

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59782; File No. SR-BATS-2009-009)

April 17, 2009

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of 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 April 14, 2009, BATS Exchange, Inc. (“BATS” or the “Exchange”) 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. BATS 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 proposes to modify its fee schedule applicable to use of the Exchange. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 15, 2009.

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).

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 modify its fee schedule applicable to use of the Exchange effective April 15, 2009, in order to make modifications to certain of the Exchange's non-standard routing charges. The Exchange proposes to charge a consistent, discounted fee for Destination Specific Orders routed to certain of the largest market centers measured by volume (NYSE, NYSE Arca and NASDAQ), which, in each instance will be \$0.0001 less per share for orders routed to such market centers by the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as "One Under" pricing). Specifically, BATS proposes to charge \$0.0017 per share for BATS + NYSE Destination Specific Orders executed at NYSE, \$0.0027 per share for BATS + NYSE ARCA Destination Specific Orders executed at NYSE Arca, and \$0.0029 per share for BATS + NASDAQ Destination Specific Orders executed at NASDAQ, while such market centers currently charge removal rates of

\$0.0018 per share, \$0.0028 per share, and \$0.0030 per share,⁵ respectively. In conjunction with this proposal, the Exchange proposes to set forth each of these fees under a new, separate heading, in order to make clear the order types to which “One Under” pricing applies. The new “One Under” pricing does not apply to securities priced below \$1.00 nor does it apply to odd lot orders routed to NYSE Arca; such order types will continue to be priced as set forth on the Exchange’s fee schedule. In addition, the Exchange will maintain the pricing currently charged by the Exchange for Destination Specific Orders sent to all other market centers that display Protected Quotations⁶ (each a “Protected Market Center”) other than the NYSE, NYSE Arca or NASDAQ.

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.⁷ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ 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 its fees and credits are competitive

⁵ This fee was announced by NASDAQ to its members on April 13, 2009, and will become effective on April 15, 2009. See NASDAQ Equity Trader Alert #2009-23.

⁶ As defined in BATS Rule 1.5(s).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

with those charged by other venues and that the changes it has proposed to provide discounted rates for routing to NYSE, NYSE Arca, and NASDAQ will benefit its Members. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(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.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the 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-2009-009 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 No. SR-BATS-2009-009. 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 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 changes 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 inspection and copying 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 also will be available for inspection and copying at the principal office of BATS. 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-2009-009 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).