

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73414; File No. SR-BATS-2014-050)

October 23, 2014

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 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 16, 2014, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 fees applicable to securities listed on the Exchange pursuant to BATS Rule 14.13. Changes to the fee schedule pursuant to this proposal are 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing, and delisting of companies on the Exchange,³ which it modified on February 8, 2012 in order to adopt pricing for the listing of exchange traded products (“ETPs”)⁴ on the Exchange,⁵ which it subsequently modified again on June 4, 2014.⁶ The Exchange proposes to modify Rule 14.13, entitled “Company Listing Fees” to eliminate the annual fees for ETPs that are not participating in the competitive liquidity provider program under Interpretation and Policy .02 to Rule 11.8 (the “CLP Program”).⁷ The Exchange is not proposing to eliminate the \$5,000 application fee for ETPs. For ETPs that are participating in the CLP Program, the Exchange proposes that the annual fees continue to be \$35,000. In conjunction with the proposed elimination of annual fees for ETPs listed on the Exchange, the Exchange is also planning to file a separate proposal that will eliminate enhanced rebates for lead market makers

³ See Securities Exchange Act Release No. 65225 (August 30, 2011) 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

⁴ As defined in BATS Rule 11.8(e)(1)(A), the term “ETP” means any security listed pursuant to Exchange Rule 14.11.

⁵ See Securities Exchange Act Release No. 66422 (February 17, 2012) 77 FR 11179 (February 24, 2012) (SR-BATS-2012-010).

⁶ See Securities Exchange Act Release No. 72377 (June 12, 2014) 79 FR 34822 (June 18, 2014) (SR-BATS-2014-024).

⁷ The Exchange notes that the CLP Program referenced in this proposal will be discontinued as of December 31, 2014. The references to the CLP Program herein do not apply to the Exchange's Supplemental CLP Program for ETPs, which is defined in Interpretation and Policy .03 to Rule 11.8.

(“LMMs”) in LMM Securities⁸ under the Exchange’s LMM Program,⁹ which was in part subsidized by the annual listing fees.

Currently, Rule 14.13(b)(2)(C) provides that the annual fee for an ETP that is not participating in the CLP Program is charged quarterly on a tiered basis based on the ETP’s consolidated average daily volume (the “CADV”), as defined below, during the quarter preceding the billing date. Specifically, the Exchange charges issuers of ETPs on a quarterly basis as follows:

<i>CADV</i>	<i>Quarterly Fee</i>	<i>Annual Fee</i>
0 – 10,000	\$1,250	\$5,000
10,001 – 40,000	\$2,000	\$8,000
40,001 – 80,000	\$3,000	\$12,000
80,001 – 150,000	\$3,750	\$15,000
150,001 – 400,000	\$4,500	\$18,000
Greater than 400,000	Free	Free

As mentioned above, the Exchange is proposing to eliminate all annual fees for ETPs that are not participating in the CLP Program, which includes the fees associated with each of the CADV tiers above. Specifically, the Exchange is proposing that issuers of each class of securities that is a domestic or foreign issue listed on the Exchange as an ETP that is not currently participating in the CLP Program will pay no annual fee to the Exchange.

⁸ As defined in Rule 11.8(e)(1)(C), LMM Security means an ETP that has an LMM.

⁹ See BATS Rule 11.8(e).

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.¹⁰ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) and 6(b)(5) of the Act,¹¹ in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange is proposing to eliminate all annual listing fees for ETPs listed on the Exchange, except for those ETPs that are participating in the CLP Program, which will significantly reduce listing fees for most new issuers and transfer listings in ETPs (with the exception of ETPs with a CADV greater than 400,000 for which there already was no annual listing fee), which the Exchange believes is equitable, reasonable, and non-discriminatory because the annual fee for listings will be applied equally to all ETPs newly listed on the Exchange. Further, there are currently no ETPs listed on the Exchange that are receiving the pricing for having a CADV of greater than 400,000. The Exchange also believes that continuing to charge \$35,000 annually for ETPs that continue to participate in the CLP Program is equitable and non-discriminatory because the costs associated with operating the CLP Program are significantly higher than the anticipated costs associated with the listing of ETPs on the Exchange that are not participating in the CLP Program and are generally designed to at least in part offset the costs to the Exchange to operate the CLP Program. Further, ETPs participating in

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4) and (5).

the CLP Program may opt out of the CLP Program at any time in order to be eligible for having no annual listing fees.

Based on the foregoing, the Exchange believes that its proposed elimination of annual fees for ETPs that are not participating in the CLP Program is a reasonable, equitable, and non-discriminatory allocation of fees to issuers.

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 pricing for the listing of ETPs, the Exchange does not believe that the changes burden competition, but instead, enhance competition, as it is intended to increase the competitiveness of the Exchange's listings program by allowing the Exchange to offer ETPs the ability to list on the Exchange without having to pay any annual fees. As such, the proposal is a competitive proposal that is intended to attract additional ETP listings, which will, in turn, benefit the Exchange and all other BATS-listed ETPs.

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) of the Act¹² and paragraph (f) of Rule 19b-4 thereunder.¹³ At any time within 60 days of the filing of

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

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-2014-050 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-2014-050. 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 offices 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-2014-050, 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).