

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69237; File No. SR-BATS-2013-021)

March 26, 2013

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 March 18, 2013, 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 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 to 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). Changes to the fee schedule pursuant to this proposal are effective upon filing.

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<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 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 pricing applicable to the Exchange's options platform ("BATS Options") with respect to orders in Mini Options routed by the Exchange and executed at an away options exchange. Mini Options overlie 10 equity or ETF shares, rather than the standard 100 shares.<sup>6</sup> Mini Options are currently approved on the following five (5) underlying securities: SPDR S&P 500 ETF ("SPY"), Apple Inc. ("AAPL"), SPDR Gold Trust ("GLD"), Google Inc. ("GOOG"), and Amazon.com, Inc.

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<sup>6</sup> See Securities Exchange Act Release No. 69018 (March 1, 2013), 78 FR 15090 (March 8, 2013) (Notice of filing and immediate effectiveness allowing Mini Options to be listed and traded on BATS Options) (SR-BATS-2013-013).

(“AMZN”). BATS Options will begin allowing trading in Mini Options on March 18, 2013.<sup>7</sup>

In conjunction with the beginning of trading in Mini Options on March 18, 2013, the Exchange is proposing to implement pricing for routing orders in Mini Options to other options exchanges. The Exchange is proposing to introduce simple pricing in which the Exchange will charge one of two possible fees for routed orders in Mini Options: one flat rate for all orders in Mini Options that are directed intermarket sweep orders (“Directed ISOs”) that execute at an away options exchange and a separate flat rate for all orders in Mini Options that are not Directed ISOs that are routed to and executed at an away options exchange. The Exchange is proposing to charge these flat rates for routing orders in Mini Options to away options exchanges based on the approximate cost of routing to such venues. These fees are based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (i.e., clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, “Routing Costs”).

Based on applicable Routing Costs, the Exchange is proposing to: (i) charge \$0.15 per contract for all orders in Mini Options that are Directed ISOs that are routed to and executed at away options exchanges; and (ii) charge \$0.10 per contract for all other orders in Mini Options that are routed to and executed at away options exchanges. Notices distributed by other options exchanges indicate that removal fees will range from free to \$0.12 per contract executed in Mini Options. In order to provide certainty around

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<sup>7</sup> The three classes are the Nasdaq-100 Index Tracking Stock (“QQQQ”), SPY, and the iShares Russell 2000 Index Fund (“IWM”). QQQQ, SPY, and IWM are quoted in \$0.01 for all options series.

execution costs for participants, the Exchange is proposing to introduce these flat routing fees that approximate the Exchange's Routing Costs.

The Exchange is not proposing to modify fees for any of its existing routing services.

## 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>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</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 or providers of routing services if they deem fee levels to be excessive.

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to implement fees for routing Mini Options is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges. The Exchange believes that its flat fee structure for

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<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at away options exchanges. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for orders in Mini Options routed to and executed at away options exchanges. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange also believes that the proposed fee structure for orders in Mini Options routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange reiterates 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 to be excessive or providers of routing services if they deem fee levels to be excessive. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit from routing to another options exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring

routing fees.<sup>10</sup> As stated above, 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 to be excessive or providers of routing services if they deem fee levels to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>12</sup> 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 proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

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<sup>10</sup> See BATS Rule 21.1(d)(8) (describing "BATS Only" orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f).

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-2013-021 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-2013-021. 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-2013-021 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>13</sup>

Elizabeth M. Murphy  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).