

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67017; File No. SR-BATS-2012-017)

May 18, 2012

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 May 11, 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 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 amend the fee schedule applicable to Members³ 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 May 14, 2012.

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, on the Commission’s website at www.sec.gov, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

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 “Equities Pricing” section of its fee schedule to update the number of ports provided in connection with the Exchange’s Multicast PITCH data feed. As described in further detail below, there is no change to the fee structure for logical ports used to receive Multicast PITCH data from the Exchange, but rather, simply an update necessary due to an increase to the number of matching engines used to operate the Exchange’s platform for cash equities (“BATS Equities”). This increase, in turn, requires an update to the number of logical ports necessary to receive Multicast PITCH data from the Exchange, which is reflected on the Exchange’s fee schedule.

Specifically, the Exchange currently operates BATS Equities with 12 matching engines, which in turn requires the use of 12 Multicast PITCH logical ports in order to receive Multicast PITCH data. The Exchange provides all Exchange constituents that receive the Exchange’s Multicast PITCH Feed with 12 free pairs⁴ of Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports. The Exchange also charges such

⁴ A pair includes one port at the Exchange’s primary data center and another port at the Exchange’s secondary data center.

customers \$400.00 per month per additional pair of GRP Ports or additional set of 12 pairs of Multicast PITCH Spin Server Ports.

As of May 14, 2012, BATS Equities will operate with 32 matching engines.

Accordingly, the Exchange proposes to update its fee schedule to provide Exchange constituents that receive the Exchange's Multicast PITCH Feed with 32 free pairs of Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports. The Exchange also proposes to charge such customers \$400.00 per month per additional pair of GRP Ports or additional set of 32 pairs of Multicast PITCH Spin Server Ports.

The Exchange's proposal to continue to provide certain ports free of charge to Multicast Pitch customers is designed to encourage use of the Exchange's Multicast PITCH Feed because the Exchange believes that the feed is its most efficient feed, and thus, will reduce infrastructure costs for both the Exchange and those who utilize the feed. Any Member or non-member that has entered into the appropriate agreements with the Exchange is permitted to receive Multicast Pitch Spin Server Ports and GRP Ports from the Exchange.

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.⁵ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ 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.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

As noted above, the Exchange is not changing the fee structure for logical ports necessary to receive Multicast PITCH data from the Exchange, but rather, is increasing the number of ports that comprise a set of ports for the receipt of Multicast PITCH data. The Exchange continues to believe that its logical port fees are reasonable in light of the benefits to Members of direct market access and receipt of data. In addition, the Exchange believes that its fees are equitably allocated among its constituents based upon the number of access ports that they require to submit orders to the Exchange or receive data from the Exchange. The Exchange also believes that providing financial incentives to use Exchange technology that the Exchange believes is the most technologically efficient for the Exchange and its constituents is a fair and equitable approach to pricing. Accordingly, the Exchange believes that promotion of its Multicast PITCH data feed through the continued offering of free logical ports is fair and equitable. Based on the foregoing, the Exchange believes that the proposed pricing structure for logical ports is not unreasonably discriminatory.

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 Act⁷ and Rule 19b-4(f)(2) thereunder,⁸ 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.

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-2012-017 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.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-BATS-2012-017. 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 also will be available for inspection and copying at the principal offices 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-2012-017, 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.⁹

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).