding will offset the change in the fee structure for such orders.

#### Options Logical Port Fees

The Exchange currently charges a fee of \$400.00 per month per logical port used by Members or non-members to access and receive information from the Exchange's cash equities platform. 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 grants that Member or non-member the ability to operate a specific application, such as FIX order entry or PITCH data receipt.

In contrast to its cash equities platform, the Exchange currently provides logical ports free of charge to Members and non-members that have access to or receive data from the Exchange's equity options platform ("BATS Options"). On August 9, 2011, the Exchange filed an immediately effective rule filing for BATS Options to introduce a bulk-quoting interface for registered BATS Options market makers to allow such market makers to provide liquidity to the market in a broader set of series in a more efficient manner.<sup>7</sup> On September 2, 2011, the Exchange filed an immediately effective rule filing

---

<sup>7</sup> See Securities Exchange Act Release No. 65133 (August 15, 2011), 76 FR 52032 (August 19, 2011) (SR-BATS-2011-029).

for BATS Options to expand the availability of the bulk-quoting interface to all Users<sup>8</sup> of BATS Options.<sup>9</sup> Due to the development and infrastructure costs associated with bulk-quoting functionality, the Exchange proposes to charge Users \$1,000.00 per month for any logical port with bulk-quoting capabilities. The bulk-quoting interface allows Users to provide both a bid and an offer in one message as well as bundle several quote updates into one bulk message. This is a useful feature for Users that provide quotations in many different options. As proposed, the change applies to any User that obtains a port enabled with bulk-quoting functionality to access the Exchange.

In order to differentiate logical port fees from physical connection charges and because the fee described above is applicable only to BATS Options, the Exchange also proposes to modify a sub-heading included in the “Equities Pricing” section of the Exchange’s fee schedule from “Port Fees” to “Equities Logical Port Fees.” Although the Exchange is implementing this fee effective September 23, 2011, the Exchange will not charge any User of BATS Options a fee for bulk-quoting ports until October 1, 2011.

## 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>10</sup> Specifically, the Exchange believes that the proposed rule change is consistent

---

<sup>8</sup> As defined in BATS Rule 16.1(a)(62), a “User” on BATS Options is either a member of BATS Options or a sponsored participant who is authorized to obtain access to the Exchange’s system pursuant to BATS Rule 11.3.

<sup>9</sup> See Securities Exchange Act Release No. 65307 (September 9, 2011), 76 FR 57092 (September 15, 2011) (SR-BATS-2011-034).

<sup>10</sup> 15 U.S.C. 78f.

with Section 6(b)(4) of the Act,<sup>11</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. With respect to the fee change related to price slid orders, the Exchange believes that the lack of a fee or rebate for any execution of a price slid order that receives price improvement over its ranked price is competitive, fair and reasonable, and non-discriminatory in that this fee structure will apply uniformly to all Members and because the proposed fee structure is the same fee structure imposed for non-displayed orders that are handled similarly. Finally, the Exchange believes that the lack of a rebate for executions of orders subject to price sliding that receive price improvement is appropriate because the price improvement received will offset the change in the fee structure for such orders.

With respect to the proposed charge for ports with bulk-quoting functionality, the Exchange notes that the use of such ports is optional, and that market participants can continue to access BATS Options through other logical ports free of charge. At the same time, the Exchange believes that its fees for bulk-quoting logical ports are reasonable, given the benefits and added efficiencies Users of BATS Options will realize through such ports. In addition, the Exchange believes that its fees are equitably allocated among its constituents as they are uniform in application to all Users of BATS Options. The Exchange believes that fees for each port with bulk-quoting capabilities will enable it to

---

<sup>11</sup> 15 U.S.C. 78f(b)(4).

cover the development and infrastructure costs associated with offering and continuing to offer bulk-quoting capabilities to BATS Options Users.

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 Act<sup>12</sup> and Rule 19b-4(f)(2) thereunder,<sup>13</sup> 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. 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

---

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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-2011-037 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-2011-037. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2011-037 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>14</sup>

Elizabeth M. Murphy  
Secretary

---

<sup>14</sup> 17 CFR 200.30-3(a)(12).