SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71041; File No. SR-BATS-2013-061)

December 11, 2013

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.

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 December 2, 2013, 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 filed a proposal to 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

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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 fee schedule pursuant to this proposal will be effective upon filing.

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.

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 pricing charged by the Exchange's options platform ("BATS Options") for orders routed away from the Exchange and executed at the International Securities Exchange, LLC ("ISE") and the NASDAQ OMX PHLX LLC ("PHLX").

Background

The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (i.e., clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, "Routing Costs"). To address different fees at various other options exchanges, the

Exchange in most instances differentiates between either securities subject to the options penny pilot program ("Penny Pilot Securities") and non-Penny Pilot Securities or between "Make/Take issues" and "Classic issues." As set forth on the Exchange's fee schedule, pricing in Make/Take issues is for executions at the identified exchange under which rebates to post liquidity (i.e., "Make") are credited by that exchange and fees to take liquidity (i.e., "Take") are charged by that exchange; pricing in Classic issues applies to all other executions at such exchanges.

ISE Routing Fees

The Exchange currently charges $0.30 per contract for Customer[6] orders and $0.57 per contract for Professional,[7] Firm, and Market Maker[8] orders executed at ISE in Make/Take issues. Based on execution fees charged by ISE, which currently exceed the fee charged for Customer orders even without taking other Routing Costs into consideration, the Exchange proposes to increase fees for Customer orders routed to and executed at ISE in Make/Take issues. Specifically, the Exchange proposes to charge $0.52 per contract for Customer orders executed at ISE in Make/Take issues. This is the same fee charged for executions in Penny Pilot Securities for Customer orders routed to and executed at the Topaz Exchange, LLC ("ISE Gemini"), the NASDAQ Options

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6 As defined on the Exchange's fee schedule, a "Customer" order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation ("OCC"), except for those designated as "Professional".

7 The term "Professional" is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

8 As defined on the Exchange's fee schedule, the terms "Firm" and "Market Maker" apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation ("OCC").

Market ("NOM"), and NYSE Arca, Inc. ("ARCA"). Also, for consistency with such other markets, because the ISE's pricing model is now clearly differentiated between Penny Pilot Securities and non-Penny Pilot Securities, the Exchange proposes to change the references for such pricing from Make/Take pricing to Penny Pilot Security pricing.

The Exchange does not propose any change to the fee of $0.57 per contract for Professional, Firm, and Market Maker orders executed at ISE other than to re-designate such pricing as applicable to Penny Pilot Securities rather than Make/Take issues. The Exchange also proposes to change the references for ISE pricing in Classic issues to refer to pricing in non-Penny Pilot Securities. The Exchange is not proposing any changes to the actual pricing for orders executed at ISE in non-Penny Pilot Securities, which will remain at $0.11 per contract for Customer orders and $0.57 per contract for Professional, Firm, and Market Maker orders.

PHLX Routing Fees

The Exchange currently charges $0.11 per contract for Customer orders and $0.57 per contract for Professional, Firm, and Market Maker orders routed to and executed at PHLX in both Classic and Make/Take issues. Based on changes to pricing at PHLX that will set the fee to remove liquidity in options overlying the SPDR® S&P 500® exchange-traded fund ("SPY") for all participants at $0.45 per contract effective December 2, 2013, the Exchange proposes to increase its fees for all Customer orders routed to and executed at PHLX from $0.11 to $0.45 per contract. The Exchange believes that this increase will allow it to cover applicable Routing Costs for all Customer orders routed to and executed at PHLX, as further described below. Effective December 2, 2013, PHLX also adopted increased rates to remove liquidity in Classic issues to $0.60

per contract. Based on this increase for Routing Costs for Professional, Firm, and Market Maker orders routed to and executed at PHLX in Classic issues, the Exchange proposes to increase the routing rate for all Professional, Firm, and Market Maker orders from $0.57 to $0.65 per contract. The Exchange believes that this increase will allow it to cover applicable Routing Costs for all Professional, Firm, and Market Maker orders routed to and executed at PHLX.

The Exchange notes that while the Exchange will be charging significantly more for certain Customer orders routed to and executed at PHLX than the PHLX charges directly for such Customer orders, in other instances the Exchange will be charging less than the total Routing Costs incurred by the Exchange for routing Customer orders to PHLX, namely in the most actively traded options contract, SPY. Because options on SPY account for a significant amount of volume routed to away markets (as well as executed on the Exchange), the Exchange does not want to charge less than the actual fee for executions of SPY options on PHLX. Also, in order to continue to maintain a relatively simple routing table and fee schedule, the Exchange does not want to charge a routing fee specific to one underlying security at this time. Similarly, with respect to Professional, Firm, and Market Maker orders, the Exchange's proposal to charge $0.65 per contract for all such orders will allow the Exchange to cover its Routing Costs for such orders routed to PHLX while also maintaining a simple pricing structure.

As it has done before, despite identical fees, the Exchange is maintaining separate references to Make/Take and Classic pricing for orders routed to and executed PHLX because it believes that participants that are accustomed to this distinction will be less confused if it continues to separately list each category.

The Exchange currently charges $0.60 per contract for Directed ISOs routed and executed at away destinations, with the exception of: (i) Directed ISOs in Mini Options, for which the Exchange charges $0.15 per contract; and (ii) in the following situations, for which the Exchange charges $0.95 per contract: (1) orders in non-Penny Pilot Securities executed at NOM, ARCA and ISE Gemini; (2) Professional, Firm and Market Maker orders executed at BX Options in non-Penny Pilot Securities; and (3) Professional, Firm and Market Maker orders executed at C2. In order to cover anticipated Routing Costs for such orders taking recent PHLX pricing changes into account, the Exchange proposes to charge $0.95 per contract for Professional, Firm, and Market Maker orders if such orders are Directed ISOs routed to and executed at PHLX.

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.[9] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] 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 or providers of routing services if they deem fee levels to be excessive.

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9 15 U.S.C. 78f.

10 15 U.S.C. 78f(b)(4).

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to modify fees to ISE and PHLX is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or slight loss for orders routed to and executed at both ISE and PHLX. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange also believes that the proposed fee structure for orders routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

As explained above, other than Directed ISOs sent to ISE and PHLX that are Customer orders, for which pricing remains unchanged, the Exchange has proposed to charge increased fees for Customer orders routed to ISE and for all orders routed to PHLX. The Exchange believes that the proposed fee structure for Customer orders routed to and executed at ISE is fair, equitable and reasonable because the fees are an approximation of the cost to the Exchange for routing such orders and will allow the Exchange to recoup and cover the costs of providing routing services to ISE. The

Exchange also believes that the proposed fee structure for Customer orders routed to and executed at ISE is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members. The Exchange also believes that the change of references for ISE routing pricing from Classic and Make/Take to non-Penny Pilot Securities and Penny Pilot Securities is consistent with the Act because this change is consistent with the current ISE pricing structure.

Consistent with the Exchange's general approach to routing fees, as described above, the Exchange believes that maintaining a simple routing table with respect to orders routed to PHLX despite recent changes by PHLX that will increase overall Routing Costs to the Exchange is also a fair and equitable approach to pricing. While the Exchange has proposed to maintain reference to both Classic and Make/Take pricing with respect to PHLX routing fees, the Exchange's proposal will actually maintain a single routing fee for all Customer orders executed at PHLX and a single routing fee for all Professional, Firm, and Market Maker orders executed at PHLX. The Exchange believes that this simple routing structure is fair, equitable and reasonable for the reasons describe above, including the certainty it provides market participants that choose to utilize the Exchange's routing services. The Exchange also believes that the proposed fee structure for orders routed to and executed at PHLX is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange has also proposed an increased fee for Directed ISOs routed to and executed at PHLX to the extent such orders are Professional, Firm, or Market Maker orders. This increase is proposed because without adjustment, the Routing Costs incurred by the Exchange for Directed ISOs in certain securities sent on behalf of Professional, Firm, and Market Maker participants to PHLX would exceed the fee charged by the Exchange for Directed ISOs. The Exchange believes that the proposed fee structure for Directed ISOs routed to and executed at PHLX is fair, equitable and reasonable because the fees are an approximation of the cost to the Exchange for routing such orders and will allow the Exchange to recoup and cover the costs of providing routing services to PHLX. The Exchange also believes that the proposed fee structure for Directed ISOs routed to and executed at PHLX is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange reiterates 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 to be excessive or providers of routing services if they deem fee levels to be excessive. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit or loss from routing to either ISE or PHLX.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants in a manner that is a better approximation of actual costs than is currently in place and that reflects recent pricing changes by such options exchanges. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[11] As stated above, 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 to be excessive or providers of routing services if they deem fee levels to be excessive.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b-4 thereunder.[13] 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.

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11 See BATS Rule 21.1(d)(8) (describing "BATS Only" orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

12 15 U.S.C. 78s(b)(3)(A).

13 17 CFR 240.19b-4(f).

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-2013-061 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-2013-061. 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 am and 3:00 pm. 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-2013-061 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.[14]

Kevin M. O'Neill
Deputy Secretary

[14] 17 CFR 200.30-3(a)(12).