

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information

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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

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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

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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

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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

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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

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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

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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 modify BATS Rule 15.1, entitled “Authority to Prescribe Dues, Fees, Assessments and Other Charges.” Pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ the Exchange has designated this proposal as one establishing or changing a due, fee, or other charge applicable to its members, and, therefore, the proposed rule change is effective upon filing.

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

* * * * *

Rule 15.1. Authority to Prescribe Dues, Fees, Assessments and Other Charges

(a) – (c) (No changes.)

(d) Cross-Connection Pass Through Fees. To the extent the Exchange is charged a fee by a third party that results directly from a Member cross-connecting its trading hardware to the Exchange’s System from another Trading Center’s system that is located in the same data center as the Exchange, the Exchange will pass that fee on, in full, to the Member.

(b) Not applicable.

(c) Not applicable.

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).

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on July 8, 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) 378-8520.

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 BATS Rule 15.1 to adopt new paragraph (d), which will allow the Exchange to pass on certain, specific fees that it is charged by the company that operates the data center where the Exchange's System⁵ is located, as described in further detail below.

Exchange Members wishing to co-locate their trading hardware to the Exchange's System can do so by leasing space directly from the company that owns the data center. The Exchange has no involvement in determining the terms of any fees paid by the Member to lease co-location space and does not receive any proceeds from such fee. Certain Members of the Exchange maintain a co-location relationship with another Trading Center's⁶ system that is located in the same data center as the Exchange. To co-locate to the Exchange, rather than leasing additional space near the Exchange's System, some Members choose instead to simply cross-connect their existing trading hardware from the space near another Trading Center's system to the Exchange's System. In such cases, the company that owns the data center charges the Exchange a monthly cross-

⁵ The term "System" is defined in BATS Rule 1.5(aa).

⁶ The term "Trading Center" is defined in BATS Rule 2.11.

connection fee. Pursuant to the proposed rule the Exchange will pass this cross connection fee on, in full, to the applicable Member.

(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.⁷ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ 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 in the current, competitive market environment, market participants can connect to numerous competing venues in numerous different ways, and that the Exchange currently does not charge any direct fees for connecting to the Exchange. In addition, the fees applied through the proposed rule will not result in any direct revenue for the Exchange, but rather, are a pass-through of fees charged to the Exchange as a result of certain Member's connections to the Exchange.

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

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

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

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

Not applicable.

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 Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ 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.

9. Exhibits

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

Exhibit 2 – 5: Not applicable.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2009-023)

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 July 9, 2009, 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. 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 BATS Rule 15.1, entitled “Authority to Prescribe Dues, Fees, Assessments and Other Charges,” effective immediately.

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 Web site 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 BATS Rule 15.1 to adopt new paragraph (d), which will allow the Exchange to pass on certain, specific fees that it is charged by the company that operates the data center where the Exchange's System⁵ is located, as described in further detail below.

Exchange Members wishing to co-locate their trading hardware to the Exchange's System can do so by leasing space directly from the company that owns the data center. The Exchange has no involvement in determining the terms of any fees paid by the Member to lease co-location space and does not receive any proceeds from such fee. Certain Members of the Exchange maintain a co-location relationship with another

⁵ The term "System" is defined in BATS Rule 1.5(aa).

Trading Center's⁶ system that is located in the same data center as the Exchange. To co-locate to the Exchange, rather than leasing additional space near the Exchange's System, some Members choose instead to simply cross-connect their existing trading hardware from the space near another Trading Center's system to the Exchange's System. In such cases, the company that owns the data center charges the Exchange a monthly cross-connection fee. Pursuant to the proposed rule the Exchange will pass this cross-connection fee on, in full, to the applicable Member.

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.⁷ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ 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 in the current, competitive market environment, market participants can connect to numerous competing venues in numerous different ways, and that the Exchange currently does not charge any direct fees for connecting to the Exchange. In addition, the fees applied through the proposed rule will not result in any direct revenue for the Exchange, but rather, are a pass-through of fees charged to the Exchange as a result of certain Member's connections to the Exchange.

⁶ The term "Trading Center" is defined in BATS Rule 2.11.

⁷ 15 U.S.C. 78f.

⁸ 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 Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ 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 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

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2009-023 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-2009-023. 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-2009-023 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.¹¹

¹¹ 17 CFR 200.30-3(a)(12).

Florence E. Harmon
Deputy Secretary