SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64847; File No. SR-BATS-2011-019)

July 8, 2011

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 July 1, 2011, 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[3] 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 amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

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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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In addition to minor structural changes, the Exchange proposes to modify the fee schedule to: (i) increase the standard fee to access the Exchange; (ii) introduce a tiered pricing structure applicable to the rebate for adding displayed liquidity to the Exchange's order book, including the adoption of definitions relating to such pricing structure; (iii) adopt a program, the "NBBO Setter Program," which will provide an additional rebate specifically for orders that set the national best bid or offer (the "NBBO"), subject to average daily volume requirements; (iv) reduce the rebate for adding non-displayed liquidity to the Exchange's order book; (v) discontinue payment of a liquidity rebate for non-displayed orders that add liquidity to the Exchange and receive price improvement when executed; (vi) increase the standard routing fee

for the CYCLE, RECYCLE, Parallel D and Parallel 2D routing strategies;[6] and (vii) make other modifications to certain other non-standard routing options and strategies.

(i) Increase to Standard Access Fee

The Exchange currently charges $0.0028 per share for all orders executed on the Exchange that remove liquidity from the Exchange. The Exchange proposes to increase the standard fee to remove liquidity from the Exchange to $0.0029 per share. Consistent with the current fee to remove liquidity, the charge per share for executions that remove liquidity from the Exchange will not apply to executions that remove liquidity in securities priced under $1.00 per share. The fee for such executions will remain at 0.10% of the total dollar value of the execution. Similarly, as is currently the case for the rebate for adding liquidity to the Exchange, there will be no liquidity rebate for adding liquidity in securities priced under $1.00 per share.

(ii) Tiered Rebate Structure

The Exchange currently rebates $0.0027 per share for orders that add displayed liquidity to the Exchange's order book and are executed by the Exchange. The Exchange proposes to decrease the standard rebate for adding displayed liquidity to $0.0025 per share and to simultaneously adopt two volume-based tiers through which Members can realize higher rebates for adding displayed liquidity, as further described below.

First, the Exchange proposes to provide a rebate of $0.0029 per share for orders that add displayed liquidity to the Exchange's order book for any Member that has an average daily volume ("ADV"), as defined below, equal to or greater than 1.0% of total consolidated volume ("TCV"), also as defined below. Accordingly, the proposal will result in an increased rebate of $0.0002 for Members with an ADV of 1.0% of TCV or more.

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[6] As defined in BATS Rule 11.13.

Second, the Exchange proposes to provide a rebate of $0.0027 per share for orders that add displayed liquidity to the Exchange's order book where the Member has an ADV equal to or greater than 0.5% but less than 1.0% of average TCV. Thus, Members qualifying for the second tier will receive the same rebate for adding displayed liquidity as they do today.

In addition, the Exchange proposes to adopt definitions for both ADV and TCV. For purposes of the fee schedule, the proposed definition of ADV is average daily volume calculated as the number of shares added or removed, combined, per day on a monthly basis. The Exchange proposes to make clear in the definition of ADV that routed shares are not included in the Exchange's calculation of ADV, but rather, only volume executed on the Exchange counts towards a Member's ADV. The Exchange also proposes to allow affiliated entities to aggregate their order flow for purposes of the Exchange's determination of ADV with respect to pricing tiers if such entities provide prior notice to the Exchange. Specifically, to the extent two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such Members to count overall volume of the affiliates in calculating ADV. The Exchange will verify such affiliate using a Member's Form BD, which lists control affiliates.

Rather than basing its pricing structure on a static number of shares executed by a Member each day, the Exchange proposes to adopt its tiered pricing structure such that it is based on total consolidated volume, or TCV, and is thus variable based on overall volumes in the securities industry. As proposed, TCV is defined as 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. To illustrate the Exchange's application

of TCV, if the overall volume of securities traded as reported by all exchanges and trade reporting facilities is 100 billion shares in a given month, this amount will be used as the TCV against which the Exchange's tiered pricing will be measured for all trading activity during the month. The amount of overall TCV in the month will be divided by the number of trading days to determine average TCV; for instance, 100 billion shares divided by 20 trading days is an average TCV of 5 billion shares per day. Using these volumes as an example, to reach the Exchange's proposed tier of 1.0% of average TCV, and thus qualify for the higher rebate of $0.0029 per share, a Member would need to have an ADV of at least 50 million shares traded on the Exchange per day. If, in the next month, volumes doubled, and the TCV for the month was 200 billion shares, then a Member would need to have an ADV of at least 100 million shares traded on the Exchange per day to have an ADV equal to 1.0% of average TCV. The Exchange believes that basing its tiered pricing on TCV rather than a specific number of shares is a preferable measure of overall activity given the fluctuation of volumes in the securities industry.

In conjunction with the adoption of these definitions, the Exchange proposes to move, but not to otherwise modify, the footnote on the Exchange's current fee schedule defining "non-displayed order types" as well as footnotes in the portion of the Exchange's fee schedule applicable to BATS Options (as defined below) and physical connection charges.

(iii) NBBO Setter Program

Consistent with programs offered by the Exchange for its equity options platform ("BATS Options")[7] and by the Exchange's affiliated exchange, BATS Y-Exchange, Inc.

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[7] See Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR-BATS-2010-038) (adopting an NBBO Setter Rebate for BATS Options); see also Securities Exchange Act Release No. 64211 (April 6, 2011), 76 FR 20414 (April 12, 2011) (SR-BATS-2011-012) (modifying the NBBO Setter Program for BATS Options to include a volume requirement based on TCV).

(“BYX”),[8] the Exchange proposes to adopt a program to attract aggressively priced displayed liquidity by providing an additional rebate for orders that set the NBBO to Members that reach either of the volume-based rebate tiers described above. Specifically, the Exchange proposes to provide any Member with an ADV equal to or greater than 0.5% of TCV with an additional rebate of $0.0002 per share for displayed liquidity that sets the NBBO and is later executed on the Exchange.

An order that is entered at the most aggressive price both on the Exchange’s order book and according to then current consolidated data from the applicable securities industry processor (“SIP”) will be determined to have set the national best bid or offer for purposes of the NBBO Setter Program without regard to whether a more aggressive order is entered prior to the original order being executed.

(iv) Reduction of Rebate for Non-Displayed Orders

As defined on the Exchange’s current fee schedule, “non-displayed liquidity” includes liquidity resulting from all forms of Pegged Orders,[9] Mid-Point Peg Orders,[10] and Non-Displayed Orders,[11] but does not include liquidity resulting from Reserve Orders[12] or Discretionary Orders.[13] The Exchange currently provides a rebate of $0.0020 per share for non-displayed orders executed on the Exchange. Consistent with other aspects of this proposal that

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8 See Securities Exchange Act Release No. 64429 (May 6, 2011), 76 FR 27694 (May 12, 2011) (SR-BYX-2011-008) (adopting an NBBO Setter Rebate for BYX).

9 As defined in BATS Rule 11.9(c)(8).

10 As defined in BATS Rule 11.9(c)(9).

11 As defined in BATS Rule 11.9(c)(11).

12 As defined in BATS Rule 11.9(c)(1).

13 As defined in BATS Rule 11.9(c)(10).

are intended to incent aggressively priced, displayed liquidity, the Exchange proposes to reduce the rebate that it provides for non-displayed orders to $0.0017 per share.

(v) Discontinued Rebate for Non-Displayed Price Improved Orders

As noted above, the Exchange currently provides a liquidity rebate of $0.0020 per share for all non-displayed orders that add liquidity to the Exchange's order book and are executed by the Exchange. The Exchange recently received approval of a rule to allow non-displayed orders that are not executable at their most aggressive price to be executed at one-half minimum price variation less aggressive than that price.[14] Accordingly, such non-displayed orders will receive price improvement upon execution. Because such orders will receive price improvement, the Exchange proposes to execute the orders without providing either a liquidity rebate or charging a fee. The Exchange believes that price improvement received for executions of non-displayed orders (rather than price improvement and a liquidity rebate) is appropriate because the price improvement received will offset the change in the fee structure for such orders.

(vi) Increase to Fee for Standard Best Execution Routing Strategies

The Exchange proposes to modify the fee charged by the Exchange for its CYCLE, RECYCLE, Parallel D and Parallel 2D routing strategies from $0.0028 per share to $0.0029 per share. To be consistent with this change, the Exchange proposes to charge 0.29%, rather than 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 these strategies.

(vii) Other Modifications to Non-Standard Routing Rates

Various market centers, including the Exchange's affiliate, BYX, are implementing certain pricing changes effective July 1, 2011. The Exchange proposes various changes to its

[14] See Securities Exchange Act Release No. 64754 (June 27, 2011) (SR-BATS-2011-015).

routing strategies in connection with such changes so that fees charged and rebates provided reflect a direct pass-through of the fee charged or rebate received when routing directly to such market centers. For instance, the Exchange's affiliate, BYX, is reducing the rebate paid for shares removed from BYX from $0.0003 per share to $0.0002 per share. Accordingly, the Exchange proposes to modify its Destination Specific Order[15] to BYX, as well as its TRIM[16] and SLIM[17] routing strategies with respect to any executions at BYX, to pay a rebate of $0.0002 per share. The Exchange also proposes to modify its TRIM routing strategy to reflect the exact rate paid or assessed for executions at NASDAQ BX and EDGA Exchange, respectively. The Exchange currently identifies both of these venues as "low priced venues" and the Exchange does not charge or rebate its Members for orders routed to and executed by such venues. As proposed, the Exchange will pass on rebates that are paid by these venues in full. Specifically, the Exchange proposes to rebate $0.0014 per share for TRIM routed orders executed at NASDAQ BX, as this is the same rate paid by NASDAQ BX and is thus a direct pass-through. Similarly, the Exchange proposes to rebate $0.00015 per share for TRIM routed orders executed at EDGA Exchange, as this is, again, a direct pass-through of the rebate provided by EDGA Exchange.

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.[18] Specifically, the

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15 As defined in BATS Rule 11.9(c)(12).

16 As defined in BATS Rule 11.13(a)(3)(G).

17 As defined in BATS Rule 11.13(a)(3)(H).

18 15 U.S.C. 78f.

Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[19] 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 changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating incentives to providing aggressively priced displayed liquidity. While Members that remove liquidity from the Exchange and/or route orders through the Exchange's standard routing strategies will be paying higher fees due to the proposal, the increased revenue received by the Exchange will be used to fund programs that the Exchange believes will attract additional liquidity and thus improve the depth of liquidity available on the Exchange. Accordingly, the Exchange believes that the higher access and routing fees will benefit Members' results in trading on the Exchange to the extent the tiered rebate structure adopted by the Exchange for adding liquidity and the adoption of the NBBO Setter Program incentivize liquidity providers to provide more aggressively priced liquidity.

The Exchange believes that basing its tiered rebate structure on overall TCV, rather than a static number irrespective of overall volume in the securities industry, is a fair and equitable approach to pricing. Volume-based tiers such as the liquidity rebate tiers proposed in this filing have been widely adopted in the equities markets, and are equitable and not unreasonably discriminatory because they are open to all members on an equal basis and provide rebates that

[19] 15 U.S.C. 78f(b)(4).

are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is not unreasonably discriminatory because it is consistent with the overall goals of enhancing market quality.

The proposed modification to the Exchange's rebate structure will have variable affects on Members of the Exchange, dependent on the volume of transaction activity they conduct on the Exchange. The Exchange notes that Members with current volumes meeting the ADV tier of 0.5% to 1.0% of TCV will not be impacted by any decrease in rebates. Further, Members with current volumes equal to or exceeding 1.0% of TCV will receive larger rebates than they currently receive. Despite the decrease in rebate for all other Members, the Exchange believes that its proposed fee structure is fair and equitable as the Exchange's standard rebate still remains higher than standard rebates paid by other markets with similar fee structures, such as NYSE Arca and Nasdaq.

The proposed language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. By way of example, many firms that are Members of the Exchange operate several different business lines within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access the Exchange. Absent the proposed policy, such corporate

affiliates would not receive the same treatment as firms operating similar business lines within a single entity that is a Member of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

Additionally, the Exchange believes that the proposed NBBO Setter Rebate, similar to rebates now offered on BATS Options for six months and on the Exchange's affiliate, BYX, for two months, will incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors. The Exchange further believes that conditioning a Member's ability to receive the NBBO Setter Rebate on reaching one of the Exchange's volume tiers is consistent with the Act for the reasons described above with respect to volume-based tiers generally.

The Exchange believes that the elimination of a rebate for executions of non-displayed orders that receive price improvement is appropriate because the price improvement received will offset the change in the fee structure for such orders. The Exchange believes that if it provided both a rebate and price improvement for such executions the Exchange would be overly incentivizing hidden liquidity, which is contrary to the goals of this proposal. Further, the Exchange believes that reducing the standard rebate for non-displayed liquidity is beneficial to market participants including public investors, as this change, too, allows the Exchange to provide additional incentives for displayed liquidity.

Finally, the Exchange believes that the proposed changes to the Exchange's non-standard routing fees and strategies are competitive, fair and reasonable, and non-discriminatory in that

they are designed to mirror the cost and/or rebate applicable to the execution if such routed orders were executed directly by the Member at each away market.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act[20] and Rule 19b-4(f)(2) thereunder,[21] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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:

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20 15 U.S.C. 78s(b)(3)(A)(ii).

21 17 CFR 240.19b-4(f)(2).

- 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-2011-019 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-2011-019. 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-2011-019 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.[22]

Cathy H. Ahn
Deputy Secretary

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[22] 17 CFR 200.30-3(a)(12).