

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71746; File No. SR-BATS-2014-006)

March 19, 2014

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 March 7, 2014, 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ 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.

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 purpose of this proposed rule change is to implement pricing, effective immediately, applicable to the Exchange's options platform ("BATS Options") with respect to executions that occur as part of the modifications to the market opening procedures as described in Rule 20.7 [sic] (the "Market Opening Procedures"), which was approved on March 15 [sic], 2014.⁶ Under the Market Opening Procedures, the Exchange will accept orders and quotes for queuing in a series of options prior to the opening of trading in that series of options. As such and as further described in Rule 20.7 [sic], executions might occur in a series as part of the Market Opening Procedures as the series is being opened for trading. The Exchange is proposing that for

⁶ See Securities Exchange Act Release No. 71651 (March 5, 2014), (SR-BATS-2014-003) (proposal to modify the BATS Options Opening Process, which was approved on March 5, 2014).

executions occurring as part of the Market Opening Procedures, the Exchange will neither charge a fee nor provide a rebate.

Currently, all orders executed on BATS Options are subject to standard pricing, which includes variable fees and/or rebates based on whether the order adds or removes liquidity, the capacity of the order (Professional,⁷ Firm, Market Maker,⁸ or Customer⁹ orders), a Member's average daily trading volume, and whether the issue is a penny pilot issue, among others. In addition to standard rebates, the Exchange does not charge a fee nor does it provide a rebate for executions in Mini Options.¹⁰ Finally, orders that add liquidity may be eligible for additional rebates upon execution of orders that originally set a new NBBO¹¹ as well as executions that qualify for the Exchange's quoting incentive program.¹²

The Exchange is proposing that for executions occurring as part of the Market Opening Procedures, the Exchange will neither charge a fee nor provide a rebate. Specifically, executions

⁷ 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).

⁸ 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 Options Clearing Corporation ("OCC").

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 OCC, excluding any transaction for a "Professional" as defined in Exchange Rule 16.1.

¹⁰ Mini Options are options that overlie 10 equity or ETF shares, rather than the standard 100 shares. 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).

¹¹ As defined in Exchange Rule 27.1(11), the term "NBBO" is defined to mean the national best bid and offer in an option series as calculated by an Eligible Exchange.

¹² See Securities Exchange Act Release No. 69079 (March 8, 2013), 78 FR 16306 (March 14, 2013) (SR-BATS-2013-017) (notice of filing and immediate effectiveness of proposed rule change related to fees for use of BATS Options).

in the Market Opening Procedures will not be eligible for any rebate, including the NBBO setter liquidity rebate or the quoting incentive program liquidity rebates. It should be noted, however, that executions in the Market Opening Procedures will be counted in calculations of ADV¹³ and TCV¹⁴ for purposes of calculating other rebates and fees.

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

The introduction of pricing for the Market Opening Procedures, as described above and proposed by this filing, is intended to allow the Exchange to begin allowing executions to occur as part of the Market Opening Procedures without charging any fees or providing any rebates for such executions. The Exchange believes that this is a reasonable, fair and equitable approach to pricing, particularly because the Exchange does not have any specific advanced knowledge of

¹³ As defined on the Exchange's fee schedule, ADV means average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis; routed contracts are not included in ADV calculation; with prior notice to the Exchange, a Member may aggregate ADV with other Members that control, are controlled by, or are under common control with such Member.

¹⁴ As defined on the Exchange's fee schedule, TCV means 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.

how market participants will react to the introduction of the Market Opening Procedures. Further, the Exchange believes that the proposal is reasonable because a high level of fees for executions occurring in the Market Opening Procedures would discourage participants from entering orders to participate in the Market Opening Procedures. In addition, the Exchange believes that this structure is a fair and equitable approach to pricing because it provides certainty for market participants with respect to execution costs across all trades occurring as part of the Market Opening Procedures. Lastly, the Exchange also believes that the proposed pricing for executions occurring as part of the Market Opening Procedures is non-discriminatory because it will apply equally to all Members.

The Exchange notes that this proposal is not increasing fees or decreasing rebates for any products traded on or routed by BATS Options, but rather, the proposal only proposes to introduce a pricing structure for executions occurring as part of the Market Opening Procedures.

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. To the contrary, the Exchange notes that this rule change is being proposed as a competitive offering at a time when many other options exchanges are already offering similar processes for opening their respective markets. As a result of the competitive environment, market participants will have various pricing and execution models to choose from in making determinations on where to enter orders prior to the opening of trading in a series of options. 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.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Act¹⁵ and paragraph (f) of Rule 19b-4 thereunder.¹⁶ 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-2014-006 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-BATS-2014-006. 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 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-2014-006 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).