

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73359; File No. SR-BATS-2014-047)

October 15, 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Changes 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 October 6, 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 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 Members<sup>3</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.

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.

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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> 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).

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 effective immediately, in order to modify pricing charged by the Exchange's options platform ("BATS Options") for orders routed away from the Exchange and executed at various away options exchanges.

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"). To address different fees at various other options exchanges, the Exchange in most instances differentiates between either securities subject to the options penny pilot program ("Penny Pilot Securities") and non-Penny Pilot Securities or between "Make/Take issues" and "Classic issues." As set forth on the Exchange's fee schedule, pricing in Make/Take issues is for executions at the identified exchange under which rebates to post liquidity (i.e., "Make") are credited by that exchange and

fees to take liquidity (i.e., “Take”) are charged by that exchange; pricing in Classic issues applies to all other executions at such exchanges. Routing charges are also differentiated depending on whether they are for Customer<sup>4</sup> orders or for Professional,<sup>5</sup> Firm, and Market Maker<sup>6</sup> orders (collectively, “non-Customer orders”).

As noted previously and as set forth above, the Exchange’s current approach to routing fees is to set forth in a simple manner certain flat fees that approximate the cost of routing to other options exchanges. The Exchange then monitors the fees charged as compared to the costs of its routing services, as well as monitoring for specific fee changes by other options exchanges, and adjusts its flat routing fees and/or groupings to ensure that the Exchange’s fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. Over the last several months, due to various increases in fees assessed by other options exchanges as well as increases experienced by the Exchange with respect to fees charged for clearing services and fees charged by the OCC, the Exchange’s overall Routing Costs have increased. As a result, and in order to avoid subsidizing routing to away options exchanges and to continue providing quality routing services, the Exchange proposes relatively modest increases and adjustments to the charges assessed for most orders routed to most options exchanges, as set forth below.

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<sup>4</sup> 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”.

<sup>5</sup> 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).

<sup>6</sup> 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”).

The Exchange currently charges \$0.10 per contract for all orders (i.e., Customer and non-Customer) to buy or sell option contracts overlying 10 shares of a security (“Mini Options”) that are routed to and executed at an away options exchange. Due to the recent increases in Routing Costs, the Exchange proposes to increase the fee for Mini Options routed to and executed at an away options exchange to \$0.12 per contract.

The Exchange currently charges \$0.57 per contract for non-Customer orders routed to and executed at the BOX Options Exchange LLC (“BOX”). Due to the recent increases in Routing Costs, the Exchange proposes to increase this fee to \$0.65 per contract. This proposed increase will also align such fee with the fee charged for most non-Customer orders routed to and executed at other options exchanges, as described below.

The Exchange currently charges \$0.11 per contract for Customer orders and \$0.60 per contract for non-Customer orders routed to and executed at: (i) NYSE MKT LLC (“AMEX”); (ii) Chicago Board Options Exchange, Incorporated (“CBOE”); (iii) the Miami International Securities Exchange, LLC (“MIAX”); (iv) NASDAQ OMX BX, Inc. (“BX Options”) in Penny Pilot Securities; and (v) the International Securities Exchange, LLC (“ISE”) in non-Penny Pilot Securities. Due to the recent increases in Routing Costs, the Exchange proposes to increase the fee charged for orders routed to and executed at these options exchanges to \$0.12 per contract for Customer orders and \$0.65 per contract for non-Customer orders.

The Exchange currently charges \$0.45 per contract for Customer orders and \$0.65 per contract for non-Customer orders routed to and executed at NASDAQ OMX PHLX LLC (“PHLX”).<sup>7</sup> In addition, the Exchange currently charges \$0.52 per contract for Customer orders

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<sup>7</sup> As it has done before, despite identical fees, the Exchange is maintaining separate references to Make/Take and Classic pricing for orders routed to and executed PHLX

and \$0.57 per contract for non-Customer orders routed to and executed at: (i) NYSE Arca, Inc. (“ARCA”) in Penny Pilot Securities; (ii) the NASDAQ Options Market (“NOM”) in Penny Pilot Securities; (iii) ISE in Penny Pilot Securities; and (iv) Topaz Exchange, LLC (“ISE Gemini”) in Penny Pilot Securities. The Exchange believes it is appropriate based on a general similarity in Routing Costs for orders routed to and executed at PHLX and these venues to add PHLX to this grouping. The Exchange also proposes to increase the fee charged for non-Customer orders from \$0.57 per contract to \$0.65 per contract. Thus, for Customer orders routed to and executed at PHLX there will be an increase from \$0.45 per contract to \$0.52 but no increase for non-Customer orders, which are currently charged \$0.65 per contract. Similarly, there will be no fee increase for Customer orders to all other options exchanges in the group, which are already charged \$0.52 per contract, but non-Customer orders will be charged a fee of \$0.65 per contract, which is an increase from the current fee of \$0.57 per contract.

Finally, the Exchange currently charges a standard fee of \$0.60 per contract for directed intermarket sweep orders (“Directed ISOs”) executed at most Member directed destinations when bypassing the BATS Options order book. The Exchange proposes to increase its standard fee for Directed ISOs to \$0.65 per contract for reasons consistent with those set forth above related to increasing Routing Costs incurred by the Exchange. The Exchange also notes that, without adjustment, the Routing Costs incurred by the Exchange for Directed ISOs in certain securities sent on behalf of Professional, Firm, and Market Maker participants would exceed the fee charged by the Exchange for Directed ISOs. The Exchange notes that it is not proposing to modify fees for Directed ISOs other than the proposed increase to the standard fee. Thus, the Exchange is not proposing any changes to the lower than standard charge per contract for

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because it believes that participants that are accustomed to this distinction will be less confused if it continues to separately list each category.

Directed ISOs sent in Mini Options or the higher than standard charge per contract for certain Directed ISOs sent to certain away options exchanges.

## 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 modify fees is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges, and the proposal is in response to various increases in fees assessed by other options exchanges as well as increases experienced by the Exchange with respect to fees charged for clearing services and fees charged by the OCC. Accordingly, the Exchange believes that the proposed increases are fair, equitable and reasonable because they will help the Exchange to avoid subsidizing routing to away options exchanges and

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

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

to continue providing quality routing services. 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 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 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 has also proposed an increased fee for most Directed ISOs routed to and executed at away options exchanges. This increase is proposed because, without adjustment, the Routing Costs incurred by the Exchange for Directed ISOs in certain securities sent on behalf of Professional, Firm, and Market Maker participants would exceed the fee charged by the Exchange for Directed ISOs. The Exchange believes that the proposed fee structure for Directed ISOs is fair, equitable and reasonable because the fees are an approximation of the cost to the Exchange for routing such orders and will allow the Exchange to recoup and cover the costs of providing routing services. The Exchange also believes that the proposed fee structure for Directed ISOs 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 away options exchanges.

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 in a manner that is a better approximation of actual costs than is currently in place and that reflects pricing changes by various options exchanges as well as increases to other Routing Costs incurred by the Exchange. 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

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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).

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2014-047 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-2014-047. 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

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

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

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 at 100 F Street, NE, Washington, DC 20549-1090 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-2014-047, 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>

Kevin M. O'Neill  
Deputy Secretary

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