

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members³ of the Exchange pursuant to BATS 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 May 1, 2009.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on April 24, 2009. This action constitutes requisite approval under the Exchange’s By-Laws.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (212) 378-8523.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective May 1, 2009, in order to: (i) charge a consistent fee of \$0.0025 per share for trades that remove liquidity in securities priced \$1.00 or above and provide a consistent rebate of \$0.0024 per share to Members who add displayed liquidity in securities priced \$1.00 or above; (ii) change the securities for which the Exchange does not pay a rebate for adding liquidity to all securities priced below \$1.00, rather than securities priced below \$5.00, and eliminate the rebate of \$0.0001 per share for trades that remove liquidity in securities priced below \$5.00; (iii) decrease the fee charged by the Exchange for its "CYCLE" routing strategy from \$0.0026 per share to \$0.0025 per share and modify the routing fee for securities priced below \$1.00; and (iv) change from a fee of \$0.0005 per share to a rebate of \$0.0001 per share for Modified Destination Specific Orders routed to a dark liquidity venue. Each of these proposed changes is described in further detail below.

(i) Fees and Rebates for Securities Priced \$1.00 or Above

The Exchange currently charges a fee of \$0.0025 per share for trades that remove liquidity in securities priced \$5.00 or above, and proposes to change this fee so that it instead applies to trades that remove liquidity in securities priced \$1.00 or above.

The Exchange currently provides rebates for securities priced \$5.00 or above of \$0.0023 per share to Members who add displayed liquidity in Tape A and C securities, and \$0.0028 per share to Members who add displayed in Tape B securities. The Exchange proposes to change this structure so that it instead provides a consistent rebate

of \$0.0024 per share to Members who add displayed liquidity in all securities priced \$1.00 or above. The Exchange does not propose to change the rebate provided for non-displayed liquidity added to the BATS Book, which is currently \$0.0020 per share for Tapes A, B, and C. However, because the rebate for displayed liquidity, as proposed, will now apply to all securities rather than having a different rebate for Tape B securities, the Exchange proposes eliminating the reference to Tapes A, B, and C in connection with non-displayed liquidity as such reference is no longer necessary.

(ii) Securities Priced Below \$1.00

Currently, the Exchange does not pay a rebate to Members who add liquidity in securities priced below \$5.00. The Exchange proposes to increase the number of securities to which a rebate applies by changing to a no-rebate structure for liquidity adders in securities priced below \$1.00. The Exchange also proposes to eliminate the rebate of \$0.0001 per share for trades that remove liquidity in securities priced below \$5.00, and instead, to allow Members to remove liquidity in securities priced below \$1.00 without a charge.

(iii) Standard Routing Fee and Routing Fee for Securities Priced Below \$1.00

The Exchange proposes to decrease the fee charged by the Exchange for its CYCLE routing strategy⁴ from \$0.0026 per share to \$0.0025 per share. To be consistent with this change, the Exchange proposes to charge 0.25%, rather than 0.26%, of the total

⁴ The CYCLE routing strategy routes orders to any market center or execution venue other than a dark liquidity pool. Orders are routed to dark liquidity pools through the Exchange's DART routing strategy. Orders executed through DART cost \$0.0020 per share, which the Exchange has not proposed to change at this time.

dollar value of the execution for any security (all Tapes) priced under \$1.00 per share that is routed away from the Exchange.

(iv) Dark Scan Rebate

Finally, the Exchange proposes to change its fee structure for Modified Destination Specific Orders routed to a dark liquidity venue (referred to by the Exchange as “Dark Scan”). Rather than charging a fee for Dark Scan orders, which is currently \$0.0005, the Exchange proposes to provide a rebate of \$0.0001. Because this change is a change from a fee to a rebate, the Exchange proposes changing the heading of the applicable section to “Other Non-Standard Routing Options,” rather than referring to “Other Non-Standard Routing Charges”.

(b) 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.⁵ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ 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 rebates are competitive with those charged by other

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

venues and that the changes it has proposed will simplify the Exchange's pricing model. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

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

The proposed rule change does not impose any burden on competition.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and Rule 19b-4(f)(2) thereunder,⁸ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to its members, which renders the proposed rule change effective upon filing.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2009-010)

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 April 30, 2009, 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. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2009.

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 applicable to use of the Exchange effective May 1, 2009, in order to: (i) charge a consistent fee of \$0.0025 per share for trades that remove liquidity in securities priced \$1.00 or above and provide a consistent rebate of \$0.0024 per share to Members who add displayed liquidity in securities priced \$1.00 or above; (ii) change the securities for which the Exchange does not pay a rebate for adding liquidity to all securities priced below \$1.00, rather than securities priced below \$5.00, and eliminate the rebate of \$0.0001 per share for trades that remove liquidity in securities priced below \$5.00; (iii) decrease the fee charged by the Exchange for its "CYCLE" routing strategy from \$0.0026 per share to \$0.0025 per share and modify the routing fee for securities priced below \$1.00; and (iv) change from a fee of \$0.0005 per share to a rebate of \$0.0001 per share for Modified Destination

Specific Orders routed to a dark liquidity venue. Each of these proposed changes is described in further detail below.

(i) Fees and Rebates for Securities Priced \$1.00 or Above

The Exchange currently charges a fee of \$0.0025 per share for trades that remove liquidity in securities priced \$5.00 or above, and proposes to change this fee so that it instead applies to trades that remove liquidity in securities priced \$1.00 or above.

The Exchange currently provides rebates for securities priced \$5.00 or above of \$0.0023 per share to Members who add displayed liquidity in Tape A and C securities, and \$0.0028 per share to Members who add displayed in Tape B securities. The Exchange proposes to change this structure so that it instead provides a consistent rebate of \$0.0024 per share to Members who add displayed liquidity in all securities priced \$1.00 or above. The Exchange does not propose to change the rebate provided for non-displayed liquidity added to the BATS Book, which is currently \$0.0020 per share for Tapes A, B, and C. However, because the rebate for displayed liquidity, as proposed, will now apply to all securities rather than having a different rebate for Tape B securities, the Exchange proposes eliminating the reference to Tapes A, B, and C in connection with non-displayed liquidity as such reference is no longer necessary.

(ii) Securities Priced Below \$1.00

Currently, the Exchange does not pay a rebate to Members who add liquidity in securities priced below \$5.00. The Exchange proposes to increase the number of securities to which a rebate applies by changing to a no-rebate structure for liquidity adders in securities priced below \$1.00. The Exchange also proposes to eliminate the rebate of \$0.0001 per share for trades that remove liquidity in securities priced below

\$5.00, and instead, to allow Members to remove liquidity in securities priced below \$1.00 without a charge.

(iii) Standard Routing Fee and Routing Fee for Securities Priced Below \$1.00

The Exchange proposes to decrease the fee charged by the Exchange for its CYCLE routing strategy⁵ from \$0.0026 per share to \$0.0025 per share. To be consistent with this change, the Exchange proposes to charge 0.25%, rather than 0.26%, of the total dollar value of the execution for any security (all Tapes) priced under \$1.00 per share that is routed away from the Exchange.

(iv) Dark Scan Rebate

Finally, the Exchange proposes to change its fee structure for Modified Destination Specific Orders routed to a dark liquidity venue (referred to by the Exchange as “Dark Scan”). Rather than charging a fee for Dark Scan orders, which is currently \$0.0005, the Exchange proposes to provide a rebate of \$0.0001. Because this change is a change from a fee to a rebate, the Exchange proposes changing the heading of the applicable section to “Other Non-Standard Routing Options,” rather than referring to “Other Non-Standard Routing Charges”.

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

⁵ The CYCLE routing strategy routes orders to any market center or execution venue other than a dark liquidity pool. Orders are routed to dark liquidity pools through the Exchange’s DART routing strategy. Orders executed through DART cost \$0.0020 per share, which the Exchange has not proposed to change at this time.

Act.⁶ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ 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 rebates are competitive with those charged by other venues and that the changes it has proposed will simplify the Exchange's pricing model. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

(B) Self-Regulatory Organization's Statement of 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 Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ because it

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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 proposal 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 No. SR-BATS-2009-010 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 No. SR-BATS-2009-010. 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, 100 F Street, NE, Washington, DC 20549. 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 No. SR-BATS-2009-010 and should be submitted on or before [_____21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).

Note: Proposed new language is underlined. Proposed deletions are enclosed in brackets.

BATS Exchange, Inc. Fee Schedule
Effective [April 15]May 1, 2009

The following reflects the Schedule of Fees (pursuant to Rule 15.1(a) and Rule 15.1(c)) for BATS Exchange, Inc. (the "Exchange"). All references to "per share" mean "per share executed."

Fees for Accessing Liquidity for All Securities Priced [~~\$5.00~~ \$1.00 or Above

\$0.0025 charge per share that removes liquidity from the BATS book

Liquidity Rebates for All Securities Priced [~~\$5.00~~ \$1.00 or Above

[\$0.0028 rebate per share that adds liquidity to the BATS book for Tape B]

[\$0.0023]~~\$0.0024~~ rebate per share that adds liquidity to the BATS book [for Tapes A & C]

\$0.0020 rebate per share that adds non-displayed* (hidden) liquidity to the BATS book [for Tapes A, B, & C]

Securities Priced Below [~~\$5.00~~ \$1.00

[\$0.0001 rebate per share to remove liquidity]

No charge or liquidity rebate for [adding liquidity (displayed or hidden)]securities priced below \$1.00 traded on the BATS Book

Standard Routing Charges – Best Execution Routing

\$0.0020 charge per share for shares executed at a dark liquidity venue ("DART" routing)

[\$0.0026]~~\$0.0025~~ charge per share for shares executed at any other venue ("CYCLE" routing)

Note: Default Best Execution Routing = DART + CYCLE

Discounted Destination Specific Routing ("One Under") to NYSE, NYSE ARCA and NASDAQ

- BATS + NYSE Destination Specific Orders: \$0.0017 charge per share
- BATS + NYSE ARCA Destination Specific Orders: \$0.0027 charge per share
- BATS + NASDAQ Destination Specific Orders: \$0.0029 charge per share

Other Non-Standard Routing [Charges]Options – Specific Order Types, Odd Lots, and Securities Priced Below \$1.00

- BATS ("Dark Scan") Modified Destination Specific Orders routed to a dark liquidity venue: [\$0.0005 charge]~~\$0.0001~~ rebate per share
- BATS + (Protected Market Center) Destination Specific Orders other than NYSE, NYSE ARCA and NASDAQ: \$0.0030 charge per share
- Directed ISO's: \$0.0033 charge per share
- ARCA Odd Lots Tape A: \$0.03 charge per share
- ARCA Odd Lots Tape B: \$0.03 charge per share
- ARCA Odd Lots Tape C: \$0.004 charge per share
- Stocks Priced Below \$1.00: [0.26%]~~0.25%~~ charge of the total dollar value for orders routed to and executed at other markets (all Tapes)

* Non-displayed order types include all forms of Pegged, Mid-Point Peg and Non-Displayed Limit orders. The non-displayed rebate does not apply to Reserve or Discretionary orders.