

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60041; File No. SR-BATS-2009-017)

June 3, 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 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 28, 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 BATS. 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 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, as amended, 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 June 1, 2009.

The text of the proposed rule change is available at the Exchange’s website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<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).

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 June 1, 2009, in order to (i) implement pricing for its recently introduced BATS Optional Liquidity Technology (“BOLT”) program; and (ii) increase the fee charged by the Exchange for Destination Specific Orders for Tape A and C securities routed to NYSE Arca from \$0.0027 per share to \$0.0030 per share. Each of these proposals is discussed in further detail below.

(i) BOLT Pricing

On May 22, 2009, the Exchange adopted changes to BATS Rules 11.9 and 11.13 pursuant to an immediately effective rule filing that will permit the Exchange to offer both a “BATS Only BOLT Order” and a pre-routing processing method (“BOLT Routing”) that will each include an optional display period through which a marketable order will be displayed to Exchange Users (and market data recipients) for a brief period of time designated by the Exchange (the “variable BOLT display period”) for potential execution.<sup>5</sup> As explained in more detail below, with the exception of orders subject to BOLT Routing that are executed on the Exchange during the

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<sup>5</sup> See SR-BATS-2009-014 (May 22, 2009), available at [http://www.batstrading.com/regulation/rule\\_filings/](http://www.batstrading.com/regulation/rule_filings/).

variable BOLT display period, BATS Only BOLT Orders and orders subject to BOLT Routing will be charged fees and will receive rebates consistent with all other orders executed on the Exchange or routed from the Exchange to away trading centers.

BATS Only BOLT Orders in securities priced at any limit price will be treated in the same manner as other such orders submitted to the Exchange. Thus, to the extent a BATS Only BOLT Order removes liquidity from the BATS Book in securities priced \$1.00 or above it will be charged the Exchange's standard fee for removing liquidity from the BATS Book (\$0.0025 per share); to the extent a BATS Only BOLT Order adds liquidity to the BATS Book in securities priced \$1.00 or above it will receive the Exchange's standard \$0.0024 per share rebate for adding liquidity.

Similarly, BATS Only BOLT Orders in securities priced below \$1.00 will be treated in the same manner as all other such orders priced below \$1.00 submitted to the Exchange. Specifically, for executions on the Exchange, the Exchange does not propose to provide any rebates for BATS Only BOLT Orders that add liquidity to the BATS Book in securities priced below \$1.00 nor does the Exchange propose to charge a fee for BATS Only BOLT Orders that remove liquidity in securities priced below \$1.00.

Orders subject to BOLT Routing in securities priced below \$1.00 will also be treated in the same manner as all other such orders priced below \$1.00 submitted to the Exchange (i.e., no rebate and no charge). With respect to orders subject to BOLT Routing in securities priced below \$1.00 that are routed and executed at an away trading center, such orders will be charged fees applicable to all other routed orders in securities priced below \$1.00 (e.g., \$0.0020 charge per share for shares executed at a dark liquidity venue, or "DART" routing; 0.25% charge of the total dollar value for executions occurring through CYCLE or RECYCLE routing). Thus, as set forth above, the

Exchange has not proposed any changes to its fee schedule related to BATS Only BOLT Orders priced at any limit price, or orders subject to BOLT Routing in securities priced below \$1.00.

To the extent an order subject to BOLT Routing removes liquidity from the BATS Book prior to entering the variable BOLT display period in securities priced \$1.00, such order will be charged the Exchange's standard fee for removing liquidity from the BATS Book (\$0.0025 per share). In addition, orders subject to BOLT Routing in securities priced \$1.00 or above that are routed and executed at an away trading center after the variable BOLT display period will be charged the Exchange's standard routing fees. Thus, the Exchange has not proposed any changes to its fee schedule for orders subject to BOLT Routing that remove liquidity from the BATS Book or that execute after routing to an away trading center. However, with respect to orders subject to BOLT Routing that execute on the Exchange during the pre-routing variable BOLT display period, the Exchange proposes to pay Members a \$0.0015 per share rebate. The Exchange proposes to reflect this new rebate on the revised fee schedule.

As explained in the Exchange's rule filing, the Exchange expects to have technological changes in place to support the proposed rule change on or about June 5, 2009. Accordingly, although the changes to the fee schedule proposed in this filing will become operative on June 1, 2009, the fees and rebates applicable to BOLT will not be charged or paid to Members until BOLT is implemented by the Exchange.

(ii) BATS + NYSE ARCA Destination Specific Orders

The Exchange currently charges 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 is \$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). NYSE Arca recently announced an increase to its liquidity removal fee from \$0.0028 per share to \$0.0030 per share in Tape A and Tape C securities.<sup>6</sup> In order to maintain its One Under pricing with respect to Destination Specific Orders routed to NYSE Arca, BATS proposes to charge \$0.0029 per share for BATS + NYSE ARCA Destination Specific Orders executed at NYSE Arca in Tape A or Tape C securities. The Exchange’s “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 BATS + NYSE ARCA Destination Specific Orders for Tape B securities and for all other Destination Specific Orders.

## 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>7</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</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

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<sup>6</sup> See NYSE Arca Client Notice (May 19, 2009), available at [http://www.nyse.com/pdfs/NYSEArca\\_Fee\\_Notice\\_6109.pdf](http://www.nyse.com/pdfs/NYSEArca_Fee_Notice_6109.pdf).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

excessive. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

B. Self-Regulatory Organization's Statement on 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 Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> 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.

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:

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2009-017 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-BATS-2009-017. 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 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 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 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 publicly available. All submissions should refer to File Number SR-BATS-2009-017 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.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).