

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62858; File No. SR-BATS-2010-023)

September 7, 2010

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”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 2010, BATS Exchange, Inc. (“BATS” or “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 Members⁵ of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on September 1, 2010.

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).

⁵ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

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 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 proposes to modify the "equities pricing" section of its fee schedule to: (i) adopt pricing for certain new routing strategies that the Exchange recently adopted; (ii) modify its pricing for Destination Specific Orders executed at NYSE Arca; (iii) eliminate a currently dormant market data product from its fee schedule; and (iv) change the name of one of its routing strategies. In addition, the Exchange proposes to modify fees applicable to options trading by eliminating certain clearing fees that it currently passes on to its Members.

(i) Adoption of Fees for New Parallel Routing Strategies

The Exchange recently adopted rules permitting it to offer certain new routing strategies, and plans on offering such routing strategies in the near future.⁶ Accordingly, the Exchange

⁶ See Securities Exchange Act Release No. 62404 (June 30, 2010), 75 FR 39303 (July 8, 2010) (SR-BATS-2010-017).

proposes to adopt fees applicable to such routing strategies. As proposed, the Exchange will offer both Parallel D and Parallel 2D routing at the same rate as it offers its CYCLE and RECYCLE routing strategies.⁷ Specifically, the Exchange proposes to charge \$0.0028 per share for executions that occur at other trading venues as a result of either Parallel D or Parallel 2D routing. The Exchange proposes to offer its Parallel T routing strategy with a charge of \$0.0033 per share for executions that occur at other trading venues as a result of such routing. To be consistent with these proposed fees and the current fee structure for CYCLE and RECYCLE routed executions, the Exchange proposes to charge 0.28% of the total dollar value of the execution for any security priced under \$1.00 per share that is routed away from the Exchange through Parallel D or Parallel 2D. Similarly, and based on the charge of \$0.0033 per share for Parallel T routing, the Exchange proposes to charge 0.33% of the total dollar value of the execution for any security priced under \$1.00 per share that is routed away from the Exchange through Parallel T.

(ii) NYSE Arca Destination Specific Orders

The Exchange proposes to modify its fee schedule applicable to use of the Exchange in order to amend the fees for its BATS + NYSE Arca destination specific routing option to continue to offer a “one under” pricing model. The Exchange has previously provided a discounted price 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 has been \$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). Based on changes in pricing at NYSE Arca, BATS is proposing a change to its

⁷ See Rule 11.13(a)(3).

price for BATS + NYSE Arca Destination Specific Orders to align its fees so they are \$0.0001 less per share for orders routed to NYSE Arca. Specifically, the Exchange proposes to increase the fee charged for BATS + NYSE Arca Destination Specific Orders executed at NYSE Arca in Tape A and C securities from \$0.0028 to \$0.0029 per share.

(iii) Deletion of Data Product

In order to avoid confusion, the Exchange proposes to delete a reference on its fee schedule to a specific data product that it is not currently offering. Earlier this year, the Exchange proposed and received approval to offer certain market data products for a fee for the first time. Market Insight was one such product proposed and approved to be offered by the Exchange. However, the Exchange has decided not to offer this product at this time, and thus, proposes deletion of reference to the product from its fee schedule to avoid confusion. If the Exchange does decide to offer Market Insight as approved, it will provide notice to its Members and will file a rule proposal to reinstate reference to Market Insight on its fee schedule.

(iv) Name Change of Routing Strategy

The Exchange has decided to re-brand one of its routing strategies, currently referred to as “DART,” as the “Dark Routing Technique” or “DRT”. Accordingly, the Exchange proposes modification of the “DART” acronym throughout the fee schedule to “DRT”.

(v) Options Clearing Charges

The Exchange currently charges \$0.05 per contract for its standard options routing service and \$0.10 per contract for Directed ISOs routed to away markets, and, in addition, passes through all destination exchange fees for executions at away markets. Effective June 1, 2010, the Exchange began passing through to Options Members, in addition to destination exchange

fees, the actual clearing fees billed to the Exchange for the execution of orders routed from the Exchange. The Exchange proposes to eliminate the clearing fee pass through charge, both to simplify pricing of its routing services and to encourage Options Members to utilize the Exchange's routing services.

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.⁸ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ 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 with those charged by other venues. 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.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

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 Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ 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 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 e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2010-023 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-BATS-2010-023. 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 website (<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 website 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 will also 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-2010-023 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

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

Elizabeth M. Murphy
Secretary

¹² 17 CFR 200.30-3(a)(12).