

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75754; File No. SR-BATS-2015-63)

August 25, 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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 12, 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 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).

The text of the proposed rule change is available at the Exchange’s website at

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 The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

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: (i) to add definitions of Broker Dealer, Joint Back Office, and Non-BATS Market Maker; (ii) to update the definitions of Customer and Market Maker; (iii) to make certain corresponding changes associated with these new and updated definitions; and (iv) to create a new Professional Penny Pilot Add Volume Tier.

The Exchange is proposing to add the definitions of Broker Dealer, Joint Back Office, and Non-BATS Market Maker to the BATS Options fee schedule. More specifically, the Exchange is proposing to add the following definitions: (i) "Broker Dealer" applies to any order for the account of a broker dealer, including a foreign broker dealer, that clears in the Customer range at the Options Clearing Corporation ("OCC"); (ii) "Joint Back Office" applies to any transaction identified by a Member for clearing in

the Firm Range at the OCC that is identified with an origin code as Joint Back Office. A Joint Back Office participant is a Member that maintains a Joint Back Office arrangement with a clearing broker-dealer; and (iii) “Non-BATS Market Maker” applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is not registered with the Exchange as a Market Maker, but is registered as a market maker on another options exchange. In conjunction with the proposed new defined terms above, the Exchange proposes to amend the fee schedule in multiple places (including the Standard Rates and Fee Codes and Associated Fees tables along with Footnotes 2, 3, 4, 6, 7, and 8) such that pricing for Broker Dealer and Joint Back Office transactions is the same as for Firm transactions and Non-BATS Market Maker transactions is the same as Market Maker transactions. In certain places, this includes using the term “Non-Customer” in order to capture pricing that relates to Professional, Firm, Market Maker, Broker Dealer, Joint Back Office, and Non-BATS Market Maker transactions.

In conjunction with these proposed additions, the Exchange is also proposing to amend the current definitions of Customer, Market Maker, and Firm on the BATS Options fee schedule. Currently, the fee schedule states that “Customer” applies to any transaction 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; “Market Maker” applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC; and “Firm” applies to any transaction identified by a Member for clearing in the Firm range at the OCC. In order to make these definitions work with proposed new definitions for Broker Dealer, Non-BATS Market Maker, and

Joint Back Office described above, the Exchange is proposing that the definitions should read as follows: (i) “Customer” applies to any transaction identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a “Professional” as defined in Exchange Rule 16.1; (ii) “Market Maker” applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37); and (iii) “Firm” applies to any transaction identified by a Member for clearing in the Firm range at the OCC, excluding any Joint Back office transaction.

Finally, the Exchange is proposing to add a new “Professional Penny Pilot Add Volume Tier”. Currently, Professional orders that add liquidity in Penny Pilot Securities receive a standard \$0.40 rebate. Under the proposed new tier, a Member that has a combined ADAV⁶ in Customer, as proposed to be defined above, and Professional⁷ orders equal to or greater than 0.20% of average TCV⁸ would receive a \$0.43 rebate per contract for each Professional order that adds liquidity in Penny Pilot Securities.⁹

Implementation Date

As noted above, the Exchange proposes to implement the amendments to its fee schedule effective immediately.

⁶ “ADAV” means average daily added volume calculated as the number of contracts added per day.

⁷ “Professional” applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1.

⁸ “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.

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

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.¹⁰ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ 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.

Volume-based rebates and fees such as the ones currently maintained on BATS Options 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.

The Exchange believes that the proposed addition of the Professional Penny Pilot Add Volume Tier is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it marks an increased rebate (from \$0.40 per contract to \$0.43 per contract) available to all Members where the Member has a

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

combined ADAV in Customer and Professional orders equal to or greater than 0.20% of average TCV. Such an increased rebate will provide Members entering Professional orders with the opportunity to receive higher rebates while simultaneously encouraging greater participation on BATS Options in both Professional and Customer orders, which the Exchange believes will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options.

The Exchange believes that the proposed additional definitions, amendments to the existing definitions, and the corresponding changes throughout the fee schedule represent a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because the amendments are designed to allow Members to more precisely mark the capacity of orders entered on the Exchange. The proposed changes to the definitions will not affect fees or rebates and the corresponding changes are designed to make this clear. Further, the additional order capacities will bring the Exchange generally in line with industry standards and Member expectations, making the Exchange's pricing easier to understand.

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.

(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 Professional Penny Pilot Add Volume Tier, the Exchange does not believe that the change burdens competition, but instead, that it

enhances competition, as it is intended to increase the competitiveness of and draw additional volume to BATS Options.

With respect to the proposed changes to the definitions and the corresponding changes throughout the fee schedule, the Exchange does not believe that any such changes burden competition, but instead, that they enhance competition by bringing the Exchange's fee schedule and capacities generally in line with industry standards which will make it easier for Members to understand.

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 Act¹² and paragraph (f) of Rule 19b-4 thereunder.¹³ 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

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:

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 No. SR-BATS-2015-63 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 No. SR-BATS-2015-63. 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 am and 3:00 pm. 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 No. SR-BATS-2015-63 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.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).