

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73880; File No. SR-BATS-2014-071]

### 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.

December 18, 2014.

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 December 17, 2014, 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to make several non-substantive amendments to 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.

The text of the proposed rule change is available at the Exchange's Web site 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 make a number of clarifying, non-substantive changes to its fee schedule in order to convert the existing fee schedule into a chart format, including eliminating certain redundancies from and providing additional clarity to the language in the existing fee schedule. The Exchange believes that these changes will provide greater transparency to Members about how the Exchange assesses fees and calculates rebates, as well as allowing Members to more easily validate their bills on a monthly basis. The Exchange notes that none of these changes substantively amend any fee or rebate, nor do they alter the manner in which the Exchange assesses fees or calculates rebates. Specifically, the Exchange is proposing the following:

- To make clear that rebates are indicated by parentheses.
- To state the following: The rates listed in the Standard Rates table apply unless a Member's transaction is assigned a fee code other than a standard fee code. If a Member's transaction is assigned a fee code other than a standard fee code, the rates listed in the Fee Codes table will apply. Footnotes provide further explanatory text or, where annotated to fee codes, indicate variable rate changes, provided the conditions in the footnote are met. Unless otherwise noted, all routing fees or rebates in the Fee Codes and Associated Fees table are for removing liquidity from the destination venue.
- To add a section and chart titled "Standard Rates," which will include the standard fees and rebates for securities priced both at or above \$1.00 and below \$1.00 for adding liquidity, removing liquidity, and routing and removing liquidity from another venue as well as the standard fee codes associated with these rates.
- To add a section titled "Fee Codes and Associated Fees," which will include the fee or rebate, the fee code, and a description for each possible execution that could occur on the Exchange or on another venue.
- To add a section titled "Definitions," which will include definitions that are defined in the current fee schedule. These include the definitions listed below, which are identical to definitions contained on the Exchange's current fee schedule. All references to "per share" mean "per share

executed." "ADAV" means average daily added volume calculated as the number of shares added and "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. "Step-Up Add TCV" means ADAV as a percentage of TCV in January 2014 subtracted from current ADAV as a percentage of TCV. For purposes of Equities Pricing, "Options Step-Up Add TCV" means ADAV as a percentage of TCV in January 2014 subtracted from current ADAV as a percentage of TCV, using the definitions of ADAV and TCV as provided under Options Pricing. ADAV and ADV are calculated on a monthly basis, excluding shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption"), on any day with a scheduled early market close and on the last Friday in June (the "Russell Reconstitution Day"). Routed shares are not included in ADAV or ADV calculation. With prior notice to the Exchange, a Member may aggregate ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD). "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day.

- To add a section titled "General Notes," that will include the following notes: Unless otherwise indicated, rebates and charges for adding, removing or routing liquidity are listed as per share rebates and charges; the Exchange notes that to the extent a Member does not qualify for any of the tiers listed below, the rates listed in the above section titled "Fee Codes and Associated Fees" will apply; 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; and variable rates provided by tiers apply only to executions in securities priced at or above \$1.00.
- To add a series of footnotes describing already existing enhanced rebates including Add Volume Tiers, Step-Up Tiers, Cross-Asset Step-Up Tiers, and NBBO Setter and Joiner Tiers (which includes one non-substantive typo correction to add parentheses around the \$0.0001 rebate offered for NBBO Setter Tier 1) that are not covered in the Fee Codes and Associated Fees section described above.
- To add a series of footnotes describing all fees and rebates for securities priced below \$1.00 that either execute on the Exchange or another venue, to the extent applicable.
- To add new sections and charts titled "Logical Port Fees," "Market Data Fees," and "Physical Connection Fees," which, other than being in chart form, will be identical to the current fee schedule.
- To eliminate the lead-in text that reads "The following is the Schedule of Fees

<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).

(pursuant to Rule 15.1(a) and (c)) for BATS Exchange, Inc. (“BZX Exchange” or “BZX”). The Schedule of Fees is divided into Equities Pricing, Options Pricing and Physical Connection Charges.”

The Exchange notes that it is not proposing any amendments to the Options Pricing section of its fee schedule at this time.

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>6</sup> Specifically, the Exchange believes that the proposed rule change is consistent with sections 6(b)(4) of the Act and 6(b)(5) of the Act,<sup>7</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 if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the proposed changes are reasonable and equitable because they are non-substantive and the Exchange is not changing any fees or rebates that apply to trading activity on the Exchange or routed executions. Further, the changes are designed to make the fee schedule easier to read and for Members to validate the bills that they receive from the Exchange. The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all Members, and again, the Exchange is not making any changes to existing fees and rebates. Finally, the Exchange believes that the proposed fee schedule will be clearer and less confusing for investors and will eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

### *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. To the contrary, the Exchange believes that the changes will both make the fee schedule easier to read and simultaneously provide Members with an easier way to validate their bills on a monthly basis, both of which the Exchange believes are important components of customer service and which will allow the Exchange to better compete for order flow. The Exchange reiterates that the changes are only to the format of the fee schedule and are entirely non-substantive. 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 [sic] 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>8</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>9</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:

### *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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2014-071 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-2014-071. 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 10:00 a.m. and 3:00 p.m. Copies of such 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-BATS-2014-071 and should be submitted on or before January 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).