

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66358; File No. SR-BATS-2012-006)

February 8, 2012

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”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 1, 2012, 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). Changes will become operative on February 1, 2012.

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 the "Options Pricing" section of its fee schedule to change pricing with respect to orders routed to NASDAQ OMX PHLX LLC ("PHLX"). PHLX has recently introduced increases to its rates to remove liquidity in specified symbols⁶ identified by the Exchange as Make/Take issues (identified as "Select Symbols" at PHLX).⁷ Further, PHLX has recently announced an increase to its current fee of \$0.31 per contract to \$0.39 per

⁶ See Securities Exchange Act Release No. 66100 (January 4, 2012), 77 FR 1532 (January 10, 2012) (SR-Phlx-2011-185) (notice of filing and immediate effectiveness of proposal to modify fees, including an increase to the Customer Fee for Removing Liquidity from \$0.29 per contract to \$0.31 per contract); Securities Exchange Act Release No. 65940 (December 12, 2011), 76 FR 78322 (December 16, 2011) (SR-Phlx-2011-162) (notice of filing and immediate effectiveness of proposal to modify fees, including an increase to the Customer Fee for Removing Liquidity from \$0.25 per contract to \$0.29 per contract).

⁷ 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.

contract for customer orders that remove liquidity in Make/Take issues.⁸ The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into three groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (i.e., clearing fees, infrastructure costs, etc.). The Exchange currently assesses fees of \$0.30 per contract for Customer⁹ orders and \$0.55 per contract for Professional,¹⁰ Firm or Market Maker¹¹ orders routed to PHLX in Make/Take issues.¹² At the current rates, the Exchange is not currently covering its costs on Customer orders routed to PHLX in Make/Take issues, based on the existing base rate of \$0.31 per contract plus additional costs incurred by the Exchange. With the proposal by PHLX to increase fees for Customer orders that remove liquidity to \$0.39 per share, the Exchange will be even further from the cost of routing customer orders to PHLX if the Exchange continues to charge \$0.30 per contract. In order to better approximate the cost to the Exchange of routing Customer orders to PHLX, the Exchange proposes to place PHLX in the away options exchange grouping along with the

⁸ See Options Trader Alert #2012-4, “PHLX and NOM Announce Updated Pricing for Customer Orders”, January 25, 2012.

⁹ As defined on the Exchange’s fee schedule, a Customer order refers to an order identified by a Member for clearing in the Customer range at the Options Clearing Corporation (“OCC”), excluding any transaction for a “Professional” as defined in Exchange Rule 16.1.

¹⁰ The term “Professional” is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

¹¹ As defined on the Exchange’s fee schedule, the terms “Firm” and “Market Maker” apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the OCC.

¹² 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.

Nasdaq Options Market (“NOM”), C2 Options Exchange, Incorporated (“C2”), and NYSE Arca Options (“Arca”) in Make/Take issues. Accordingly, the Exchange proposes to charge a fee of \$0.50 per contract for Customer orders and to continue to charge \$0.55 per contract for Professional, Firm, or Market Maker orders routed to and executed at PHLX.

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.¹³ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ 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 Exchange also notes that with respect to the change proposed in this filing, although routing options are available to all Users, Users 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.

The Exchange believes that its proposal to modify routing fees to PHLX is reasonable because the modified fee is a better approximation of the cost to the Exchange for routing Customer orders to PHLX. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

execution fees at groups of away options exchanges. Under its flat fee structure, the Exchange has previously operated at a slight loss for Customer orders routed to and executed at PHLX. The Exchange believes that the proposed change will allow it to recoup and better cover its costs of providing routing services going forward. The Exchange also believes that the proposed fees for orders routed to and executed at PHLX are fair and equitable and not unreasonably discriminatory in that they apply equally to all Exchange 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 Act¹⁵ and Rule 19b-4(f)(2) thereunder,¹⁶ 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 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-2012-006 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-2012-006. 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 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-2012-006 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).