

Proposed Rule Change by BATS Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to impose fees for physical ports used to connect to the Exchange's systems under certain circumstances.

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Anders"/>	Last Name	<input type="text" value="Franzon"/>
Title	<input type="text" value="VP, Associate General Counsel"/>		
E-mail	<input type="text" value="afranzon@batstrading.com"/>		
Telephone	<input type="text" value="(913) 815-7154"/>	Fax	<input type="text" value="(913) 815-7119"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date	<input type="text" value="12/18/2009"/>
By	<input type="text" value="Anders Franzon"/>
	(Name)
	<input type="text" value="VP, Associate General Counsel"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

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

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. (“BATS” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members³ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Pursuant to the proposed rule change the Exchange will commence charging fees to Members and non-members for certain physical ports used to connect to the Exchange’s systems. The Exchange will implement the proposed rule change on the first day of the month immediately following Commission approval (or on the date of approval, if on the first business day of a month).

(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 December 18, 2009. This action constitutes requisite approval under the Exchange’s By-Laws.

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.

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 purpose of the proposed rule change is to begin charging a monthly fee for physical ports used to connect to the Exchange's system for order entry and receipt of data from the Exchange. The Exchange recently began charging for "logical" ports used for order entry or receipt of Exchange data,⁴ but does not currently charge for the "physical" ports needed to connect to the Exchange's system. A logical port is also commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or PITCH data receipt. In contrast, a physical port is the port that is used by a Member or non-member to literally plug into the Exchange at the data centers where the Exchange's servers are located (*i.e.*, either a cross-connection or a private line Ethernet connection to the Exchange's network within the data center). Multiple logical ports can be created for a single physical port.

⁴ See Release No. 34-60364 (July 22, 2009), 74 FR 37285 (July 28, 2009) (File No. SR-BATS-2009-026).

The Exchange proposes to provide four (4) pairs⁵ of physical ports without charge to any Member or non-member that has been approved to connect to the Exchange. Due to the infrastructure costs associated with providing physical ports, the Exchange proposes to charge \$2,000 for each additional single physical port provided by the Exchange to any Member or non-member in any data center. Under the Exchange's current policy all physical ports are provided free of charge but Members and non-members are only permitted to establish up to 4 such physical port pairs. The Exchange's proposal is intended to permit those Members and non-members that wish to establish additional physical ports to do so if such constituent is willing to pay for such ports. Based on the proposal, the change applies to all Exchange constituents with physical connections, including Members that obtain ports for direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, Sponsored Participants, and market data recipients. Very few Members or other non-members require four physical ports for their operations related to the Exchange or would utilize more than four physical ports, and thus, the proposal should not affect many of the Exchange's constituents. However, the Exchange believes that Members and non-members that wish to pay for additional physical ports outside of those provided for free should have the ability to do so.

(b) Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national

⁵ A "pair" of ports refers to one port at the site of the Exchange's primary data center (including the expansion space located adjacent to such data center) and one port at the site of the Exchange's secondary data center.

securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes that the proposed change is consistent with Section 6(b)(4) of the Act,⁷ because it provides an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that its proposed physical port fees are reasonable in light of the benefits to Exchange Users of direct market access and receipt of data, which access and data can be accomplished without charge through the four physical port pairs provided free of charge or through other means of access not requiring physical ports (*e.g.*, access through a virtual private network, or “VPN”, connection). In addition, the Exchange believes that its fees are equitably allocated among its constituents as they are uniform in application to all Members and non-Members. The Exchange believes that fees for each single physical port over and above four free physical port pairs will enable it to cover its infrastructure costs associated with allowing constituents to establish additional physical ports to connect to the Exchange’s systems.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Market participants will not be affected by the proposal unless such participants’ technological needs are such that they wish to establish more than four physical connections to the Exchange. In addition, the Exchange believes that the

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

proposed physical port fees are reasonable, especially in light of the 4 pairs of physical ports provided by the Exchange for free.

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 the time period for Commission action specified in Section 19(b)(2) of the Act.⁸

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

Not applicable.

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.

Exhibits 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

⁸ 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2009-032)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend BATS Fee Schedule to Impose Fees for Physical Ports Used to Connect to BATS Exchange

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 December 18, 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. 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 has filed a proposed rule change to amend the fee schedule applicable to Members³ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Pursuant to the proposed rule change the Exchange will commence charging fees to Members and non-members for certain physical ports used to connect to the Exchange’s systems. The Exchange will implement the proposed rule change on the first day of the month immediately following Commission approval (or on the date of approval, if on the first business day of a month).

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.

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 purpose of the proposed rule change is to begin charging a monthly fee for physical ports used to connect to the Exchange's system for order entry and receipt of data from the Exchange. The Exchange recently began charging for "logical" ports used for order entry or receipt of Exchange data,⁴ but does not currently charge for the "physical" ports needed to connect to the Exchange's system. A logical port is also commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or PITCH

⁴ See Release No. 34-60364 (July 22, 2009), 74 FR 37285 (July 28, 2009) (File No. SR-BATS-2009-026).

data receipt. In contrast, a physical port is the port that is used by a Member or non-member to literally plug into the Exchange at the data centers where the Exchange's servers are located (*i.e.*, either a cross-connection or a private line Ethernet connection to the Exchange's network within the data center). Multiple logical ports can be created for a single physical port.

The Exchange proposes to provide four (4) pairs⁵ of physical ports without charge to any Member or non-member that has been approved to connect to the Exchange. Due to the infrastructure costs associated with providing physical ports, the Exchange proposes to charge \$2,000 for each additional single physical port provided by the Exchange to any Member or non-member in any data center. Under the Exchange's current policy all physical ports are provided free of charge but Members and non-members are only permitted to establish up to 4 such physical port pairs. The Exchange's proposal is intended to permit those Members and non-members that wish to establish additional physical ports to do so if such constituent is willing to pay for such ports. Based on the proposal, the change applies to all Exchange constituents with physical connections, including Members that obtain ports for direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, Sponsored Participants, and market data recipients. Very few Members or other non-members require four physical ports for their operations related to the Exchange or would utilize more than four physical ports, and thus, the proposal should not affect many of the Exchange's constituents. However, the Exchange believes

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that Members and non-members that wish to pay for additional physical ports outside of those provided for free should have the ability to do so.

2. Statutory Basis

The rule change proposed in this submission 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(b) of the Act.⁶ Specifically, the Exchange believes that the proposed change is consistent with Section 6(b)(4) of the Act,⁷ because it provides an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that its proposed physical port fees are reasonable in light of the benefits to Exchange Users of direct market access and receipt of data, which access and data can be accomplished without charge through the four physical port pairs provided free of charge or through other means of access not requiring physical ports (*e.g.*, access through a virtual private network, or “VPN”, connection). In addition, the Exchange believes that its fees are equitably allocated among its constituents as they are uniform in application to all Members and non-Members. The Exchange believes that fees for each single physical port over and above four free physical port pairs will enable it to cover its infrastructure costs associated with allowing constituents to establish additional physical ports to connect to the Exchange’s systems.

⁶ 15 U.S.C. 78f(b).

⁷ 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 will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Market participants will not be affected by the proposal unless such participants' technological needs are such that they wish to establish more than four physical connections to the Exchange. In addition, the Exchange believes that the proposed physical port fees are reasonable, especially in light of the 4 pairs of physical ports provided by the Exchange for free.

(C) 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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-2009-032 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-2009-032. 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 changes 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-2009-032 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.⁸

Florence E. Harmon
Deputy Secretary

⁸ 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 [September 1, 2009]February 1, 2010

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."

* * * * *

Port Fees

- \$250.00 per month per pair (primary and secondary data center) of any logical port other than a Multicast PITCH Spin Server Port or GRP Port
- Multicast PITCH customers: 12 free pairs of Multicast PITCH Spin Server Ports, and, if such ports are used, one free pair of GRP Ports; \$250.00 per month per additional set of 12 pairs of Multicast PITCH Spin Server Ports or additional pair of GRP Ports
- Physical ports: up to 4 pairs free of charge; \$2,000.00 per month for each additional single physical port

* 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.