

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70257; File No. SR-BATS-2013-047)

August 26, 2013

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Registration and Continuing Education Fees for 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 August 16, 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 Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 2.5, entitled “Restrictions,” to include the Regulatory Fees that will be charged to certain registered persons at the Exchange for the proficiency examination and continuing education (“CE”) requirements under the Rule. Changes to Exchange fees 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).

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 add Interpretation and Policy .01(j) to Rule 2.5 to include the examination fee that will be charged to individuals that choose to complete the Proprietary Traders Qualification Examination ("Series 56"). Specifically, the Exchange is proposing to add a \$195 examination fee for this examination. The Exchange also proposes to add Interpretation and Policy .02(f) to Rule 2.5 to include a \$60 session fee for those individuals that must complete the S501 Series 56 Proprietary Trader Continuing Education Program ("S501").

Examination Fee

Recently, the Exchange amended Interpretation and Policy .01(f) to Rule 2.5 to include the registration and qualification requirements for persons registered as Proprietary Traders with

the Exchange.<sup>5</sup> Under this provision, those who wish to register as a Proprietary Trader with the Exchange must complete the Series 56 examination. Thus, the Exchange is proposing to include the \$195 fee that will be charged to individuals who wish to complete this examination. This fee will be collected with [sic] the administrator of the Series 56, which is currently FINRA. The Exchange will not invoice or collect this fee.

Rule 2.5 does not currently set forth the examination fees for other qualification examinations required or accepted by the Exchange because these programs are within the jurisdiction of the Financial Industry Regulatory Authority (“FINRA”), which collects these examination fees from its members. The Series 56, however, applies to Exchange Members that are not required by Section 15(b)(8)<sup>6</sup> of the Act to become FINRA Members. Therefore, [sic] Exchange believes it is appropriate to include the Series 56 examination fee within Rule 2.5 to make the cost of this examination clear to Exchange Members. The examination fee is designed to reflect the costs of maintaining and developing the Series 56 and to ensure that the examination’s content is and continues to be adequate for testing the competence and knowledge generally applicable to proprietary trading.

#### Continuing Education Fees

Interpretation and Policy .02(a) to Rule 2.5 requires all Registered Representatives to complete the Regulatory Element of the CE program beginning with the “occurrence of their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Exchange.” Recently, the Exchange amended Interpretation and Policy .02 to enumerate

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<sup>5</sup> See SR-BATS-2013-046 (filed Aug. 15, 2013), available at [http://www.batstrading.com/regulation/rule\\_filings/bzx](http://www.batstrading.com/regulation/rule_filings/bzx).

<sup>6</sup> 15 U.S.C. 78o(b)(8).

the different CE programs appropriate for each category of registration with the Exchange.<sup>7</sup> The Exchange is now proposing to outline the necessary fees associated with the Regulatory Element of the S501.<sup>8</sup>

The Exchange has determined that this fee change is necessary to administer the Series 56 CE program. Specifically, the \$60 session fee will be used to fund the CE program administered to Proprietary Traders that have a Series 56 registration and are required to complete the S501. The Exchange believes the \$60 fee is reasonable and proportional based upon the programming of the CE. In addition, the \$60 fee will only be used for the administration of the CE, while the costs associated with the development of the S501 are included in the examination fee. Like the examination fee for the Series 56, the S501 fee will be collected by the administrator of the Program, which is currently FINRA. The Exchange will not invoice or collect this fee. The Exchange is not proposing to include the CE fees for the other CE programs enumerated in the Rule. Like the registration examinations, these CE programs are within FINRA's jurisdiction and FINRA collects the session fees from its members.

Because the CE element is separate and different from the CE programs already administered, the proposed change would put Registered Representatives on notice of the associated fees. The proposed fee would also allow the Exchange to fund the S501, which is more tailored to the Series 56 registration. In addition, the Exchange believes other exchanges

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<sup>7</sup> Id. [sic]

<sup>8</sup> The Exchange has assisted with the development of, and plan to administer, the Series 56 and S501 along with the following participating self-regulatory organizations: BATS Y-Exchange, Inc., Chicago Board Options Exchange ("CBOE"), C2 Options Inc. ("C2"), the Chicago Stock Exchange, Inc., the New York Stock Exchange, LLC, NYSE Arca, Inc., NYSE Amex, LLC, the NASDAQ Stock Market LLC, the National Stock Exchange, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, LLC, EDGA Exchange, Inc. ("EDGA"), EDGX Exchange, Inc. ("EDGX"), International Securities Exchange, LLC, and BOX Options Exchange, LLC.

will be assessing the same fee for this CE program. The proposed changes are to take effect on August 19, 2013.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitation of transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>11</sup> The proposed changes fulfill this requirement because the fees are allocated to all individuals who have or wish to have a Series 56 registration. The proposed fees are reasonably designed to allow FINRA to cover its cost of administering the Series 56 examination program on behalf of the Exchange. The fee for the Series 56 examination is greater than the fee for the CE program because the examination fee

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Id.

is also designed to cover the costs associated with developing both the Series 56 examination and the related S501. The S501 fee is meant only to cover the costs of administering the CE sessions. The Exchange notes that it will not invoice or collect funds from Members that are subject to these fees because these fees will be paid directly to FINRA. The Exchange and the current administrator of the examination and CE program, FINRA, incur costs in maintaining and developing the examination and CE program to ensure the content is and continues to be adequate for testing the competence and knowledge generally applicable to proprietary trading. The Exchange believes it is reasonable and equitable to include these fees in Interpretations and Policies .01(j) and .02(f) to make the costs of the Series 56 and its related CE requirement clear to Members. Moreover, the Exchange believes other exchanges will be assessing the same fees for this examination and related CE program.<sup>12</sup>

Finally, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>13</sup> which requires that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act such that it can enforce compliance with the Act by persons registered with the Exchange. As previously discussed, the proposed rule change is designed to fund the administration of the Series 56 and S501. Thus, the proposed rule change will help the Exchange enforce compliance with the Act and Exchange Rules by those persons registered as Proprietary Traders.

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<sup>12</sup> CBOE, C2, EDGX, and EDGA have already assessed this \$60 fee. Securities Exchange Act Release No. 70064 (July 30, 2013), 78 FR 47469 (Aug. 5, 2013) (SR-CBOE-2013-078); Securities Exchange Act Release No. 70194 (Aug. 14, 2013) (SR-C2-2013-030); Securities Exchange Act Release No. 70162 (Aug. 12, 2013) (SR-EDGX-2013-31); Securities Exchange Act Release No. 70163 (Aug. 12, 2013) (SR-EDGA-203-24 [sic]). EDGX and EDGA have also already assessed the \$195 examination fee. Securities Exchange Act Release No. 70162 (Aug. 12, 2013) (SR-EDGX-2013-31); Securities Exchange Act Release No. 70163 (Aug. 12, 2013) (SR-EDGA-203-24 [sic]).

<sup>13</sup> 15 U.S.C. 78f(b)(1).

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed rule change will not impose any burden on intermarket competition because it will merely serve to aid the Exchange in fulfilling its obligations as a Self-Regulatory Organization by funding the administration of the Series 56 and S501. The proposed rule change will not impose any burden on intramarket competition because all Registered Representatives are required to pass a qualification examination and fulfill the appropriate CE requirement as outlined in Interpretations and Policies .01 and .02 of Rule 2.5, and the fees for the Series 56 and S501 will apply uniformly to all Members. In addition, as noted above, the Exchange believes other exchanges will be assessing the same fees for the Series 56 and related CE program to be collected by FINRA.

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>14</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>15</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f).

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-2013-047 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-2013-047. 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-2013-047 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>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).