

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59095; File No. SR-BATS-2008-012)

December 12, 2008

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of the Exchange

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 December 9, 2008, BATS Exchange, Inc. (“BATS” or the “Exchange”) 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. BATS 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 Act³ 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 to modify its fee schedule applicable to use of the Exchange effective December 12, 2008 in order to (i) implement new pricing for orders routed away from the Exchange that are executed at dark liquidity venues as part of the Exchange’s routing strategies, and (ii) substitute the current fee schedule with a fee schedule in a revised format.

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).

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 its fee schedule in order to implement new pricing for orders routed away from the Exchange that are executed at dark liquidity venues as part of the Exchange's routing strategies. In addition, the Exchange proposes to reformat the fee schedule to better reflect the routing charges applicable to Members.

(a) Orders Routed to and Executed at Dark Liquidity Venues

The Exchange recently amended its Rule 11.13 to provide additional flexibility to the Exchange's affiliated routing broker-dealer, BATS Trading, Inc. (the "Outbound Router") in making routing determinations.⁵ This rule change was primarily made to permit the Outbound

⁵ See Securities Exchange Act Release No. 34-58776 (October 14, 2008), 73 FR 63529 (October 24, 2008) (SR-BATS-2008-007).

Router to send orders to Trading Centers (as defined in Exchange Rule 2.11),⁶ without limiting the permissible destinations to execution venues with “protected quotations” (as defined in Rule 600(b)(58) of the Act).⁷ Such Trading Centers may include execution venues known as dark liquidity venues, which do not publish quotations. Because dark liquidity venues provide the possibility of executions at reduced rates, the Exchange is proposing to charge Members \$0.0020 per share executed at such a dark liquidity venue. The Exchange will continue to charge \$0.0029 per share executed at any other Trading Center. The proposed fee schedule also notes, consistent with the Exchange’s technical specifications, that the default best execution routing strategy first attempts to route to dark liquidity venues (“DART” routing) and then to other Trading Centers (“CYCLE” routing).

(b) Non-Substantive, Structural Changes

In addition to the proposed change above related to orders routed to and executed at dark liquidity venues, the Exchange is proposing to make certain non-substantive, structural changes to its fee schedule. First, the Exchange is proposing to restructure its fee schedule to distinguish between its standard routing charges (i.e., those charges for orders routed away by the Outbound Router under its best execution strategies) and non-standard routing charges imposed for specific order types and securities (e.g., Destination Specific Orders, odd lot orders and securities priced below \$1.00 per share). In addition, the Exchange proposes to consolidate into one list certain Destination Specific Orders⁸ which were previously listed separately, as such order types are

⁶ The Exchange’s definition of Trading Center, contained in Rule 2.11, is consistent with the definition of “trading center” contained in Rule 600(b)(78) of Regulation NMS.

⁷ 17 CFR 242.600(b)(58).

⁸ As defined in BATS Rule 11.9(c)(10).

each charged the same fee.⁹ The Exchange believes that the revised format of the fee schedule is more transparent and easy to understand with respect to fees charged for routed orders.

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) of the Act,¹¹ 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 Exchange believes that its fees and credits are competitive with those charged by other venues, and that reduced transaction fees for shares executed at dark liquidity venues will benefit market participants. Also, although routing options are available to all Members, Members are not required to use the Exchange's Outbound Router for routing to other Trading Centers. The Exchange also believes that the reformatted fee schedule sets forth the fees applicable to routed orders in a more transparent manner. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

⁹ The Exchange charges \$0.0029 per share for Destination Specific Orders routed to the NASDAQ Stock Market, the International Securities Exchange, and the National Securities Exchange.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹² and Rule 19b-4(f)(2) thereunder,¹³ because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2008-012 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-2008-012. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 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-2008-012 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

Florence E. Harmon
Acting Secretary

¹⁴ 17 CFR 200.30-3(a)(12).