

Commission also continues to believe that the rule does not unfairly discriminate between issuers, consistent with Section 6(b)(5) of the Act.<sup>30</sup>

Finally, the Commission believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, consistent with Section 6(b)(8) of the Act.<sup>31</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-NYSE-2015-36), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Brent J. Fields,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76120; File No. SR-BATS-2015-83]

### 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.

October 9, 2015.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 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 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 amend the fee schedule applicable to Members <sup>5</sup> 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 Web site at [www.batstrading.com](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 modify the fee schedule applicable to the Exchange’s options platform (“BATS Options”) effective immediately, in order to: (i) Increase the fees for certain logical ports; and (ii) provide for separate fees based upon the number of logical ports utilized.

A logical port represents a port established by the Exchange within the Exchange’s system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or PITCH data receipt. The Exchange’s Multicast PITCH data feed is available from two primary feeds, identified as the “A feed” and the “C feed”, which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant fees,

identified as the “B feed” and the “D feed.” The Exchange also offers a bulk-quoting interface which allows Users <sup>6</sup> of BATS Options to submit and update multiple bids and offers in one message through logical ports enabled for bulk-quoting.<sup>7</sup> The bulk-quoting application for BATS Options is a particularly useful feature for Users that provide quotations in many different options.

Logical ports, including Multicast PITCH Spin Server and GRP ports, which are used to request and receive a retransmission of data from the Exchange, are currently subject to a fee of \$400 per month per port and ports with bulk quoting capabilities are charged \$1,500 per month per port. These fees are set and do not currently vary based on the number of ports purchased. In addition, logical port fees are limited to logical ports in the Exchange’s primary data center and no logical port fees are assessed for redundant secondary data center ports. The Exchange assesses the monthly per logical port fees for all of a Member and non-Member’s logical ports.

The Exchange now proposes to increase the fees for logical ports (including Multicast PITCH Spin Server and GRP ports) from \$400 per port per month to \$550 per port per month for the first five ports. Multicast PITCH Spin Server Ports and GRP Ports would now be subject to a fee of \$550 per month for a set of primary ports (A or C feed). The Exchange will continue to offer for free the ports necessary to receive the Exchange’s redundant Multicast “B feed” and “D feed”, as well as all ports made available in the Exchange’s secondary data center. Accordingly, this proposal only applies to ports used to receive an Exchange primary Multicast PITCH feeds at the Exchange’s primary data center. Other than as described below, the Exchange does not propose to amend the monthly fee for ports with bulk quoting capabilities.

Where a User subscribes to more than five ports, the Exchange proposes to charge for each port in excess of five \$650 per logical port per month and \$2,000 per month for logical ports with bulk quoting capabilities. For example, if a User subscribes to seven logical ports, it would pay \$550 per port per month for ports one through five and

<sup>6</sup> A User on BATS Options is either a member of BATS Options or a sponsored participant who is authorized to obtain access to the Exchange’s system pursuant to BATS Rule 11.3.

<sup>7</sup> See Securities Exchange Act Release Nos. 65133 (August 15, 2011), 76 FR 52032 (August 19, 2011) (SR-BATS-2011-029) and 65307 (September 9, 2011), 76 FR 57092 (September 15, 2011) (SR-BATS-2011-034).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78f(b)(8).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

<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> 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).

\$650 per port per month for ports six and seven. Except for bulk quoting ports, which will be separately evaluated, the Exchange will sum logical ports across all classifications in order to determine applicable fees. For example, if a User subscribes to five logical ports and one logical port with bulk quoting capabilities, that User would be charged \$550 per port per month for each logical port and \$1,500 per month for the port with bulk quoting capabilities. That User would not be charged the increased fees for its sixth ports. However, should that User subscribe to six logical ports and one logical port with bulk quoting capabilities, that User would be charged \$550 per port per month for logical ports one through five, \$650 per month for its sixth logical port, and \$1,500 per month for the port with bulk quoting capabilities.

#### 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.<sup>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</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 operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, the exchange charging

excessive fees would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

The Exchange believes that the proposal to increase fees for logical ports is equitably allocated, reasonable, and not unfairly discriminatory in that the proposal will help the Exchange to cover increasing infrastructure costs associated with offering and maintaining logical ports connections. The Exchange notes its proposal to increase the fee for logical ports equals that currently charged by the New York Stock Exchange, Inc. ("NYSE") and NYSE Arca, Inc. ("NYSE Arca").<sup>10</sup> In addition, the Exchange believes that charging different fees based on the number of ports a User subscribes to is also equitably allocated, reasonable, and not unfairly discriminatory because proposed fees based on the number of ports subscribed to would encourage Users to become more efficient with, and reduce the number of ports used, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize with respect to managing its own infrastructure. Lastly, the Exchange notes that the NYSE and NYSE Arca also previously charged different fees based on the number of ports subscribed to.<sup>11</sup>

Lastly, the Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all Members. All Members that voluntarily select various service options will be charged the same amount for the same services. All Members have the option to select any connectivity option, and there is no differentiation among Members with regard to the fees charged for the services offered by the Exchange.

<sup>10</sup> See File Nos. SR-NYSE-2015-43 (filed September 23, 2015), and SR-NYSEArca-2015-87 (filed September 22, 2015) (proposing a fee of \$550 per port per month). In addition, the charge on the NASDAQ Stock Market LLC ("NASDAQ") for a FIX Trading Port is \$550 per port per month. See NASDAQ Rule 7015. A separate charge for Pre-Trade Risk Management ports also is applicable, which ranges from \$400 to \$600 and is capped at \$25,000 per firm per month. See NASDAQ Rule 7016.

<sup>11</sup> See File Nos. SR-NYSE-2015-43 (filed September 23, 2015), and SR-NYSEArca-2015-87 (filed September 22, 2015).

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including logical port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Members and non-Members equally.

#### 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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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. If the Commission takes such action, the

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change 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 No. SR-BATS-2015-83 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 No. SR-BATS-2015-83. 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 No. SR-BATS-

2015-83, and should be submitted on or before November 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Robert W. Errett,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76124; File No. SR-NYSEArca-2015-91]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Amending the Exchange's Fee Schedule To Eliminate the Sponsor Fee In Connection With Listing a New Derivative Securities Product on the Exchange

October 9, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 5, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 8, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Schedule of Fees and Charges ("Fee Schedule") to eliminate the \$20,000 one-time consultation fee when a first time sponsor, managing owner, general partner or equivalent is listing a new Derivative Securities Product on the Exchange. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange,

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> In Amendment No. 1, the Exchange represented that, notwithstanding the elimination of the Sponsor Fee (as defined herein), the Exchange will continue to be able to fund its regulatory obligations.

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 those 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

Currently, the Exchange's Schedule of Fees and Charges ("Schedule") provides that, where a first time sponsor, managing owner, general partner or equivalent ("Sponsor") lists a new Derivative Securities Product<sup>5</sup> on the Exchange, the Sponsor is charged a one-time consulting charge of \$20,000 (the "Sponsor Fee"). The Exchange originally implemented the Sponsor Fee in 2009 to adequately compensate the Exchange for additional legal and business resources to properly advise new Sponsors through the listing process.<sup>6</sup>

The Exchange proposes to amend the Fee Schedule to eliminate the Sponsor Fee. The Exchange has determined to eliminate the Sponsor Fee to permit the Exchange to better compete for listings of Derivative Securities Products with other exchanges that do not impose a fee similar to the Sponsor Fee. Elimination of the Sponsor Fee would benefit Sponsors by providing a cost savings and by permitting them to select their listing venue for a new Derivative Securities Product based on level of service and without consideration of

<sup>5</sup> For the purposes of the Schedule, the term "Derivative Securities Products" includes securities described in NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units); 8.100 (Portfolio Depository Receipts); 8.200 (Trust Issued Receipts); 8.201 (Commodity-Based Trust Shares); 8.202 (Currency Trust Shares); 8.203 (Commodity Index Trust Shares); 8.204 (Commodity Futures Trust Shares); 8.300 (Partnership Units); 8.500 (Trust Units); 8.600 (Managed Fund Shares), and 8.700 (Managed Trust Securities).

<sup>6</sup> See Securities Exchange Act Release No. 60184 (June 29, 2009), 74 FR 32209 (July 7, 2009) (SR-NYSEArca-2009-52) (notice of filing of proposed rule change to amend the schedule of fees and changes for Exchange services).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).