SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72376; File No. SR-BATS-2014-021)

June 12 , 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to 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 May 30, 2014, 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 the fee schedule pursuant to this proposal are 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 defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

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 aspects of such statements.

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

1. Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule effective immediately, in order to amend a rebate and add two new tiers for Customer[6] orders that add liquidity to the Exchange's options platform ("BATS Options") in options classes subject to the penny pilot program ("Penny Pilot Securities").[7] More specifically, the Exchange is proposing to amend the fee schedule as follows: (i) lower the standard rebate for Customer orders that add liquidity in Penny Pilot Securities; (ii) introduce a new tier for Customer orders that add liquidity in Penny

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 Exchange currently charges different fees and provides different rebates depending on whether an options class is an options class that qualifies as a Penny Pilot Security pursuant to Exchange Rule 21.5, Interpretation and Policy .01 or is a non-penny options class.

Pilot Securities; and (iii) introduce a new cross-asset tier for Customer orders that add liquidity in Penny Pilot Securities.

The Exchange currently provides rebates for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities pursuant to a tiered pricing structure, as described below, including a cross-asset tier, which provides enhanced rebates to Members that meet certain volume thresholds on both BATS Options and the BATS equities trading platform ("BATS Equities"). The Exchange currently offers the following rebates per contract for a Customer order that adds liquidity in Penny Pilot Securities to the BATS Options order book: (i) $0.45 where the Member does not qualify for any additional rebates (the "Lower Tier"); (ii) $0.48 where the Member has an ADV[8] equal to or greater than 0.30% of average TCV,[9] but less than 1.00% of average TCV ("Second Tier"); (iii) $0.50 where the Member has an ADV equal to or greater than 0.90% of average TCV and has on BATS Equities an ADAV[10] equal to or greater than

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8 As provided in the fee schedule, for purposes of BATS Options pricing, "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day. ADV is calculated on a monthly basis, excluding contracts added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption"). The fee schedule also provides that routed contracts are not included in ADV calculation.

9 As provided in the fee schedule, for purposes of BATS Options pricing, "TCV" is total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption.

10 As provided in the fee schedule, for purposes of BATS Equities pricing, "ADAV" means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis, excluding routed shares as well as shares added on any day that the Exchange experiences an Exchange System Disruption and on the last Friday in June (the "Russell Reconstitution Day").

0.25% of average TCV ("Cross-Asset Tier");[11] and (iv) $0.50 where the Member has an ADV equal to or greater than 1.00% of average TCV.

The Exchange is proposing to reduce the per contract rebate for the Lower Tier from $0.45 to $0.25. The Exchange is also proposing to create a new tier between the Lower Tier and the Second Tier in which a Member that has an ADV equal to or greater than 0.05% of average TCV, but less than 0.30% of average TCV will receive $0.45 per contract, the same rebate previous available in the Lower Tier. Finally, the Exchange is proposing to add an additional cross-asset tier in which a Member will receive $0.50 per contract where the Member has an ADV equal to or greater than 0.80% of average TCV and has on BATS Equities an ADAV equal to or greater than 0.50% of average TCV (the "New Cross-Asset Tier").

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on June 2, 2014.

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.[12] Specifically, the Exchange believes that the proposed rule change is consistent

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11 As provided in the fee schedule, for purposes of BATS Equities pricing, "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 volume on any day that the Exchange experiences an Exchange System Disruption or the Russell Reconstitution Day.

12 15 U.S.C. 78f.

with Section 6(b)(4) of the Act,[13] 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.

Volume-based rebates and fees such as the ones maintained by BATS Options, and as amended by this proposal, have been widely adopted in the cash equities markets, and are reasonable and equitable because they are open to all Members on an equal basis and provide additional benefits or discounts 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/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. Accordingly, the Exchange believes that the proposed changes to the Exchange's tiered pricing structure and incentives are not unfairly discriminatory because they are consistent with the overall goals of enhancing market quality. Similarly, the Exchange believes that continuing to base its tiered fee structure on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing.

The Exchange notes that while the rebate for the Lower Tier is being reduced (from $0.45 to $0.25 per contract) such proposed new rebate is reasonable, fair and equitable in that it is the same as the rebate offered by NYSE Arca, Inc. and is $0.05

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13 15 U.S.C. 78f(b)(4).

greater than rebate offered by the Nasdaq Stock Market LLC for Customer orders that add liquidity in Penny Pilot Securities that do not meet any other volume tiers. Further, the Exchange believes the reduction of the rebate for the Lower Tier is reasonable, fair and equitable because the Exchange is also proposing to introduce a new volume tier between the Lower Tier and the Second Tier with a relatively low volume threshold, where a Member will receive a $0.45 rebate per contract for Customer orders in Penny Pilot Securities where the Member has an ADV equal to or greater than 0.05% of average TCV. Thus, all Members with an ADV equal to or greater than 0.05%, but less than 0.30% of average TCV will receive the same rebate that they would have previously received pursuant to the Lower Tier for Customer orders that add liquidity in Penny Pilot Securities. The Exchange also believes that the new volume tier between the Lower Tier and Second Tier is reasonable, fair and equitable because it will encourage Members to add liquidity on BATS Options and because such Members will qualify for rebates pursuant to the new volume tier at a relatively low volume threshold. The Exchange further believes that the proposed amendment to rebates for the Lower Tier and the addition of a new tier between the Lower Tier and the Second Tier are fair and equitable and not unreasonably discriminatory because they will apply uniformly to all Members and are consistent with the overall goal of enhancing market quality on BATS Options as described above with respect to volume-based rebates and fees.

The Exchange's proposed New Cross-Asset Tier is reasonable, fair and equitable because it provides additional flexibility for Members to receive the highest possible rebate for Customer orders that add liquidity in Penny Pilot Securities. Compared to the Cross-Asset Tier, Members must meet a lower threshold on BATS Options (0.80% vs.

0.90%), but a higher threshold for BATS Equities (0.50% vs. 0.25%) in order to qualify for the New Cross-Asset Tier rebate of $0.50. Thus, the Exchange believes that the New Cross-Asset Tier is reasonable, fair and equitable because it will provide Members with a different volume profile on BATS Options and BATS Equities with the opportunity to qualify for the $0.50 per contract rebate, while simultaneously encouraging more Members to add liquidity on both BATS Equities and BATS Options. Further, the Exchange believes that the addition of the New Cross-Asset Tier is fair and equitable and not unreasonably discriminatory because it is consistent with the overall goal of enhancing market quality on BATS Options and BATS Equities as described above with respect to volume-based rebates and fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. With respect to the proposed new tiers and rebates, the Exchange does not believe that any such changes burden competition, but instead, enhance competition, as they are intended to increase the competitiveness of and draw additional volume to BATS Options, and, in the case of the New Cross-Asset Tier, also to BATS Equities. The Exchange also believes that the changes to the tiers as a whole will enhance competition because they are similar to pricing tiers currently available on other exchanges. 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 the deem fee structures to be unreasonable or excessive. As such, the proposal is a competitive proposal that is intended to add additional liquidity to the Exchange, which will, in turn, benefit the Exchange and all Exchange participants.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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)(ii) of the Act[14] and paragraph (f) of Rule 19b-4 thereunder.[15] 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

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2014-021 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2014-021. 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 the 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-2014-021, 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.[16]

Kevin M. O'Neill
Deputy Secretary

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[16] 17 CFR 200.30-3(a)(12).