

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 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 February 26, 2010.

(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 proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on November 10, 2009. Exchange staff will advise the BATS Exchange Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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 Exchange proposes to modify its fee schedule applicable to use of the Exchange effective February 26, 2010, in order to (i) establish fees for executions that occur on the BATS Exchange options market ("BATS Options");⁴ (ii) establish fees for executions routed via BATS Options to other options exchanges; and (iii) make other technical changes to the fee schedule.

(i) *Fees for Executions on BATS Options*

The Exchange proposes to implement fees based on the pricing model currently in place for the trading of equities via the Exchange. Specifically, the Exchange will assess fees for the execution of options contracts based upon which Member provides liquidity to the BATS Options order book and which Member takes liquidity from BATS Options order book. This model seeks to attract liquidity to BATS Options by providing credits to Members that provide liquidity, and to assess a fee to the Member whose order executes against an order that has provided liquidity. An order that provides liquidity is any order that is entered into BATS Options and is placed on the BATS Options order book for potential execution. An order that takes liquidity is one that is entered into

⁴ On January 26, 2010, the Commission approved SR-BATS-2009-031, which proposed rules for the trading of equity options on the Exchange. See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031).

BATS Options and that executes against an order resting on the BATS Options order book.

The Exchange is proposing to charge \$0.30 per contract for executions that remove liquidity from BATS Options and to rebate \$0.20 per contract for executions that add liquidity to BATS Options.

(ii) *Routing Fees for Orders Routed away from BATS Options*

The Exchange proposes to charge the routing charges per contract as described below. All charges by the Exchange for routing away from BATS Options are applicable only in the event that an order is executed. In other words, there is no charge for orders that are routed away from the Exchange but are not filled.

BATS Options will pass through the charges assessed by other markets for the execution of options orders, plus an additional charge. Specifically, in connection with routing of orders other than directed ISOs away from BATS Options, the Exchange proposes to charge \$0.05 per contract plus all destination exchange fees incurred for the execution. In connection with routing of directed ISOs away from BATS Options, the Exchange proposes to charge \$0.10 per contract plus all destination exchange fees incurred for the execution. For instance, if the Exchange routes an order (other than a directed ISO) to another options exchange and is charged \$0.30 for the execution, then the total charge billed to the Member will be \$0.35. Similarly, if the Exchange routes a directed ISO to another options exchange and is charged \$0.30 for the execution, then the total charge billed to the Member will be \$0.40. With respect to orders that are executed at other options exchanges without a charge to the Exchange, such orders will only be

assessed the applicable additional charge (*i.e.*, \$0.05 per contract for all orders other than directed ISOs and \$0.10 per contract for all directed ISOs).

(iii) *Technical Changes to Fee Schedule*

The Exchange proposes to create headings to make clear which fees apply to the Exchange's pre-existing equity securities trading platform, the BATS Options trading platform, which will commence operations on February 26, 2010, or both. At this time, the Exchange is not proposing to charge for logical ports for Members who connect to BATS Options. Accordingly, the Exchange has intentionally left the portions of the fee schedule that set forth fees for logical ports classified under the new "Equities Pricing" heading. However, the Exchange's proposal to implement physical port fees, which was recently approved,⁵ was intended to operate such that physical port fees charged by the Exchange apply to any Member or non-Member that maintains more than four (4) physical ports at either of the Exchange's data centers, regardless of their activities on the Exchange (*e.g.*, equities trading, options trading, receipt of Exchange market data or some combination of the foregoing). Accordingly the Exchange has also created a heading to make clear that such physical connection charges are applicable to all Exchange constituents.

In addition, the Exchange proposes an amendment to the description of pricing for executions on the Exchange in equity securities priced below \$1.00 to make clear that the 0.10% fee applies to executions on the Exchange that remove liquidity from the Exchange by adding the words "to remove liquidity" to the existing text.

⁵ See Securities Exchange Act Release No. 61545 (February 19, 2010) (SR-BATS-2009-032).

(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.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. Upon launch, BATS Options will be the eighth options market in the national market system. Joining BATS Options and electing to trade options via BATS Options is entirely voluntary. Under these circumstances, the fees for trading on and through BATS Options must be competitive in order for BATS Options to attract order flow, execute orders, and grow as a market. The Exchange believes that the fees and credits proposed for BATS Options are competitive with those charged by other venues. In addition, 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.

⁶ 15 U.S.C. 78f.

⁷ 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 Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ 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 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2010-005)

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 February 24, 2010, 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 its fee schedule applicable to Members⁵ of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule

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

pursuant to this proposal will be effective upon filing, the changes will become operative on February 26, 2010.

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 its fee schedule applicable to use of the Exchange effective February 26, 2010, in order to (i) establish fees for executions that occur on the BATS Exchange options market ("BATS Options");⁶ (ii) establish fees for executions routed via BATS Options to other options exchanges; and (iii) make other technical changes to the fee schedule.

(i) *Fees for Executions on BATS Options*

⁶ On January 26, 2010, the Commission approved SR-BATS-2009-031, which proposed rules for the trading of equity options on the Exchange. See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031).

The Exchange proposes to implement fees based on the pricing model currently in place for the trading of equities via the Exchange. Specifically, the Exchange will assess fees for the execution of options contracts based upon which Member provides liquidity to the BATS Options order book and which Member takes liquidity from BATS Options order book. This model seeks to attract liquidity to BATS Options by providing credits to Members that provide liquidity, and to assess a fee to the Member whose order executes against an order that has provided liquidity. An order that provides liquidity is any order that is entered into BATS Options and is placed on the BATS Options order book for potential execution. An order that takes liquidity is one that is entered into BATS Options and that executes against an order resting on the BATS Options order book.

The Exchange is proposing to charge \$0.30 per contract for executions that remove liquidity from BATS Options and to rebate \$0.20 per contract for executions that add liquidity to BATS Options.

(ii) *Routing Fees for Orders Routed away from BATS Options*

The Exchange proposes to charge the routing charges per contract as described below. All charges by the Exchange for routing away from BATS Options are applicable only in the event that an order is executed. In other words, there is no charge for orders that are routed away from the Exchange but are not filled.

BATS Options will pass through the charges assessed by other markets for the execution of options orders, plus an additional charge. Specifically, in connection with routing of orders other than directed ISOs away from BATS Options, the Exchange proposes to charge \$0.05 per contract plus all destination exchange fees incurred for the execution. In connection with routing of directed ISOs away from BATS Options, the

Exchange proposes to charge \$0.10 per contract plus all destination exchange fees incurred for the execution. For instance, if the Exchange routes an order (other than a directed ISO) to another options exchange and is charged \$0.30 for the execution, then the total charge billed to the Member will be \$0.35. Similarly, if the Exchange routes a directed ISO to another options exchange and is charged \$0.30 for the execution, then the total charge billed to the Member will be \$0.40. With respect to orders that are executed at other options exchanges without a charge to the Exchange, such orders will only be assessed the applicable additional charge (*i.e.*, \$0.05 per contract for all orders other than directed ISOs and \$0.10 per contract for all directed ISOs).

(iii) *Technical Changes to Fee Schedule*

The Exchange proposes to create headings to make clear which fees apply to the Exchange's pre-existing equity securities trading platform, the BATS Options trading platform, which will commence operations on February 26, 2010, or both. At this time, the Exchange is not proposing to charge for logical ports for Members who connect to BATS Options. Accordingly, the Exchange has intentionally left the portions of the fee schedule that set forth fees for logical ports classified under the new "Equities Pricing" heading. However, the Exchange's proposal to implement physical port fees, which was recently approved,⁷ was intended to operate such that physical port fees charged by the Exchange apply to any Member or non-Member that maintains more than four (4) physical ports at either of the Exchange's data centers, regardless of their activities on the Exchange (*e.g.*, equities trading, options trading, receipt of Exchange market data or some combination of the foregoing). Accordingly the Exchange has also created a

⁷ See Securities Exchange Act Release No. 61545 (February 19, 2010) (SR-BATS-2009-032).

heading to make clear that such physical connection charges are applicable to all Exchange constituents.

In addition, the Exchange proposes an amendment to the description of pricing for executions on the Exchange in equity securities priced below \$1.00 to make clear that the 0.10% fee applies to executions on the Exchange that remove liquidity from the Exchange by adding the words “to remove liquidity” to the existing text.

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.⁸ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ 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. Upon launch, BATS Options will be the eighth options market in the national market system. Joining BATS Options and electing to trade options via BATS Options is entirely voluntary. Under these circumstances, the fees for trading on and through BATS Options must be competitive in order for BATS Options to attract order flow, execute orders, and grow as a market. The Exchange believes that the fees and credits proposed for BATS

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

Options are competitive with those charged by other venues. In addition, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

(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 Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ 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:

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

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-2010-005 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-2010-005. 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-2010-005 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 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 [March 1]February 26, 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"). The Schedule of Fees is divided into Equities Pricing, Options Pricing and Physical Connection Charges.

Equities Pricing:

All references to "per share" mean "per share executed."

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

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

Liquidity Rebates for All Securities Priced \$1.00 or Above

\$0.0024 rebate per share that adds liquidity to the BATS book

\$0.0020 rebate per share that adds non-displayed* (hidden) liquidity to the BATS book

Securities Priced Below \$1.00

0.10% charge of the total dollar value to remove liquidity for securities priced below \$1.00 traded on the BATS Book

No liquidity rebate for securities priced below \$1.00 traded on the BATS Book

Standard Routing Pricing – Best Execution Routing

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

\$0.0027 charge per share for shares executed at any other venue ("CYCLE" and "RECYCLE" 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 for Tape B: \$0.0027 charge per share

- BATS + NASDAQ Destination Specific Orders for Tapes A and C: \$0.0029 charge per share

Other Non-Standard Routing Options – Specific Order Types and Securities Priced Below \$1.00

- BATS ("Dark Scan") Modified Destination Specific Orders routed to a dark liquidity venue: \$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

- Stocks Priced Below \$1.00 for CYCLE and RECYCLE routed executions: 0.27% charge of the total dollar value

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.

Options Pricing:

All references to “per contract” mean “per contract executed.”

Fees for Accessing Liquidity for All Securities

\$0.30 charge per contract that removes liquidity from the BATS book

Liquidity Rebates for All Securities

\$0.20 rebate per contract that adds liquidity to the BATS book

Standard Routing Fee

\$0.05 charge per contract plus all destination exchange fees

Directed ISO Fee

\$0.10 charge per contract plus all destination exchange fees

Physical Connection Charges:

- Physical ports: up to 4 pairs free of charge; \$2,000.00 per month for each additional single physical port