

providing the rebate to Floor Brokers does not discriminate against other QCC orders entered into the NYSE Arca System from on the Floor. Any participant will be able to engage a rebate-receiving Floor Broker in a discussion surrounding the appropriate level of fees that they may be charged for entrusting the entry of the QCC order to the Floor Broker into the Exchange systems for validation and execution. The additional order flow attracted by this rebate should benefit all participants. The rebate is meant to assist Floor Brokers to recruit business on an agency basis from both OTP Holders and non-OTP Holder firms. The Floor Broker may use all or part of the rebate to offset the Floor Brokerage charges billed to the Firm. For this reason the Exchange believes the adoption of the proposed rebate is both equitable and not unfairly discriminatory.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such 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 email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2011-79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2011-79. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 a.m. and 3 p.m. Copies of the 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-NYSEArca-2011-79 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65728, File No. SR-BATS-2011-035]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend and Restate the Amended and Restated Bylaws of BATS Global Markets, Inc.

November 10, 2011.

I. Introduction

On September 7, 2011, BATS Exchange, Inc. ("BATS" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Bylaws of the Exchange's sole stockholder, BATS Global Markets, Inc. ("Corporation"), in connection with the Corporation's anticipated initial public offering of shares of its Class A Common Stock (the "IPO"). The proposed rule change was published for comment in the **Federal Register** on September 26, 2011.³ On November 3, 2011, the Exchange filed Partial Amendment No. 1 to the proposed rule change.⁴ The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Partial Amendment No. 1.

II. Description of the Proposal

On May 13, 2011, the Corporation filed a registration statement on Form S-1 with the Commission to register shares of Class A common stock and to disclose its intention to conduct an IPO offering those shares and to list those shares for trading on the Exchange. In connection with its IPO, the Exchange filed this proposed rule change to amend and restate the Corporation's current Bylaws and adopt these changes as its Second Amended and Restated Bylaws ("New Bylaws"). The proposal would primarily amend and restate various provisions of the Bylaws in a manner that the Exchange believes

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 65353 (September 19, 2011), 76 FR 59472 (September 26, 2011) ("Notice").

⁴ Partial Amendment No. 1 corrects an inconsistency between the Third Amended and Restated Certificate of Incorporation of the Corporation and the Corporation's proposed amended bylaws concerning actions of stockholders without a meeting. This is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the rule filing.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 17 CFR 200.30-3(a)(12).

would reflect changes to conform with provisions that are more customary for publicly-owned companies and also conform the New Bylaws to the Corporation's Certificate of Incorporation.⁵

A. Stockholders Meetings and Actions Without a Meeting

The Exchange has proposed to revise the current Bylaw procedures to require stockholders to make certain disclosures and representations in notices to the Corporation concerning business proposals and director nominations to be considered at annual meetings.⁶ In addition, the Exchange would require that all proposals and nominations comply with applicable requirements of the Act.⁷ The Exchange has represented that the purpose of the disclosure and representation requirements is to assure that stockholders asked to vote on stockholder proposals or nominations are more fully informed and are able to consider any proposals or nominations along with the interests of those stockholders or the beneficial owners on whose behalf such proposal or nomination is being made.⁸

In addition, the Exchange has proposed that the New Bylaws would only permit a special meeting of the stockholders to be called by the board of directors pursuant to a resolution adopted by a majority of the board of directors.⁹ The Exchange has also proposed to revise certain notice requirements with respect to written consent from stockholders to approve

⁵ See Notice, *supra* note 3, 76 FR at 59473. The Exchange also filed a proposed rule change to amend the Corporation's Certificate of Incorporation in anticipation of its upcoming IPO, which proposed rule change was recently approved by the Commission. See Securities Exchange Act Release No. 65646 (October 27, 2011), 76 FR 67783 (November 2, 2011) (SR-BATS-2011-033) (order approving proposed rule change to amend and restate the Second Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc.).

⁶ See proposed Section 2.02 of the New Bylaws. The New Bylaws also state that such notice requirements would be satisfied if done in compliance with Exchange Act Rule 14a-8. See Notice, *supra* note 3, 76 FR at 59474. Additionally, the New Bylaws requires stockholders to appear at any meeting to present such proposals or nominations. See *id.*

⁷ See Notice, *supra* note 3, 76 FR at 59474.

⁸ See *id.*

⁹ See proposed Section 2.03 of the New Bylaws. Under the current Bylaws, a special meeting of the stockholders could be called by the chairman of the board of directors, chief executive officer, the majority of the board of directors, or by the stockholders entitled to vote at least ten percent of the votes at the meeting. The Exchange also proposed that, whenever preferred stockholders have the right to elect directors, the preferred stockholders may call a special meeting of preferred stockholders pursuant to a resolution of the board. See *id.*

certain corporate actions taken without a meeting.¹⁰ Additionally, the Exchange has proposed to prohibit any action by written consent following a change of ownership, except as provided in the Corporation's Certificate of Incorporation.¹¹ The Exchange notes that these provisions are designed to prevent any stockholder from exercising undue control over the operation of the Exchange by circumventing the board of directors of the Corporation through a special meeting of the stockholders or action by written consent.¹²

B. Board of Directors and Board Committees

The Exchange has proposed changing the current Bylaws to revise the process to remove directors and board committees. The proposed rule change would allow the board of directors or any director to be removed by the affirmative vote of at least a majority of voting power of all outstanding shares of the Corporation.¹³ The Exchange has represented that the purpose of this change is to align these requirements with Delaware General Corporation Laws.¹⁴ The Exchange also has proposed to eliminate references to executive committees, to authorize the board of directors to create committees, and, so as to ensure that the full board of directors considers significant corporate decisions, to prohibit board committees from (i) Approving, adopting, or recommending to stockholders any matter required by Delaware law to be submitted for stockholder approval or (ii) adopting, amending, and repealing the New Bylaws.¹⁵

Currently, the Corporation's Bylaws provide that either the board of directors or shareholders may adopt, amend, or repeal the Bylaws of the Corporation. The proposal would modify this provision so that, upon a Change in Ownership,¹⁶ stockholders may only adopt, amend, or repeal the New Bylaws upon the affirmative vote of at least 70% of the total voting power of all outstanding shares of the Corporation.¹⁷

¹⁰ See proposed Section 2.10 of the New Bylaws.

¹¹ See Notice, *supra* note 3, 76 FR at 59474 n. 4 (defining a "Change of Ownership" as occurring at such time as the beneficial owners of the Class B Common Stock and Non-Voting Class B Common Stock own, in the aggregate, less than a majority of the total voting power of the Corporation) and Partial Amendment 1.

¹² See Notice, *supra* note 3, 76 FR 59474.

¹³ See proposed Section 3.05 of the New Bylaws.

¹⁴ See Notice, *supra* note 3, 76 FR at 59474.

¹⁵ See proposed Section 3.10 of the New Bylaws.

¹⁶ See *supra* note 11.

¹⁷ See generally proposed Section 2.10 of the New Bylaws.

C. Other Amendments

The proposal will also amend and restate various other provisions such as those relating to the registered office of the Corporation,¹⁸ shares held by the Corporation in a fiduciary capacity,¹⁹ form of stock certificates,²⁰ loans to officers,²¹ and indemnification of directors,²² among others.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²³ In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,²⁴ which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with the provisions of the Act.

The Exchange has represented that the proposed rule change relates solely to the Bylaws of the Corporation and that the Exchange will continue to be governed by its existing certificate of incorporation and by-laws.²⁵ The Exchange also has represented that the Corporation will continue to directly and solely hold the stock in, and voting power of, the Exchange and that the Exchange will continue to operate pursuant to its existing governance structure.²⁶ The Commission also notes that the Exchange does not propose any new substantive changes to Article 12 of the current Bylaws (relating to SRO Functions of BATS Exchange, Inc. and BAT-Y Exchange, Inc.).

The Commission, therefore, believes that the proposed rule change is consistent with Section 6(b)(1) of the Exchange Act, which requires the Exchange to have the ability to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with provisions of the

¹⁸ See Notice, *supra* note 3, 76 FR at 59473.

¹⁹ The Exchange also has proposed that any shares of stock held by the Corporation would have no voting rights, except when such shares are held in a fiduciary capacity. See proposed Section 2.07 of the New Bylaws.

²⁰ See Notice, *supra* note 3, 76 FR at 59475.

²¹ See *id.*

²² See *id.*

²³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁴ 15 U.S.C. 78f(b)(1).

²⁵ See Notice, *supra* note 3, 76 FR at 59473.

²⁶ See *id.*

Act, the rules and regulations thereunder, and the rules of the Exchange.²⁷

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-BATS-2011-035), as modified by Partial Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65724; File No. SR-ISE-2011-72]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Transaction Fees and Rebates for Certain Complex Orders Executed on the Exchange

November 10, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on October 28, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 ISE is proposing to amend certain transaction fees and rebates. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects 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 currently assesses per contract transaction charges and credits to market participants that add or remove liquidity from the Exchange ("maker/taker fees") in a number of options classes (the "Select Symbols").³ The Exchange's maker/taker fees are applicable to regular and complex orders executed in the Select Symbols.⁴ The fees and rebates for complex orders in the Select Symbols also apply to all symbols that are in the Penny Pilot program.⁵

For complex orders in the Select Symbols and in symbols that are in the Penny Pilot program but excluding the Designated Symbols, the Exchange currently charges a "take" fee of: (i) \$0.30 per contract for ISE Market Maker,⁶ Market Maker Plus,⁷ Firm

³ Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

⁴ The Exchange has also adopted fees and rebates for complex orders in a subset of the Select Symbols ("Designated Symbols") that are different from the fees for complex orders in the Select Symbols. These Designated Symbols are AAPL, BAC, C, F, GLD, INTC, IWM, JPM, QQQ, SLV, SPY and XLF. See Exchange Act Release Nos. [sic] 65084 (August 10, 2011), 76 FR 50805 (August 16, 2011) (SR-ISE-2011-49).

⁵ See Exchange Act Release Nos. 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR-ISE-2011-45); and 65550 (October 13, 2011), 76 FR 64984 (October 19, 2011) (SR-ISE-2011-65).

⁶ The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See ISE Rule 100(a)(25). Market Makers who remove liquidity in the Select Symbols from the Complex Order Book by trading with orders preferred to them are currently charged \$0.28 per contract.

⁷ A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between \$0.03 and \$5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to \$100) and between \$0.10 and \$5.00 (for options whose underlying stock's

Proprietary and Customer (Professional)⁸ orders; and (ii) \$0.35 per contract for Non-ISE Market Maker⁹ orders. Priority Customer¹⁰ orders are not charged a "take" fee for complex orders. For complex orders in these same symbols, the Exchange currently charges a "make" fee of: (i) \$0.10 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) \$0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a "make" fee for complex orders.

For complex orders in the Designated Symbols, the Exchange currently charges a "take" fee of: (i) \$0.31 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) \$0.36 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a "take" fee for complex orders in the Designated Symbols. The "make" fee for complex orders in the Designated Symbols is the same as the "make" fee the Exchange currently charges for the Select Symbols and symbols that are in the Penny Pilot program noted above. Priority Customer orders are not charged a "make" fee for complex orders in the Designated Symbols.

The Exchange now proposes to increase the "take" fee for complex orders in both the Select Symbols and the Designated Symbols to (i) \$0.32 per contract for ISE Market Maker, Market

previous trading day's last sale price was greater than \$100) in premium in each of the front two expiration months and 80% of the time for series trading between \$0.03 and \$5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to \$100) and between \$0.10 and \$5.00 (for options whose underlying stock's previous trading day's last sale price was greater than \$100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates \$0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

⁸ A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

⁹ A Non-ISE Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

¹⁰ A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

²⁷ 15 U.S.C. 78f(b)(1).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.