

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63300; File No. SR-BATS-2010-031)

November 10, 2010

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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 29, 2010, BATS Exchange, Inc. (the “Exchange”, “BZX Exchange” or “BZX”) 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to Members⁵ of the Exchange pursuant to BZX Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on November 1, 2010.

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 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, on the Commission's website at <http://www.sec.gov>, 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 the "Equities Pricing" section of its fee schedule to increase its standard fee for removing liquidity from the Exchange to \$0.0028 per share and to increase its standard rebate for adding displayed liquidity to the Exchange to \$0.0027 per share. The Exchange does not propose to charge different fees or grant different rebates depending on the amount of orders submitted to, and/or trades executed on or through, the Exchange. Accordingly, all fees and rebates described below are applicable to all Members, regardless of the overall volume of their trading activities on the Exchange.

Consistent with the current fee to remove liquidity, the charge per share for executions that remove liquidity from the Exchange will not apply [sic] executions that remove liquidity in securities priced under \$1.00 per share. The fee for such executions will remain at 0.10% of the total dollar value of the execution. Similarly, as is currently the case for the rebate for adding liquidity to the Exchange, there will be no liquidity rebate for adding liquidity in securities priced

under \$1.00 per share. Finally, the rebate paid by the Exchange for adding non-displayed liquidity will remain at \$0.0020 per share. As defined on the Exchange’s current fee schedule, “non-displayed liquidity” includes liquidity resulting from all forms of Pegged Orders,⁶ Mid-Point Peg Orders,⁷ and Non-Displayed Orders,⁸ but does not include liquidity resulting from Reserve Orders⁹ or Discretionary Orders.¹⁰

In addition to the changes described above, and to differentiate itself from its affiliate, BATS Y-Exchange, Inc. (“BYX Exchange”), which recently commenced operations, the Exchange proposes to use the name “BZX Exchange” and “BZX” throughout the fee schedule, other than when referring to its equity options platform, which it will refer to as “BATS Options.” Similarly, the Exchange proposes defining its affiliate, as it has done above, as “BYX Exchange.” Also, the Exchange proposes to make stylistic changes, including referring to its book of orders as its “order book”, rather than just its “book.” Finally, the Exchange proposes to remove one heading from its fee schedule, “Options Pricing (Continued)”, which is no longer necessary for the printed version of its fee schedule.

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.¹¹ Specifically, the

⁶ As defined in BZX Rule 11.9(c)(8).

⁷ As defined in BZX Rule 11.9(c)(9).

⁸ As defined in BZX Rule 11.9(c)(11).

⁹ As defined in BZX Rule 11.9(c)(1).

¹⁰ As defined in BZX Rule 11.9(c)(10).

¹¹ 15 U.S.C. 78f.

Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² 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 impact of the proposed price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant's quotes and orders relative to the national best bid and offer (i.e., its propensity to add or remove liquidity), the types of securities that it trades and its usage of non-displayed quotes/orders. While Members that generally remove liquidity from the Exchange will be paying a higher fee, the Exchange believes that such Members will benefit to the extent the higher rebate paid by the Exchange for adding liquidity attracts additional liquidity and thus improves the depth of liquidity available on the Exchange.

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. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

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 Regarding the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

¹² 15 U.S.C. 78f(b)(4).

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 Act¹³ and Rule 19b-4(f)(2) thereunder,¹⁴ 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 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-2010-031 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 Number SR-BATS-2010-031. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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 publicly available. All submissions should refer to File Number SR-BATS-2010-031 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).