

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74052; File No. SR-BATS-2015-02)

January 14, 2015

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 2, 2015, 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 filed a proposal 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 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 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") including adding a new tier within the Professional, Firm, and Market Maker Penny Pilot Add Volume Tiers, a new Market Maker Penny Pilot Add Volume Tier, and several corresponding changes, as further described below.

The Exchange proposes to add a new Non-Customer Take Volume Tier. Currently, the Exchange charges \$0.48 per contract for a Professional,<sup>6</sup> Firm,<sup>7</sup> or Market Maker<sup>8</sup> order in a

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<sup>6</sup> "Professional" applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1.

<sup>7</sup> "Firm" applies to any transaction identified by a Member for clearing in the Firm range at the OCC.

<sup>8</sup> "Market Maker" applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC.

Penny Pilot Security<sup>9</sup> that removes liquidity from BATS Options under fee code PP, or, where the Member meets the requirements of the existing Non-Customer Take Volume Tier under footnote 3, i.e. has an ADV<sup>10</sup> equal to or greater than 1.00% of average TCV,<sup>11</sup> \$0.47 per contract for a Professional, Firm, or Market Maker order in a Penny Pilot Security that removes liquidity from BATS Options. The Exchange proposes to add an additional Non-Customer Take Volume Tier to footnote 3 of the fee schedule that will charge \$0.45 per contract for Professional, Firm, and Market Maker orders in a Penny Pilot Security that removes liquidity from BATS Options where the Member: (1) has an ADAV<sup>12</sup> equal to or greater than 1.00% of average TCV; and (2) has an ADV equal to or greater than 2.00% of average TCV.

The Exchange is also proposing to add a new Market Maker Penny Pilot Add Volume Tier. Currently, the Exchange provides a \$0.40 per contract rebate for a Market Maker order in a Penny Pilot Security that adds liquidity to BATS Options under fee code PM. The Exchange proposes to add a Market Maker Penny Pilot Tier under footnote 6 of the fee schedule that will provide a \$0.42 per contract rebate for Market Maker orders in a Penny Pilot Security that adds liquidity to BATS Options where the Member: (1) has an ADAV equal to or greater than 1.00% of average TCV; and (2) has an ADV equal to or greater than 2.00% of average TCV.

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<sup>9</sup> “Penny Pilot Securities” are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

<sup>10</sup> “ADV” means average daily volume calculated as the number of contracts added or removed, combined, per day.

<sup>11</sup> “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.

<sup>12</sup> “ADAV” means average daily added volume calculated as the number of contracts added.

Finally, the Exchange proposes to make several corresponding changes to the fee schedule to reflect the proposed changes above. Specifically, the Exchange is proposing to add the fee and rebate proposed above to the Standard Rates chart on the fee schedule, to add footnote six to fee code PM, and to title the current Non-Customer Take Volume Tier in footnote 3 as “Non-Customer Take Volume Tier 1” in order to reflect the addition of the second tier proposed above.

The Exchange proposes to implement the amendments to its fee schedule effective immediately.

## 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>13</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>14</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.

Volume-based rebates and fees such as the ones currently maintained on BATS Options as well as the new Non-Customer Take Volume Tier 2 and the new Market Maker Penny Pilot Add Volume Tier proposed herein, have been widely adopted by equities and options exchanges

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<sup>13</sup> 15 U.S.C. 78f.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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 the proposed Non-Customer Take Volume Tier 2 is a reasonable and equitable allocation of fees and rebates because the requirement that the Member has an ADAV equal to or greater than 1.00% of average TCV combined with the requirement that a Member achieve an ADV of equal to or greater than 2.00% of average TCV will provide such enhancements in market quality on BATS Options by incentivizing increased participation on BATS Options. This is especially true as compared to Non-Customer Take Volume Tier 1, which has no ADAV component, meaning that Non-Customer Take Volume Tier 2 will act to incentivize Members to add liquidity on BATS Options in order to receive further reduced fees. Similarly, the Exchange believes that the new Market Maker Penny Pilot Add Volume Tier is a reasonable and equitable allocation of fees and rebates it will incentivize Members to both add and remove liquidity from the Exchange in order to meet the ADV and ADAV thresholds required to receive the enhanced rebates.

The Exchange notes that it is not proposing to modify any existing tiers, but rather to add new tiers that will provide Members with additional ways to receive higher rebates or pay lower fees. As such, under the proposal a Member will receive either the same or a higher rebate or be charged either the same or a lower fee than they would 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, except as noted below, apply uniformly to all

Members and are consistent with the overall goals of enhancing market quality on BATS Options which also benefits all Members. The Exchange believes that restricting the availability of the proposed rebates in Penny Pilot Securities associated with the Market Maker Add Volume Tier to Market Maker orders is reasonable and equitably allocated as well as not unreasonably discriminatory because Market Makers are subject to additional regulatory requirements not applicable for Professional and Firm orders and such Market maker orders are not currently eligible for certain enhanced rebate tiers available to Professional and Firm orders under the Professional and Firm Penny Pilot Add Volume Tiers. The Exchange notes that all non-Customer orders (i.e., Professional, Firm and Market Maker orders) will be eligible for the reduced fees proposed as under the Non-Customer Take Volume Tier 2.

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.

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. 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 BATS Options. The Exchange also believes the proposed tiers would further enhance competition because they are similar to pricing tiers currently available on both the Exchange and other exchanges. 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.

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>15</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>16</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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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:

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

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-2015-02 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-BATS-2015-02. 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 will also 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-2015-02 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>17</sup>

Brent J. Fields  
Secretary

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