

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71140; File No. SR-BATS-2013-063)

December 19, 2013

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 9, 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<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 from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

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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).

<sup>5</sup> 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 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 purpose of the proposed rule change is to modify the "Equities Pricing" section of its fee schedule effective December 9, 2013, in order to temporarily amend the way that the Exchange calculates rebates for adding liquidity to the Exchange. Specifically, the Exchange is proposing to exclude odd lot executions from the calculation of average daily TCV, as defined below, as it relates to "Equities Pricing" until February 1, 2014.

The Exchange currently offers a tiered structure for determining the rebates that Members receive for executions that add liquidity to the Exchange. Under the tiered pricing structure, the Exchange provides different rebates to Members based on a Member's ADAV or ADV<sup>6</sup> as a

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<sup>6</sup> As provided in the "Equities Pricing" section of the fee schedule, "ADAV" means average daily added volume calculated as the number of shares added and "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis, excluding shares added or removed on any day that trading is not available on the Exchange for more than 60

percentage of average daily TCV,<sup>7</sup> as well as a possible additional rebate where a Member's order sets or joins the NBBO and that Member meets or exceeds a certain threshold of ADAV or ADV as a percentage of average daily TCV. The Exchange notes that it is not proposing to modify any of the existing rebates or the percentage thresholds at which a Member may qualify for certain rebates. Rather, as mentioned above, the Exchange is proposing to modify the "Equities Pricing" section of its fee schedule in order to temporarily exclude odd lot executions from the calculation of average daily TCV.

The Exchange is proposing to exclude odd lot executions from the calculation of average daily TCV through January 31, 2014 because recent amendments to the Consolidated Tape Association and NASDAQ UTP Plans<sup>8</sup> require that odd lots be reported to the consolidated tape. Beginning on December 9, 2013, exchanges and trade reporting facilities are required to report odd lot executions to the consolidated transaction reporting plan and, as currently defined, odd lots would be included in the calculation of TCV. As such, the Exchange is proposing to amend the definition of TCV in order to exclude odd lots from the calculation of TCV until January 31, 2014. When calculating ADAV or ADV as a percentage of TCV, the Exchange has historically

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minutes during regular trading hours but continues on other markets during such time ("Exchange Outage") and on the last Friday in June (the "Russell Reconstitution Day"). Routed shares are not included in ADAV or ADV calculation. With prior notice to the Exchange, a Member may aggregate ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD).

<sup>7</sup> As provided in the "Equities Pricing" section of the fee schedule, "TCV" means 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, excluding any day that the Exchange experiences an Exchange Outage and the Russell Reconstitution Day.

<sup>8</sup> Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05); Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7-24-89).

included odd lots in the Member's ADV and ADAV, but excluded them from TCV since they have not been included in the trades reported to consolidated transaction reporting plans.

Accordingly, the proposal intends to exclude odd lots from TCV for the first two billing cycles in which odd lots are reported to the consolidated transaction reporting plans in order to create a period during which odd lot reporting behavior can be observed without affecting the rebates for which a Member will qualify. The Exchange believes that excluding such odd lots will help to eliminate uncertainty faced by Members as to their monthly ADAV or ADV as a percentage of average daily TCV because of the additional reported volume and the rebates that this percentage will qualify for, providing Members with an increased certainty as to their monthly cost for trades executed on the Exchange. Further, excluding such odd lots through January 31, 2014 will allow the Exchange to evaluate the impact that odd lot orders would have on Member rebates.

## 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>9</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>10</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 structures at a particular venue to be unreasonable and/or excessive.

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

With respect to the proposed changes to the tiered pricing structure for adding liquidity to the Exchange, the Exchange believes that its proposal is reasonable because, as explained above, it will help provide Members with a greater level of certainty as to their level of rebates for December and January. The Exchange also believes that its proposal is reasonable because it is not changing the thresholds to become eligible or the dollar value associated with the rebates and, moreover, by continuing to exclude odd lots from the calculation of average daily TCV, Members will be more likely to meet the minimum or higher tier thresholds for December and January, which will provide additional incentive to Members to increase their participation on the Exchange in order to meet the next tier. In addition, the Exchange believes that the proposed changes to fees are equitably allocated among Exchange constituents as the methodology for calculating ADV and TCV will apply equally to all Members.

Volume-based tiers such as the liquidity adding tiers maintained by the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that 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 equitably allocated and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

**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 help the Exchange to continue to incentivize higher levels of liquidity at a tighter

spread while providing more stable and predictable costs to its Members. 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 structures to be unreasonable or 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<sup>11</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>12</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2013-063 on the subject line.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

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-2013-063. 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 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 available publicly. All submissions should refer

to File Number SR-BATS-2013-063 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).