

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76113; File No. SR-BATS-2015-80)

October 8, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt an Issuer Incentive Program Applicable to Securities Listed on 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 September 30, 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 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 fees applicable to securities listed on the Exchange, which are set forth in BATS Rule 14.13.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing, and delisting of companies on the Exchange,³ which it modified on February 8, 2012 in order to adopt pricing for the listing of exchange traded products (“ETPs”)⁴ on the Exchange,⁵ which it subsequently modified again on June 4, 2014.⁶ On October 16, 2014, the Exchange modified Rule 14.13, entitled “Company Listing Fees” to eliminate the annual fees for ETPs not participating in the Exchange’s Competitive Liquidity Provider Program pursuant to Rule 11.8, Interpretation and Policy .02 (the “CLP Program”).⁷ On May 22, 2015, the Exchange further modified Rule 14.13 to eliminate the \$5,000 application fee for ETPs, effectively eliminating any compulsory fees for both new ETP issues and transfer listings in ETPs on the Exchange.⁸ The Exchange is now proposing to offer an incentive payment to ETPs that are listed on the Exchange based on the consolidated average daily volume (the “CADV”) of

³ See Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

⁴ As defined in BATS Rule 11.8(e)(1)(A), the term “ETP” means any security listed pursuant to Exchange Rule 14.11.

⁵ See Securities Exchange Act Release No. 66422 (February 17, 2012), 77 FR 11179 (February 24, 2012) (SR-BATS-2012-010).

⁶ See Securities Exchange Act Release No. 72377 (June 12, 2014), 79 FR 34822 (June 18, 2014) (SR-BATS-2014-024).

⁷ See Securities Exchange Act Release No. 73414 (October 23, 2014), 79 FR 64434 (October 29, 2014) (SR-BATS-2014-050).

⁸ See Securities Exchange Act Release No. 75085 (June 1, 2015), 80 FR 32190 (June 5, 2015) (SR-BATS-2015-39).

the ETP (the “Issuer Incentive Program”). The Exchange notes that the payments would be made payable to the ETP or fund, and not to the sponsor of the ETP.⁹

Specifically, the Exchange is proposing that the Issuer Incentive Program would allow the Exchange to provide payments to the fund on a quarterly basis that would be based on the CADV of the ETP for each trading day of the preceding calendar quarter that the ETP was listed on the Exchange, as follows:

CADV Range	Annualized Payment
1,000,000 – 3,000,000 shares	\$3,000
3,000,001 – 5,000,000 shares	\$10,000
5,000,001 – 10,000,000 shares	\$50,000
10,000,001 – 20,000,000 shares	\$100,000
20,000,001 – 35,000,000 shares	\$250,000
Greater than 35,000,000 shares	\$400,000

Because the payments would be provided for each trading day, where an ETP had a CADV of 4,000,000 over the course of a full calendar quarter that it was listed on the Exchange, the ETP would receive a payment of \$2,500 ($.25 * \$10,000$, the annualized payment for that CADV) for the quarter. Where the same ETP had a CADV of 4,000,000, but was only listed on the Exchange for exactly half of the trading days in the calendar quarter, the ETP would receive a payment of \$1,250 ($(.25 * \$10,000) * .5$).

The Exchange is proposing the Issuer Incentive Program as a way to attract both new ETP issues and transfer ETP listings to the Exchange. The Exchange notes that the Issuer

⁹ The sponsor of an ETP is the registered investment adviser that provides investment management services to such ETP.

Incentive Program would also be applicable to ETPs currently listed on the Exchange.

Traditionally, ETP issuers have paid between \$5,000 and \$55,000 on an annual basis in order to be listed on an exchange,¹⁰ a paradigm only recently broken by BATS implementing free ETP listings on the Exchange, as described above. If the only revenue source associated with listing these ETPs was the listing fee, the pay-per-listing model would make sense, however, the primary listing exchange also earns additional revenue from trading fees. Such additional trading fees are earned by exchanges from the outsized share of intraday trading volume that a primary listed security typically garners for the listing exchange as well as trading fees for orders participating in the opening and closing auctions. As the CADV increases for an ETP, so does the additional trading fee revenue earned by the primary listing exchange. As such, the Exchange is proposing to adopt the above described tiered payment structure for ETPs listed on the Exchange, which it believes creates a more equitable and appropriate relationship between the Exchange and issuers based on the revenue and expenses associated with listing ETPs on the Exchange.

In addition to the proposed changes described above, the Exchange proposes to eliminate reference to fees for securities participating in the CLP Program because such program is no longer operational and has been replaced by the Supplemental Competitive Liquidity Provider Program, as described in Rule 11.8, Interpretation and Policy .03 (the “ETP CLP Program”).

The Exchange proposes to implement the amendments to Rule 14.13(b)(2)(C) effective October 1, 2015.

¹⁰ See, e.g., NYSE Arca Equities Schedule of Fees and Charges for Exchange Listing Services, available at: https://www.nyse.com/publicdocs/nyse/listing/nyse_arca_e_listing_fees.pdf; see also NASDAQ Rules 5930 and 5940.

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.¹¹ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) and 6(b)(5) of the Act,¹² in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed amendment to the annual listing fees in Rule 14.13(b)(2)(C) to provide payment to ETPs listed on the Exchange is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because it would create a distribution of fees and other charges applicable to all issuers that reflect the additional revenue that an ETP listed on the Exchange creates for the Exchange through executions occurring in the auctions and additional shares executed on the Exchange. As the market is currently structured, ETPs typically pay a flat fee to an exchange for listing services regardless of the amount of additional revenue that the product will bring to the exchange. The Issuer Incentive Program, on the other hand, acknowledges the additional revenue brought to the Exchange by virtue of an ETP listing on the Exchange and is designed to reward the issuer of an ETP for such additional revenue, which the Exchange believes creates a more equitable and appropriate relationship between the Exchange and issuers based on the revenue and expenses associated with listing ETPs on the Exchange. As such, the Exchange believes that that it is

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4) and (5).

reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges to provide payment to issuers of ETPs listed on the Exchange.

Similarly, the Exchange believes that the proposed amendment to the annual listing fees in Rule 14.13(b)(2)(C) to provide tiered payments to issuers of ETPs listed on the Exchange based on the CADV of an ETP is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because it would create a distribution of fees and other charges applicable to all issuers that are commensurate with the additional revenue that an ETP listed on the Exchange creates for the Exchange through executions occurring in the auctions and additional shares executed on the Exchange. As described above, where the CADV of an ETP increases, so does the additional trading fee revenue earned by the primary listing exchange. Accordingly, the tiers within the Issuer Incentive Program are designed to reward the issuer of an ETP on the basis of the additional revenue potential that the ETP brings to the Exchange. Further to this point, the Exchange does not believe that the proposal is unfairly discriminatory because, as described above, the annualized payments associated with the various CADV tiers in the Issuer Incentive Program are designed to account for the approximate additional revenue that the Exchange will receive from an ETP listed on the Exchange within a particular CADV tier. The Exchange notes that certain ETPs in the proposed tiers with higher CADV would receive disproportionately higher rebates than ETPs in other tiers with lower CADV. The Exchange believes it is equitable and not unfairly discriminatory to provide a disproportionately higher payment to ETPs in higher tiers because such ETPs would likely bring a disproportionately larger amount of revenue to the Exchange from the auctions the Exchange would conduct for such securities and increased trading activity on the Exchange in such securities. The Exchange believes that the additional revenue it will generate from ETPs that receive payments through the

Issuer Incentive Program, including ETPs that qualify for the higher tiers, will exceed the amount of such payments. To the extent the additional revenue generated by ETPs that receive payments through the Issuer Incentive Program does not exceed the amount of such payments, the Exchange will modify the structure of the Issuer Incentive Program such that the program does generate revenue for the Exchange.

In addition, the Exchange does not believe that it is unfairly discriminatory to exclude ETPs with a CADV of less than 1,000,000 from the Issuer Incentive Program because such ETPs do not typically generate revenue to the same degree as the higher CADV products. The Exchange notes that ETPs with a CADV of less than 1,000,000 are eligible to participate in the ETP CLP Program, which is designed to incent market makers to provide liquidity in less actively traded products with the goal of facilitating the growth of such products.¹³

The Exchange believes that the proposal creates a more equitable and appropriate relationship between the Exchange and issuers tied directly to the revenue and expenses associated with listing ETPs on the Exchange. As such, the Exchange believes that that it is reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges to offer payments to issuers of ETPs listed on the Exchange that are tiered on the basis of the CADV of the ETP.

The Exchange is not currently proposing to extend the Issuer Incentive Program to corporate securities despite the fact that it currently maintains rules and fees necessary to support the listing of a corporate security on the Exchange.¹⁴ The Exchange believes it is reasonable and

¹³ Pursuant to Rule 11.8, Interpretation and Policy .03(n), a security participating in the ETP CLP Program will no longer be eligible to participate once such security sustains CADV of 1,000,000 shares or more for three consecutive months.

¹⁴ The Exchange notes that it does not currently list any corporate securities and would

equitable to limit the Issuer Incentive Program to ETPs and not to extend such proposal to corporate listings because the economic structure of operating a listings program for ETPs is significantly different than operating a listings program for corporates. A primary distinction between ETPs and corporate listings is that the regulation and oversight of ETPs is scalable, such that while each new ETP requires surveillance and results in additional regulatory burden on the Exchange, such burden is rarely related to the governance structure of the fund as many funds are often issued through the same governance structure (e.g., a trust). In contrast, each corporate issuance is typically distinct from any other issuance, and thus, the regulatory burden does not as easily scale as the number of listings increases. In addition, corporate listings often demand additional oversight with respect to governance and services that are typically not provided for ETPs, including investor relations services, public relations, sales and marketing. These services often demand a large capital commitment from the listings exchange. Thus, while the Exchange believes that it can adopt a competitive and profitable program for ETPs that includes the Issuer Incentive Program as proposed, the Exchange would have to further analyze whether such a program could be applied to corporate securities and remain profitable.

Based on the foregoing, the Exchange believes that the proposed amendment to Rule 14.13(b)(2)(C) to implement the Issuer Incentive Program is a reasonable, equitable, and non-discriminatory allocation of fees to issuers.

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

consider applicable fees and incentives in the future if the Exchange is to list one or more corporate securities, particularly if the Exchange was seeking to operate a competitive corporate listing business. To the extent the Exchange did propose to extend the Issuer Incentive Program to corporate securities it would file a separate proposal pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder.

competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. With respect to the proposed new pricing for the listing of ETPs, the Exchange does not believe that the changes burden competition, but instead, enhance competition, as it is intended to increase the competitiveness of the Exchange's listings program by allowing the Exchange to provide ETPs with quarterly payments based on the CADV of the ETP, which the Exchange believes will be directly related to the amount of additional revenue that the Exchange receives from additional transactions in the ETP. As such, the proposal is a competitive proposal that is intended to attract additional ETP listings, which will, in turn, benefit the Exchange and all other BATS-listed ETPs.

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 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

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-2015-80 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-2015-80. 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-

80 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

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).