SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75915; File No. SR-BATS-2015-71)

September 14, 2015

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 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 2, 2015, 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).

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 The term "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 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 the "Options Pricing" section of its fee schedule effective immediately, in order to: (i) modify pricing charged by the Exchange's options platform ("BATS Options") including for orders routed away from the Exchange and executed at various away options exchanges; (ii) amend the thresholds related to meeting certain pricing tiers and to increase the rebate associated with such tiers; (iii) amend the fee for Customer[6] orders that remove liquidity in Penny Pilot Securities;[7] and (iv) make two non-substantive clean up changes.

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6 "Customer" applies to any transaction identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a Broker Dealer or a "Professional" as defined in Exchange Rule 16.1.

7 "Penny Pilot Securities" are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

Routing Fees

The Exchange currently charges the following rates for orders routed to certain other options exchanges: (i) Customer orders routed to C2 Options Exchange, Incorporated ("C2"), which yield the fee code 2C, are charged $0.47 per contract; (ii) non-Customer orders routed to C2, which yield fee code 2F, are charged $0.95 per contract; (iii) Customer orders in Penny Pilot Securities routed to NYSE Arca, Inc. ("Arca"), which yield fee code AC, are charged $0.52 per contract; and (iv) Customer orders in Penny Pilot Securities routed to Nasdaq Options Market LLC ("NOM"), which yield fee code QC, are charged $0.52 per contract. In an effort to continue to offer routing services to its Members at prices that approximate the cost to the Exchange, BATS Options is proposing to amend those rates as follows: (i) the fee for Customer orders routed to C2 and any Customer orders in Penny Pilot Securities routed to Arca or NOM (fee codes 2C, AC, and QC, respectively) would be increased to $0.70 per contract; and (ii) the fee for non-Customer orders routed to C2 (fee code 2F) would be reduced to $0.72 per contract.

As noted previously and as set forth above, the Exchange's current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (i.e., clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, "Routing Costs"). The Exchange then monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. In performing this analysis, the Exchange has concluded that certain orders that it was routing to other options exchanges were costing more than it was charging, and in one case, were significantly less than it was charging. As a result, and in order to avoid subsidizing routing to away options exchanges and to continue providing quality routing services, the Exchange proposes relatively modest increases and adjustments to the charges assessed for the orders described above.

Tier Thresholds and Associated Rebate

The Exchange currently offers enhanced rebates under both the Firm, Broker Dealer, and Joint Back Office Penny Pilot Add Volume Tiers (which apply to fee code PF) and the Market Maker and Non-BATS Market Maker Penny Pilot Add Volume Tiers (which apply to fee code PM) to Members with trading activity on BATS Options that meets certain thresholds. More specifically, in Tier 3 of each of these sets of tiers, BATS Options offers enhanced rebates to orders that yield fee code PF and PM ($0.43 and $0.42, respectively) for Members that: (i) have an ADAV[8] in Firm,[9] Broker Dealer,[10] and Joint Back Office[11] orders in Penny Pilot Securities (yielding Fee Code PF) equal to or greater than 0.35% of average TCV; and (ii) have an ADV[12] equal to or greater than 1.00% of average TCV.[13] The Exchange is proposing to amend the

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8 "ADAV" means average daily added volume calculated as the number of contracts per day.

9 "Firm" applies to any transaction identified by a Member for clearing in the Firm range at the Options Clearing Corporation ("OCC"), excluding any Joint Back office transaction.

10 "Broker Dealer" applies to any order for the account of a broker dealer, including a foreign broker dealer, that clears in the Customer range at the OCC.

11 "Joint Back Office" applies to any transaction identified by a Member for clearing in the Firm Range at the OCC that is identified with an origin code as Joint Back Office. A Joint Back Office participant is a Member that maintains a Joint Back Office arrangement with a clearing broker-dealer.

12 "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day.

13 "TCV" means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees

numerical thresholds associated with meeting these tiers by lowering the threshold for requirement (i) from 0.35% to 0.25% and increasing the threshold for requirement (ii) from 1.00% to 1.50%. Specifically, the Exchange is proposing that an order yielding fee code PF or PM will meet Tier 3 of the respective tiers where: (i) the Member has an ADAV in Firm, Broker Dealer, and Joint Back Office orders in Penny Pilot Securities (yielding Fee Code PF) equal to or greater than 0.25% of average TCV; and (ii) the Member has an ADV equal to or greater than 1.50% of average TCV. The Exchange is also proposing to increase the rebates for meeting these tiers to $0.47 per contract for fee code PF and PM, from $0.43 and $0.42 per contract, respectively.

Customer Orders in Non-Penny Pilot Securities

The Exchange currently charges $0.80 per contract for Customer orders that remove liquidity in non-Penny Pilot Securities. The Exchange is proposing to increase the fee to $0.84 per contract. The Exchange notes that the proposed fee is lower than the fees charged on NOM for removing liquidity in non-Penny Pilot Securities ($0.85 per contract) and is generally in line with the pricing at other options exchanges.

Clean Up Changes

Finally, the Exchange is also proposing to make two non-substantive clean up changes to its fee schedule. Specifically, the Exchange is proposing to capitalize the “O” in “Joint Back office” as it appears in the definition for “Firm” and to add a bullet in front of the definition of “Penny Pilot Securities” in order to make the formatting consistent with that of the other definitions in the fee schedule.

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apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule effectively immediately.

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.[14] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] 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 or providers of routing services if they deem fee levels to be excessive.

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to modify fees is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges and the Exchange has concluded that certain orders that it was routing to other options exchanges were costing more than it was charging, and in one case, were costing significantly less than it was charging. Further to this

14 15 U.S.C. 78f.

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

point, the Exchange notes that it is proposing to decrease fees for non-Customer orders routed to C2. Accordingly, the Exchange believes that the proposed increases are fair, equitable and reasonable because they will help the Exchange to avoid subsidizing routing to away options exchanges and to continue providing quality routing services. The Exchange believes that its fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at away options exchanges. Under its straightforward fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or slight loss for orders routed to and executed at away options exchanges. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange notes that routing through the Exchange is voluntary. The Exchange also believes that the proposed fee structure for orders routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange reiterates 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 to be excessive or providers of routing services if they deem fee levels to be excessive. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit or loss from routing to away options exchanges.

The Exchange also believes that the proposed amendments to the fee schedule related to the thresholds required to meet Tier 3 of both the Firm, Broker Dealer, and Joint Back Office Penny Pilot Add Volume Tiers and the Market Maker and Non-BATS Market Maker Penny Pilot

Add Volume Tiers and the increased rebate of $0.47 per contract for achieving such tiers is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will encourage greater participation on BATS Options, which, as described above the Exchange believes will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options. Specifically, the Exchange believes that the reduction in the threshold for a Member's ADAV in Penny Pilot Securities that yield fee code PF from 0.35% of average TCV and the increased threshold for a Member's ADV of average TCV from 1.00% to 1.50% combined with the increased rebate for meeting the thresholds is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because, in conjunction, they will provide Members with a reasonably achievable threshold for receiving a greater rebate than they do today while simultaneously encouraging and rewarding higher levels of participation on the Exchange. By lowering the requirement for Firm, Broker Dealer, and Joint Back Office orders in Penny Pilot securities, increasing the requirement for ADV as a percentage of TCV, and increasing the rebate for achieving such tiers, the proposed amendment will encourage greater general participation on the Exchange, which will result in higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes, which will benefit all participants on BATS Options.

The Exchange believes the proposed increase of the standard fees for Customer orders that remove liquidity in non-Penny Pilot Securities (from $0.80 per contract to $0.84 per contract) is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because the additional revenue generated through the increased fees will allow the Exchange to continue to offer competitive pricing and incentives for other types of orders, which will result in better market quality for all participants. Further, as noted above, the proposed standard fee is still lower than the standard fee offered by NOM for of $0.85 per contract.

The Exchange also believes that the proposed non-substantive changes to the definition of Firm and adding of the bullet to definition of Penny Pilot Securities are reasonable, fair, and equitable because they are designed to make the fee schedule easier to read and understand. The Exchange notes that neither of the proposed changes are designed to amend any fee or rebate, nor alter the manner in which the Exchange assess fees and rebates. These non-substantive changes to the fee schedule are intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As it relates to the proposed changes to routing fees, the proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants in a manner that is a better approximation of actual costs than is currently in place and that reflects pricing changes by various options exchanges as well as increases to other Routing Costs incurred by the Exchange. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[16]

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[16] See BATS Rule 21.1(d)(8) (describing "BATS Only" orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

With respect to the proposed changes to the thresholds in the Firm, Broker Dealer, and Joint Back Office Penny Pilot Add Volume Tiers and the Market Maker and Non-BATS Market Maker Penny Pilot Add Volume Tiers and the increased rebates associated therewith, the Exchange does not believe that any such changes burden competition, but instead, that they enhance competition as they are intended to increase the competitiveness of and draw additional volume to BATS Options.

Finally, with respect to the change in fees for Customer orders that remove liquidity in non-Penny Pilot Securities, the Exchange does not believe that such change burdens competition, but instead, that it enhances competition as the proposed new pricing remains generally in line with that of other options exchanges and would still be lower than the per contract fee for an identical transaction that occurred on NOM.

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 they deem fee levels to be excessive or providers of routing services if they deem routing fee levels to be excessive.

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

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 Act[17] and paragraph (f)(2) of Rule 19b-4 thereunder.[18] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-2015-71 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-2015-71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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17 15 U.S.C. 78s(b)(3)(A).

18 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 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 will also 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-2015-71 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.[19]

Brent J. Fields
Secretary

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[19] 17 CFR 200.30-3(a)(12).