

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72830; File No. SR-BATS-2014-030)

August 13, 2014

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 August 1, 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 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 defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange in order to: (i) add an additional “Step-Up Tier” for purposes of tiered pricing applicable to the Exchange’s equities trading platform (“BATS Equities”); (ii) introduce an “Options Step-Up Tier” and a corresponding definition of “Options Step-Up Add TCV” for purposes of tiered pricing applicable to the Exchange’s equity options trading platform (“BATS Options”); (iii) reduce the fee charged by BATS Options to remove liquidity for all Customer⁶ orders in securities subject to the options penny pilot program

⁶ As defined on the Exchange’s fee schedule, a “Customer” order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (“OCC”), except for those designated as “Professional”.

(“Penny Pilot Securities”); and (iv) increase the fee charged by BATS Options for Professional,⁷ Firm, and Market Maker⁸ orders routed to and executed at certain venues.

Additional Step-Up Tier – BATS Equities

Currently, with respect to BATS Equities, the Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange’s tiered pricing structure, which is based on the Member meeting certain volume tiers based on their ADAV⁹ as a percentage of TCV¹⁰ or ADV¹¹ as a percentage of TCV. Under such pricing structure, a Member will receive an adding rebate of anywhere between \$0.0020 and

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 provided in the fee schedule, for purposes of BATS Equities pricing, “ADAV” means average daily added volume calculated as the number of shares added per day on a monthly basis; the Exchange excludes from the ADAV calculation routed shares as well as shares added on any day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during regular trading hours (“Exchange System Disruption”), on any day with a scheduled early market close and on the last Friday in June (the “Russell Reconstitution Day”).

¹⁰ As provided in the fee schedule, for purposes of BATS Equities pricing, “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption, on any with a scheduled early market close and the Russell Reconstitution Day.

¹¹ As provided in the fee schedule, for purposes of BATS Equities pricing, “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day on a monthly basis; the Exchange excludes from the ADV calculation routed shares, and shares added on any day that the Exchange’s system experiences an Exchange System Disruption, on any day with a scheduled early market close and on the Russell Reconstitution Day.

\$0.0032 per share executed, depending on the volume tier for which such Member qualifies. The Exchange also maintains two additional types of tiers in addition to the volume tiers described above: Step-Up Tiers and a Cross-Asset Step-Up tier. The Step-Up Tier and Cross-Asset Step-Up tier provide Members with additional ways to qualify for enhanced rebates.

As proposed, the existing volume tiers, including the Step-Up Tiers and Cross-Asset Step Up Tier will remain the same. However, the Exchange proposes to add a new tier to its fee schedule as Step-Up Tier 1, and to re-number the existing tiers as Step-Up Tiers 2 and 3. The new proposed Step-Up Tier 1 would provide a rebate of \$0.0025 per share where the Member's Step-Up Add TCV is equal to or greater than 0.07%. For purposes of BATS Equities pricing, the Exchange defines the term "Step-Up Add TCV" within the definition of ADAV as a percentage of TCV in January 2014 subtracted from current ADAV as a percentage of TCV. This definition would remain unchanged.

A Member's Step-Up Add TCV is calculated as the increase in the Member's current ADAV as a percentage of TCV ("Current ADAV") over the Member's ADAV as a percentage of TCV from January 2014 ("Baseline ADAV"). By way of example, where a Member's Baseline ADAV is 0.07%, the Member would qualify for new Step-Up Tier 1 if the Member's Current ADAV is at least 0.14%. The Exchange is not proposing any changes to pricing for BATS Equities other than the addition of the new Step-Up Tier 1 and the re-numbering of the existing Step-Up Tiers.

The Exchange's Step-Up Tiers, including the new proposed tier, are designed to incentivize Members to increase their participation on the Exchange in terms of their

ADAV compared to their January 2014 ADAV. The Exchange notes that the Step-Up tiers are similar to step-up tiers currently employed by NYSE Arca, Inc. (“Arca”).¹²

As is currently the case pursuant to the fee schedule, a Member will receive the higher of the volume rebates, step-up rebates, or cross-asset step-up rebates for which they qualify.

Options Step-Up Tier – BATS Options

The Exchange also proposes to introduce an “Options Step-Up Tier” and a corresponding definition of “Options Step-Up Add TCV” for purposes of tiered pricing applicable to adding liquidity in Penny Pilot Securities to BATS Options. The Exchange notes that it already maintains an Options Step-Up Tier for purposes of tiered pricing applicable to BATS Equities. The Exchange also notes that the definitions within the Options Pricing portion of the fee schedule of TCV (“Options TCV”)¹³ and ADAV (“Options ADAV”)¹⁴ are similar to but different than those under the Equities Pricing portion of the fee schedule.

The Exchange notes that its proposed definition of Options Step-Up Add TCV for BATS Options pricing mirrors the definition of Options Step-Up Add TCV under BATS Equities pricing with the exception of the applicable baseline, which, for BATS Options

¹² See Exchange Act Release No. 64820 (July 12, 2011), 76 FR 40974 (July 6, 2011) (SR-NYSEArca-2011-41) [sic].

¹³ As provided in the fee schedule, for purposes of BATS Options pricing, “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, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

¹⁴ As provided in the fee schedule, for purposes of BATS Options pricing, “ADAV” means average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis; the Exchange excludes from the ADAV calculation routed contracts, contracts added or removed on any day that the Exchange experiences an Exchange System Disruption, and contracts added or removed on any day with a scheduled early market close.

is proposed to be June 2014 and for BATS Equities is January 2014. Thus, for purposes of BATS Options pricing, the Exchange proposes to define “Options Step-Up Add TCV” within the definition of ADAV as “ADAV as a percentage of TCV in June 2014 subtracted from current ADAV as a percentage of TCV, using the definitions of ADAV and TCV.”

Currently, for BATS Options, the Exchange provides a rebate of \$0.40 per contract for any Professional, Firm or Market Maker order that adds liquidity in Penny Pilot Securities to the BATS Options order book. In addition, Professional, Firm and Market Maker orders can qualify for additional rebates to the extent they establish a new NBBO and are submitted by a Member that qualifies based on volume conducted on BATS Options (the “NBBO Setter Program”). Further, Market Makers (but only Market Makers) can qualify for additional rebates under the Quoting Incentive Program (“QIP”), which is a program that incentivizes Market Maker registration and quoting.

In order to provide an additional incentive to Members to submit to the Exchange Professional and Firm orders, the Exchange proposes to adopt an Options Step-Up Tier for BATS Options that would provide a rebate of \$0.44 per contract for any Professional or Firm order that adds liquidity to BATS Options and was submitted by a Member that has an Options Step-Up Add TCV equal to or greater than 0.50%.

A Member’s Options Step-Up Add TCV would be calculated as the increase in the Member’s current ADAV as a percentage of TCV (“Current Options ADAV”) over the Member’s ADAV as a percentage of TCV from June 2014 (“Baseline Options ADAV”). By way of example, where a Member’s Baseline Options ADAV is 0.04% the

Member would need to achieve a Current Options ADAV of 0.54% in order to qualify for the Options Step-Up Tier and its \$0.44 per contract rebate.

The Exchange proposes to continue to provide a rebate \$0.40 per contract for all other Professional, Firm and Market Maker orders and does not propose any changes to applicable additional rebates such as QIP and NBBO Setter rebates.

Customer Fee to Remove Liquidity – BATS Options

The Exchange proposes to reduce the fee charged by BATS Options to remove liquidity for all Customer orders in Penny Pilot Securities. Currently, pricing on BATS Options for removing liquidity is based on the capacity of the order that is executed (i.e., Customer or “non-Customer”, which includes all Professional, Firm and Market Maker orders) as well as whether or not the security is a Penny Pilot Security. BATS Options currently charges a fee of \$0.47 per contract for all Customer orders that remove liquidity in Penny Pilot Securities. To encourage Members to submit Customer orders to the Exchange, the Exchange proposes to reduce this fee to a fee of \$0.45 per contract for all Customer orders that remove liquidity in Penny Pilot Securities.

Routing Fees – BATS Options

Finally, the Exchange proposes to increase the fee charged by BATS Options for Professional, Firm, and Market Maker orders routed to and executed at certain venues.

The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into 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, connectivity and other infrastructure costs, membership fees, etc.) (collectively, “Routing Costs”).

The Exchange currently charges \$0.57 per contract for Professional, Firm, and Market Maker orders routed to and executed at NYSE MKT LLC (“AMEX”), the Chicago Board Options Exchange, Incorporated (“CBOE”), the Miami International Securities Exchange, LLC (“MIAX”), NASDAQ OMX BX, Inc. (“BX Options”) in Penny Pilot Securities and the International Securities Exchange, LLC (“ISE”) in Non-Penny Pilot Securities.

Based on execution fees charged by some of these venues that exceed the fees currently charged by the Exchange for Professional, Firm and Market Maker orders routed to and executed at such venues (even without taking other Routing Costs into consideration), the Exchange proposes to increase fees for the options venues listed above.¹⁵ Specifically, the Exchange proposes to charge \$0.60 per contract for Customer orders executed at AMEX, CBOE, MIAX, BX Options (Penny Pilot Securities) and ISE (Non-Penny Pilot Securities). The Exchange is not proposing any changes to pricing for Customer orders routed to and executed at these options venues, which is currently set at a fee of \$0.11 per contract.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on August 1, 2014.

¹⁵ In particular, AMEX currently charges \$0.58 to non-Customer orders that remove liquidity in non-Penny Pilot Securities and CBOE currently charges \$0.60 to non-Customer orders that remove liquidity in non-Penny Pilot Securities.

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.¹⁶ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁷ 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.

Step-Up Tiers – BATS Equities and BATS Options

The Exchange believes that providing additional financial incentives to Members that demonstrate an increase over their Baseline ADAV (or Options Baseline ADAV) through the Step-Up Tiers already in place on BATS Equities and the proposed Step-Up Tier for BATS Options offer additional, flexible ways to achieve financial incentives from the Exchange and encourage Members to add increasing amounts of liquidity to both BATS Equities and BATS Options. The Exchange believes that these incentives are reasonable, fair and equitable because the increased liquidity from each of these proposals also benefits all investors by deepening the BATS Equities and BATS Options liquidity pools, offering additional flexibility for all investors to enjoy cost savings,

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4).

supporting the quality of price discovery, promoting market transparency and improving investor protection. Such pricing programs thereby reward a Member's growth pattern and such increased volume increase potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. These pricing programs are also fair and equitable in that they are available to all Members and will result in Members receiving either the same or an increased rebate than they would currently receive. Although non-Customer orders are typically treated consistently by the Exchange and the Options Step-Up Tier will only be applied to Professional and Firm orders, and not Market Maker orders, the Exchange believes that this proposal is reasonable not unfairly discriminatory because Market Makers are already able to reach the same rebate level through the QIP, which is not available to Professional or Firm orders. The Exchange also notes that the proposed step-up tier are similar to pricing tiers currently available on Arca.¹⁸

Volume-based rebates and fees such as the ones maintained on both BATS Equities and BATS Options as well as the BATS Equities Step-Up Tiers and the new BATS Options Step-Up Tier proposed herein, have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. Further, the Exchange believes that the Step-Up Tiers will provide such enhancements in market quality on both

¹⁸ See supra note 12.

BATS Equities and BATS Options by incentivizing increased participation on both platforms. The Exchange notes that it is not proposing to modify any existing tiers (other than to re-number the Equities Step-Up Tiers), but rather to add new tiers that will provide Members with additional ways to receive higher rebates. Accordingly, under the proposal a Member will receive either the same or a higher rebate than they would receive today. Accordingly, the Exchange believes that the proposed additions to the Exchange's tiered pricing structure and incentives are not unfairly discriminatory because they will apply uniformly to all Members and are consistent with the overall goals of enhancing market quality on both BATS Equities and BATS Options. The Exchange again notes that it believes that restricting the availability of the proposed Options Step-Up Tier for BATS Options to Professional and Firm orders is reasonable and not unreasonably discriminatory because Market Maker orders are already afforded an opportunity to receive QIP rebates up to an additional \$0.04 per contract that is not available to Professional and Firm orders. Thus, currently, Professional and Firm orders can never receive the same maximum rebate that Market Maker orders can receive but, pursuant to the proposal, there would be a way for all three non-Customer capacities to achieve such maximum rebate.

Customer Fee to Remove Liquidity – BATS Options

The Exchange believes that its proposal to reduce the Customer fee to remove liquidity from BATS Options in Penny Pilot Securities is reasonable, fair and equitably allocated because it will reduce the cost of removing liquidity for all Customer orders and is intended to enhance the competitiveness of the Exchange's pricing model. The fee remains consistent with the fees changes by other markets with similar fee structures,

such as NYSE Arca and NOM. The Exchange believes that the proposal is not unreasonably discriminatory because it will apply equally to all Customer orders and is only slightly discounted as compared to the fee to remove liquidity charged for non-Customer orders.

Routing Fees – BATS Options

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 increase fees applicable to Professional, Firm and Market Maker orders routed to and executed at AMEX, CBOE, MIAX, BX Options (Penny Pilot Securities) and ISE (Non-Penny Pilot Securities) 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 orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of 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 slight loss for orders routed to and executed at other 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 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 or loss from routing to other options exchanges.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. With respect to the proposed new tiered rebates, the Exchange does not believe that any such changes burden competition, but instead, enhance competition, as they are intended to increase the competitiveness of and draw additional volume to both BATS Equities and BATS Options. The Exchange also believes the proposed step-up tiers would enhance competition because they are similar to pricing tiers currently available on Arca.¹⁹ Similarly, the proposal to reduce the fee for Customer orders that remove liquidity in Penny Pilot Securities is a competitive proposal that is intended to draw volume to BATS 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 the deem fee structures to be unreasonable or excessive. Finally, the Exchange notes that the proposed change to routing fees to certain

¹⁹ See supra note 12.

options exchanges is not intended as a competitive change to create an incentive or disincentive to use the Exchange's routing strategies to route to these exchanges. Rather, the proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants in a manner that is a better approximation of actual costs than is currently in place. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.²⁰

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 Act²¹ and paragraph (f) of Rule 19b-4 thereunder.²² 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.

²⁰ 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).

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f).

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-2014-030 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.

All submissions should refer to File Number SR-BATS-2014-030. 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-2014-030, 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.²³

Kevin M. O'Neill
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).