

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76147; File No. SR-BATS-2015-89)

October 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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 13, 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 www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public

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).

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

On April 17, 2014, the Exchange filed a proposal to adopt rules to create a Lead Market Maker Program (the "Program") on an immediately effective basis.⁶ The Program is designed to strengthen market quality for BATS-listed ETPs⁷ by offering enhanced rebates to market makers registered with the Exchange ("Market Makers")⁸ that are also registered as a lead market maker ("LMM") in an LMM Security⁹ and meet certain minimum quoting standards ("Minimum

⁶ See Securities Exchange Act Release No. 72020 (April 25, 2014), 79 FR 24807 (May 1, 2014) (SR-BATS-2014-015).

⁷ As defined in Rule 11.8(e)(1)(A), ETP means any security listed pursuant to Exchange Rule 14.11.

⁸ See BATS Rule 11.5.

⁹ As defined in Rule 11.8(e)(1)(C), LMM Security means an ETP that has an LMM.

Performance Standards”).¹⁰ The purpose of this filing is to adopt such enhanced rebates and to adopt additional LMM credit tiers, effective immediately.¹¹

LMM Incentive Program

The Exchange proposes to modify its fee schedule applicable to use of the Exchange in order to provide pricing for orders that add displayed liquidity in LMM Securities entered by LMMs that meet the Minimum Performance Standards (a “Qualified LMM”). The Exchange is proposing to implement a tiered rebate structure that is based on the consolidated average daily volume (“CADV”) of the LMM Security.¹² Specifically, the Exchange is proposing that an LMM shall receive the following rebates for each share of added displayed liquidity in each security for which they are a Qualified LMM (each an “LMM Rebate”): where the CADV is less than 1,000,000, \$0.0045; where the CADV is 1,000,000 to 5,000,000, \$0.0040; where the CADV is greater than 5,000,000, \$0.0035. The Exchange also proposes to charge Qualified LMMs a fee of \$0.0025 per share to remove liquidity in each security for which they are a Qualified LMM (the “LMM Fee”). In addition, as proposed an LMM would not be charged or provided a rebate for executions occurring in the Exchange’s closing auction in securities for which it is a Qualified LMM.

¹⁰ As defined in Rule 11.8(e)(1)(D), Minimum Performance Standards means a set of standards applicable to an LMM that may be determined from time to time by the Exchange.

¹¹ The Exchange initially filed the proposed fee change on October 1, 2015 (SR-BATS-2015-81). On October 9, 2015, the Exchange withdrew SR-BATS-2015-81 and submitted a new filing (SR-BATS-2015-88). On October 13, 2015, the Exchange withdrew SR-BATS-2015-88 and submitted this filing.

¹² As defined in the proposed fee schedule, “CADV” means consolidated average daily volume calculated as the average daily volume reported for a security by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the three calendar months preceding the month for which the fees apply and excludes volume on days when the market closes early and on the Russell Reconstitution Day.

As is the case for all Members, in the event that a Qualified LMM is ever eligible to receive a higher per share rebate or lower per share fee under other pricing, the Qualified LMM will receive such higher rebate or fee rather than the applicable LMM Rebate or LMM Fee. For example, as proposed and further described below, an LMM may be eligible to receive a higher rebate per share under the LMM Credit Tiers in combination with other incentives offered by the Exchange.

Under the proposal, CADV is calculated based on the three calendar months preceding the month for which the fees apply, meaning that when calculating the rebates that apply to a particular LMM Security, the CADV will be based on the three calendar months prior to the current trading month. For example, in calculating the rebates that will apply to an LMM for a particular LMM Security for October, the Exchange will look to the average daily volume reported for the LMM Security by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for July, August, and September. If that LMM Security was an initial listing on BATS (not a transfer listing from another listing market) and was listed beginning on September 15, the calculation of CADV used for October pricing would include all days from July 1 through September 14 with zero volume each trading day. For transfer listings, the determination of the rebates for a month will be based on the CADV for the past three months, regardless of where the ETP was listed during that period.

The Exchange notes that all volume, including volume in LMM Securities, will continue to be included in all volume calculations as it relates to other rebates and fees on the Exchange.

In connection with the changes described above, the Exchange proposes to add definitions of Qualified LMM and CADV to the fee schedule consistent with the definitions provided above. As the proposed rebates and fees will be included in footnote 14 of the fee

schedule, the Exchange also proposes to append footnote 14 to fee codes applicable to the Exchange's closing auction, fee codes AC, AL and AN, the fee code applicable to adding liquidity in Tape B securities, fee code B, and the fee code applicable to removing liquidity in Tape B securities, fee code BB.

LMM Credit Tiers for Tape B

The Exchange proposes to adopt tier-based incremental credits for Members that are LMMs for their orders that provide displayed liquidity in Tape B securities. Specifically, Members that are LMMs for LMM Securities would receive an additional credit (an "LMM Credit") for orders that provide displayed liquidity in Tape B securities traded on the Exchange, including non-BATS-listed securities, except that such LMM Credits will not be applied to the LMM Rebates proposed above. As proposed, the LMM Credits and volume thresholds associated therewith would be as follows: (i) an LMM Credit of \$0.0001 per share where an LMM is a Qualified LMM in at least 50 ETPs; (ii) an LMM Credit of \$0.0002 per share where an LMM is a Qualified LMM in at least 75 ETPs; (iii) an LMM Credit of \$0.0003 per share where an LMM is a Qualified LMM in at least 150 ETPs; and (iv) an LMM Credit of \$0.0004 per share where an LMM is a Qualified LMM in at least 250 ETPs. The number of ETPs in which the Member is a Qualified LMM for the billing month will be based on whether the LMM met the Minimum Performance Standards for an LMM Security during the applicable billing month.

For example, a Member that is a Qualified LMM in 100 ETPs would be eligible to receive an LMM Credit of \$0.0002 per share in Tape B securities for which it is not a Qualified LMM, in addition to the rebate it would normally receive in accordance with the Exchange's fee schedule ("Normal Rebate"). For securities in which the Member is a Qualified LMM, the

Member would instead receive the LMM Rebates proposed above. Where the LMM Credit plus the Normal Rebate would be greater than the LMM Rebate, the Member will receive this higher rebate instead of the LMM Rebate, which is consistent with the treatment of all other fees and rebates, as provided in the General Note that states “to the extent a Member qualifies for higher rebates and/or lower fees than those provided by a tier for which such Member qualifies, the higher rebates and/or lower fees shall apply.” For instance, a Member could be eligible to receive a Normal Rebate of \$0.0032 per share along with an additional \$0.0004 per share in LMM Credit for an LMM Security with a CADV greater than 5,000,000. For such security the LMM Rebate would be \$0.0035 per share. In such an instance, because the Normal Rebate combined with the LMM Credit would be \$0.0036 per share and greater than the LMM Rebate of \$0.0035 per share, the Member would receive a \$0.0036 per share rebate in the LMM Security.

Implementation Date

The Exchange proposes to implement these 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.¹³ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) and 6(b)(5) of the Act,¹⁴ in that it provides for the equitable allocation of reasonable dues, fees and other

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

charges among members and other persons using any facility or system which the Exchange operates or controls and it does not unfairly discriminate between customers, issuers, brokers or dealers. 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.

LMM Incentive Program

The Exchange believes that the proposed LMM Rebates are equitable and not unfairly discriminatory because they will incentivize and reward LMMs that make tangible commitments to enhancing market quality for securities listed on the Exchange. The Exchange also believes that the proposed LMM Rebates are reasonable because they are substantially similar to the rebates offered in a comparable lead market maker program currently offered by NYSE Arca, Inc. (“Arca”). The Exchange further believes that the proposal will provide a better trading environment for investors in ETPs and generally encourage greater competition between listing venues.

As described above, the Exchange proposes to provide rebates to Qualified LMMs for adding displayed liquidity ranging from \$0.0035 to \$0.0045 per share. This range is based on an LMM Security’s CADV such that as the CADV increases, the proposed rebate decreases. Typically, the lower a security’s CADV, the higher the risks and costs to a market maker associated with making markets in the security, such as holding inventory in the security. As the CADV for a security increases, and thus the liquidity increases, typically these same costs associated with making markets in a security decrease. Similarly, the lower a security’s CADV, the wider the bid-ask spread in that security will typically be, which means that anyone that wants to buy (sell) the security will have to pay a higher (receive a lower) price for the security.

As a security's CADV increases, the narrower the bid-ask spread typically becomes, which means that a buyer (seller) pays (receives) a lower (higher) price when buying (selling) the security. As such, the Exchange's proposal to pay rebates between \$0.0035 and \$0.0045 per share to Qualified LMMs as the CADV of the LMM Security increases is designed to provide higher rebates to Qualified LMMs for meeting the Minimum Quoting Standards in securities that are most likely to cost them the most to make a market, which the Exchange believes will have the effect of shrinking the bid-ask spread in such securities and reducing (increasing) the price for anyone that wants to buy (sell) the security. As the CADV of a security increases, the cost of making markets in the security decreases, which is why the Exchange is proposing to offer smaller rebates to Qualified LMMs for LMM Securities with higher CADV, while still having the effect of tightening spreads. The Exchange believes that the tightened spreads and the increased liquidity from the proposal will benefit all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Similarly, the Exchange believes that providing the proposed LMM Fee and the ability to participate in closing auctions without charge will incentivize LMMs to participate in the program generally and will assist them in actively providing liquidity on the Exchange consistent with the Minimum Performance Standards.

Based on the foregoing, the Exchange believes that these rebates and fees will incent Qualified LMMs to narrow spreads, increase liquidity, and generally enhance the quality of quoting in all LMM Securities, particularly in lower CADV LMM Securities, which will reduce trading costs and benefit investors generally. Accordingly, the Exchange believes that the

proposal is equitably allocated and not unfairly discriminatory because the proposal is consistent with the overall goals of enhancing market quality.

The Exchange notes that the proposed pricing structure is not dissimilar from volume-based rebates and fees (“Volume Tiers”) that have been widely adopted, including those maintained on the Exchange, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide higher rebates and lower fees that are reasonably related to the value to an exchange’s market quality. While Volume Tiers are generally designed to incentivize higher levels of liquidity provision and/or growth patterns on the Exchange across all securities, the proposal is designed to more precisely garner the same benefits specifically in LMM Securities. Stated another way, while Volume Tiers aim to enhance market quality generally, the proposed rebates are designed to enhance market quality on a security by security basis and particularly in securities with a lower CADV. As such, the Exchange believes that the proposed changes will strengthen its market quality for BATS-listed securities by enhancing the quality of quoting in such securities and will further assist the Exchange in competing as a listing venue for issuers seeking to list ETPs. Accordingly, the Exchange believes that the proposal will complement the Exchange’s program for listing securities on the Exchange, which will, in turn, provide issuers with another option for raising capital in the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.¹⁵

LMM Credit Tiers for Tape B

The proposed fee change to adopt the LMM Credit Tiers for Tape B is intended to encourage Members to promote price discovery and market quality across all BATS-listed

¹⁵ 15 U.S.C. 78f(b)(5).

securities for the benefit of all market participants. The Exchange believes that the proposed credits are reasonable and appropriate in that they are based on the amount of business transacted on the Exchange. The Exchange notes that the proposed fee change is similar to market quality incentive programs already in place on other markets, such as the Qualified Market Maker incentive on the NASDAQ Stock Market LLC (“NASDAQ”), which requires a member on that exchange to provide meaningful and consistent support to market quality and price discovery by quoting at the NBBO in a large number of securities. In return, NASDAQ provides such member with an incremental rebate.¹⁶ Arca also provides enhanced credits to market makers on a tiered basis based on the number of “Less Active ETP Securities” in which it is a registered lead market maker, which it defines as those securities with a CADV in the previous month of less than 100,000 shares. The more Less Active ETP Securities in which an LMM is registered and the higher the tier achieved, the greater the incremental rebate Arca provides to the LMM for orders that provide liquidity in Tape B securities.¹⁷ The Exchange believes that providing increased credits to Members that are LMMs that add liquidity in Tape B securities to the Exchange is reasonable because the Exchange believes that by providing increased rebates to such Members, more LMMs will register to quote and trade in as many BATS-listed ETPs as possible. In particular, by providing enhanced rebates tiered based on the number of securities for which a Member is registered as an LMM, it would provide an incentive for such Members not only to register as an LMM in more liquid securities, but also to register to quote in lower volume ETPs, which are traditionally less profitable for market makers than more liquid ETPs. The Exchange believes that the proposed incremental credit for adding liquidity is also

¹⁶ See NASDAQ Rule 7014.

¹⁷ See SR-NYSEArca-2015-87, available at: <https://www.nyse.com/regulation/rule-filings?market=NYSE%20Arca>.

reasonable because it will encourage liquidity and competition in Tape B securities quoted and traded on the Exchange. Moreover, the Exchange believes that the proposed fee change will incentivize LMMs to register as an LMM in more ETPs, including less liquid ETPs and, thus, add more liquidity in these and other Tape B securities to the benefit of all market participants.

The Exchange believes that the proposed incremental credits are equitable and not unfairly discriminatory because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange further believes that the proposed incremental rebate is not unfairly discriminatory because it is consistent with the market quality and competitiveness benefits associated with the proposed fee program and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders. The Exchange does not believe that it is unfairly discriminatory to offer increased rebates to LMMs as LMMs are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not. The Exchange believes that it is also not unfairly discriminatory to provide increased rebates to Members based on the number of securities for which they are registered as an LMM because it will encourage broader registration as LMMs in all BATS-listed ETPs which will enhance liquidity and market quality in such BATS-listed ETPs to the benefit of all participants.

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 LMM Rebates, LMM Fee, pricing for LMMs participating in Exchange closing auctions, and the proposed LMM Credit Tier, the Exchange does not believe that the changes burden competition, but instead, enhance competition, as these

changes are intended to increase the competitiveness of the Exchange's listings program. The Exchange also believes the proposed changes would enhance competition because they are similar to pricing incentives provided by both Arca and NASDAQ, as noted 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 deemed fee structures to be unreasonable or excessive. The proposed changes are generally intended to enhance the fees and rebates in LMM Securities for Qualified LMMs and for those Members that are Qualified LMMs in multiple ETPs, which is intended to enhance market quality in BATS-listed securities. As such, the proposal is a competitive proposal that is intended to add additional liquidity to the Exchange, which will, in turn, benefit the Exchange and all Exchange participants.

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 Act¹⁸ and paragraph (f) of Rule 19b-4 thereunder.¹⁹ 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.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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-2015-89 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-2015-89. 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 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-2015-89 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.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).