

Required fields are shown with yellow backgrounds and asterisks.

Filing 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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" 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)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

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 action (limit 250 characters, required when Initial is checked \*).  
 Amendments to the fee schedule of BATS Exchange, Inc. with respect to BATS Options pricing.

**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 action.

First Name \* Chris      Last Name \* Solgan  
 Title \* Assistant General Counsel  
 E-mail \* csolgan@bats.com  
 Telephone \* (646) 856-8723      Fax

**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.  
 (Title \*)  
 Date 06/19/2015      Assistant General Counsel  
 By Chris Solgan      (Name \*)  
 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 EFFF 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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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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, security-based swap submission, or advance notice 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

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (“BATS” or the “Exchange”) proposes to amend its fee schedule applicable to its equity options platform to: (i) establish fees for the Multicast PITCH market data feed; and (ii) add definitions for terms that apply to market data fees. The proposed changes to the fee schedule are attached as Exhibit 5 and are available on the Exchange’s website at [www.batstrading.com](http://www.batstrading.com), at the Exchange’s principal office and at the Public Reference Room of the Commission.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Exchange submits the proposed rule change pursuant to authority delegated by the Board of Directors of the Exchange on February 11, 2014. Exchange staff will advise the Exchange’s Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change and, therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Eric Swanson  
Executive Vice President and  
General Counsel  
(913) 815-7000

Chris Solgan  
Assistant General Counsel  
(646) 856-8723

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

(a) Purpose

The Exchange proposes to amend its fee schedule applicable to its equity options platform to: (i) establish fees for the Multicast PITCH market data feed; and (ii) add definitions for terms that apply to market data fees.

Definitions Applicable to Market Data Fees

The Exchange proposes to include in its fee schedule the following defined terms that relate to the Exchange’s market data fees. The proposed definitions are designed to provide greater transparency with regard to how the Exchange assesses fees for market data.

First, the Exchange proposes to define a “Distributor” as “any entity that receives an Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.”<sup>3</sup> In turn, an Internal Distributor and External Distributor will be separately defined. An Internal Distributor will be defined as a “Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own

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<sup>3</sup> The proposed definition of “Distributor” is based on the definition of Distributor in fee schedules of the BATS Exchange, Inc. (“BATS Equities”), the BATS Y-Exchange, Inc. (“BYX”), the EDGX Exchange, Inc. (“EDGX”), and the EDGA Exchange, Inc. (“EDGA” together with BATS Equities, BYX, and EDGX, the “BATS Exchanges”). See the BATS Equities fee schedule available at [http://batstrading.com/support/fee\\_schedule/bzx/](http://batstrading.com/support/fee_schedule/bzx/), BYX fee schedule available at [http://batstrading.com/support/fee\\_schedule/byx/](http://batstrading.com/support/fee_schedule/byx/), EDGX fee schedule available at [http://batstrading.com/support/fee\\_schedule/edgx/](http://batstrading.com/support/fee_schedule/edgx/), and EDGA fee schedule available at [http://batstrading.com/support/fee\\_schedule/edga/](http://batstrading.com/support/fee_schedule/edga/) (collectively, the “BATS Exchange Fee Schedules”).

entity.”<sup>4</sup> An External Distributor will be defined as a “Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.”<sup>5</sup>

Secondly, the Exchange proposes to add a definition of “User” to its fee schedule. A User will be defined as a “natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.” For purposes of its market data fees, the Exchange will distinguish between “Non-Professional Users” and “Professional Users.” Specifically, a Non-Professional User will be defined as “a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.”<sup>6</sup> A Professional User will be defined as “any User other than a Non-Professional User.”<sup>7</sup>

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<sup>4</sup> The proposed definition of “Internal Distributor” is similar to the definition of Internal Distributor in fee schedules of the BATS Exchanges. Id.

<sup>5</sup> The proposed definition of “External Distributor” is similar to the definition of External Distributor in fee schedules of the BATS Exchanges. Id.

<sup>6</sup> The proposed definition of “Professional User” is similar to the definition of Professional User in fee schedules of the BATS Exchanges. Id.

<sup>7</sup> The proposed definition of “Non-Professional User” is similar to the definition of Professional User in fee schedules of the BATS Exchanges. See BATS Exchange

### Multicast PITCH Fees

Multicast PITCH is a market data feed that includes depth of book quotations and execution information based on options orders traded on the Exchange.<sup>8</sup> Currently, the Exchange does not charge any fees for receipt of Multicast PITCH. The Exchange now proposes to amend its fee schedule to incorporate fees related to Multicast PITCH. These fees include the following, each of which are described in detail below: (i) a Distribution Fee; (ii) Usage Fees for both Professional and Non-Professional Users; and (iii) an Enterprise Fee.

Distribution Fee. As proposed, each Distributor that receives Multicast PITCH shall pay a fee of \$1,500 per month. The proposed Distribution Fee would apply equally to both Internal Distributors and External Distributors.

User Fees. The Exchange proposes to charge those who receive Multicast PITCH from either an Internal or External Distributor different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$30.00 per User. Non-Professional Users will be assessed a monthly fee of \$1.00 per User.

Both Internal and External Distributors would be required to count every Professional User and Non-Professional User to which they provide Multicast PITCH, the requirements for which are similar to that currently in place for the BATS One Feed.<sup>9</sup>

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Fee Schedules, supra note 3.

<sup>8</sup> See Exchange Rule 21.15(a).

<sup>9</sup> See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18,

Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of Multicast PITCH, the Distributor should count as one User each unique User that the Distributor has entitled to have access to Multicast PITCH. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.
- The Distributor should identify and report each unique User. If a User uses the same unique method to gain access to Multicast PITCH, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to Multicast PITCH (*e.g.*, a single User has multiple passwords and user identifications), the Distributor should report all of those methods as an individual User.
- Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

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2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09) (“Initial BATS One Feed Fee Filings”). The only difference is that the counting requirements proposed herein would require the counting of Users receiving Multicast PITCH through both internal and external distribution. Because Usage Fees are solely charged to recipient firms who's Users receive the BATS One Feed from an External Distributor and not through internal distribution, the BATS One Feed counting requirements only require the counting of Users by Distributors that disseminate the BATS One Feed externally.

- If a Distributor entitles one or more individuals to use the same device, the Distributor should include only the individuals, and not the device, in the count.

Enterprise Fee. The Exchange also proposes to establish a \$3,500 per month Enterprise Fee that will permit a recipient firm who receives Multicast PITCH from a Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 500 Professional Users who each receive Multicast PITCH at \$30.00 per month, then that recipient firm will pay \$15,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$3,500 per month for an unlimited number of Professional and Non-Professional Users for Multicast PITCH. A recipient firm must pay a separate Enterprise Fee for each Distributor that controls display of Multicast PITCH if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on July 1, 2015.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the

objectives of Section 6 of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act<sup>12</sup> in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,<sup>13</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and

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<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78k-1.

<sup>13</sup> See 17 CFR 242.603.

unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. Multicast PITCH is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to Multicast PITCH further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute Multicast PITCH, prospective Users likely would not subscribe to, or would cease

subscribing to, the Multicast PITCH.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.<sup>14</sup>

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for Multicast PITCH is equitable and reasonable because it will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for Multicast PITCH is reasonable because it provides an additional method for retail investors to access Multicast PITCH data by providing the same data that is available to Professional Users. The Exchange

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<sup>14</sup> The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized for by the Exchange for the BATS One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.<sup>15</sup> Offering Multicast PITCH to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE Arca, Inc. (“NYSE Arca”). Specifically, NYSE Arca offers NYSE ArcaBook for Arca Options – Depth of Book, which includes depth of book information for options traded on NYSE Arca, for a monthly fee of \$50.00 per professional subscriber and \$1.00 per non-professional subscriber.<sup>16</sup> The Exchange’s proposed per User Fees for Multicast PITCH is less than or equal to the NYSE Arca’s fees for NYSE ArcaBook for Arca Options – Depth of Book.

Enterprise Fee. The proposed Enterprise Fee for Multicast PITCH is equitable and reasonable as the fees proposed are less than the enterprise fees currently charged for NYSE ArcaBook for Arca Options – Depth of Book. NYSE Arca provides a fee cap \$5,000 per month for NYSE ArcaBook for Arca Options – Depth of Book for non-

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<sup>15</sup> See the Initial BATS One Feed Fee Filings, *supra* note 9. See also, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); Nasdaq Rules 7023(b), 7047.

<sup>16</sup> See NYSE Market Data Pricing dated May 2015 available at <http://www.nyxdata.com/>.

professional user only,<sup>17</sup> while the Exchange is proposing a monthly Enterprise Fee of \$3,500 per month for both Professional and Non-Professional Users. In addition, the Enterprise Fee proposed by the Exchange could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the Multicast PITCH, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the Multicast PITCH, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

Distributor Fee. The Exchange believes that the proposed Distributor Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions

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<sup>17</sup> Id.

between internal and external distribution.<sup>18</sup> The Exchange believes that the Distributor Fees for Multicast PITCH are reasonable and fair in light of alternatives offered by other market centers. For example, NYSE Arca charges an internal distribution fee of \$3,000 per month and an external distribution fee of \$2,000 per month for NYSE ArcaBook for Arca Options – Depth of Book,<sup>19</sup> while the Exchange is proposing a monthly Distribution Fee of \$1,500 per month for both Internal and External Distribution.

#### Definitions Applicable to Market Data Fees

The Exchange believes that the proposed definitions are consistent with Section 6(b) of the Act,<sup>20</sup> in general, and Section 6(b)(4) of the Act,<sup>21</sup> in particular, in that it provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that the proposed definitions are reasonable because they are designed to provide greater transparency with regard to how the Exchange assesses fees for market data. The Exchange believes that recipients of Exchange data would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would

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<sup>18</sup> The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See BATS Exchange Fee Schedules, supra note 3. See also Nasdaq Rule 019(b); Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

<sup>19</sup> See NYSE Market Data Pricing dated May 2015 available at <http://www.nyxdata.com/>.

<sup>20</sup> 15 U.S.C. 78f.

<sup>21</sup> 15 U.S.C. 78f(b)(4).

assess fees. These definitions are intended to make the fee schedule clearer and less confusing for investors, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Lastly, the proposed definitions are based on existing definitions in fee schedules of the BATS Exchanges.<sup>22</sup>

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.

Multicast PITCH Fees

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. The Exchange's ability to price Multicast PITCH is constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative

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<sup>22</sup> See BATS Exchange Fee Schedules, supra note 3.

trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, Multicast PITCH competes with a number of alternative products. For instance, Multicast PITCH does not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the Options Price Reporting Authority (“OPRA”), the several TRFs, and Electronic Communication Networks (“ECN”) that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce similar data products, and many currently do, including the Nasdaq Stock Market LLC (“Nasdaq”) and the New York Stock Exchange, Inc. (“NYSE”).

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange’s compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to Multicast PITCH, including existing similar feeds by

other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

#### Definitions Applicable to Market Data Fees

The proposed definitions applicable to market data fees will not result in any burden on competition. The proposed definitions are not designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that recipients of Exchange data would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees for market data. These definitions are intended to make the Fee Schedule clearer and less confusing for investors and are not designed to have a competitive impact.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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)

(a) This proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Act.

(b) This proposed rule change establishes dues, fees or other charges among its

members and, as such, may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>23</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>24</sup>

(c) Inapplicable.

(d) Inapplicable.

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

Not applicable.

9. Security Based-Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BATS-2015-46)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fee schedule applicable to its equity options platform to: (i) establish fees for the Multicast PITCH market data feed; and (ii) add definitions for terms that apply to market data fees.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

The text of the proposed rule change is available at the Exchange's website at [www.batstrading.com](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 amend its fee schedule applicable to its equity options platform to: (i) establish fees for the Multicast PITCH market data feed; and (ii) add definitions for terms that apply to market data fees.

Definitions Applicable to Market Data Fees

The Exchange proposes to include in its fee schedule the following defined terms that relate to the Exchange's market data fees. The proposed definitions are designed to provide greater transparency with regard to how the Exchange assesses fees for market data.

First, the Exchange proposes to define a "Distributor" as "any entity that receives an Exchange Market Data product directly from the Exchange or indirectly through

another entity and then distributes it internally or externally to a third party.”<sup>5</sup> In turn, an Internal Distributor and External Distributor will be separately defined. An Internal Distributor will be defined as a “Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.”<sup>6</sup> An External Distributor will be defined as a “Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.”<sup>7</sup>

Secondly, the Exchange proposes to add a definition of “User” to its fee schedule. A User will be defined as a “natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.” For purposes of its market data fees, the Exchange will distinguish between “Non-Professional Users” and “Professional Users.” Specifically, a Non-Professional User will be defined as “a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading

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<sup>5</sup> The proposed definition of “Distributor” is based on the definition of Distributor in fee schedules of the BATS Exchange, Inc. (“BATS Equities”), the BATS Y-Exchange, Inc. (“BYX”), the EDGX Exchange, Inc. (“EDGX”), and the EDGA Exchange, Inc. (“EDGA” together with BATS Equities, BYX, and EDGX, the “BATS Exchanges”). See the BATS Equities fee schedule available at [http://batstrading.com/support/fee\\_schedule/bzx/](http://batstrading.com/support/fee_schedule/bzx/), BYX fee schedule available at [http://batstrading.com/support/fee\\_schedule/byx/](http://batstrading.com/support/fee_schedule/byx/), EDGX fee schedule available at [http://batstrading.com/support/fee\\_schedule/edgx/](http://batstrading.com/support/fee_schedule/edgx/), and EDGA fee schedule available at [http://batstrading.com/support/fee\\_schedule/edga/](http://batstrading.com/support/fee_schedule/edga/) (collectively, the “BATS Exchange Fee Schedules”).

<sup>6</sup> The proposed definition of “Internal Distributor” is similar to the definition of Internal Distributor in fee schedules of the BATS Exchanges. *Id.*

<sup>7</sup> The proposed definition of “External Distributor” is similar to the definition of External Distributor in fee schedules of the BATS Exchanges. *Id.*

Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.”<sup>8</sup> A Professional User will be defined as “any User other than a Non-Professional User.”<sup>9</sup>

#### Multicast PITCH Fees

Multicast PITCH is a market data feed that includes depth of book quotations and execution information based on options orders traded on the Exchange.<sup>10</sup> Currently, the Exchange does not charge any fees for receipt of Multicast PITCH. The Exchange now proposes to amend its fee schedule to incorporate fees related to Multicast PITCH. These fees include the following, each of which are described in detail below: (i) a Distribution Fee; (ii) Usage Fees for both Professional and Non-Professional Users; and (iii) an Enterprise Fee.

Distribution Fee. As proposed, each Distributor that receives Multicast PITCH shall pay a fee of \$1,500 per month. The proposed Distribution Fee would apply equally

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<sup>8</sup> The proposed definition of “Professional User” is similar to the definition of Professional User in fee schedules of the BATS Exchanges. Id.

<sup>9</sup> The proposed definition of “Non-Professional User” is similar to the definition of Professional User in fee schedules of the BATS Exchanges. See BATS Exchange Fee Schedules, supra note 6.

<sup>10</sup> See Exchange Rule 21.15(a).

to both Internal Distributors and External Distributors.

User Fees. The Exchange proposes to charge those who receive Multicast PITCH from either an Internal or External Distributor different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$30.00 per User. Non-Professional Users will be assessed a monthly fee of \$1.00 per User.

Both Internal and External Distributors would be required to count every Professional User and Non-Professional User to which they provide Multicast PITCH, the requirements for which are similar to that currently in place for the BATS One Feed.<sup>11</sup> Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of Multicast PITCH, the Distributor should count as one User each unique User that the Distributor has entitled to have access to Multicast PITCH. However, where a device is

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<sup>11</sup> See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09) ("Initial BATS One Feed Fee Filings"). The only difference is that the counting requirements proposed herein would require the counting of Users receiving Multicast PITCH through both internal and external distribution. Because Usage Fees are solely charged to recipient firms who's Users receive the BATS One Feed from an External Distributor and not through internal distribution, the BATS One Feed counting requirements only require the counting of Users by Distributors that disseminate the BATS One Feed externally.

dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.

- The Distributor should identify and report each unique User. If a User uses the same unique method to gain access to Multicast PITCH, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to Multicast PITCH (*e.g.*, a single User has multiple passwords and user identifications), the Distributor should report all of those methods as an individual User.
- Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If a Distributor entitles one or more individuals to use the same device, the Distributor should include only the individuals, and not the device, in the count.

Enterprise Fee. The Exchange also proposes to establish a \$3,500 per month Enterprise Fee that will permit a recipient firm who receives Multicast PITCH from a Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 500 Professional Users who each receive Multicast PITCH at \$30.00 per month, then that recipient firm will pay \$15,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$3,500 per month for an unlimited number of Professional and Non-Professional Users for Multicast PITCH. A recipient firm must pay a separate Enterprise Fee for each Distributor that controls display of Multicast PITCH if it wishes

such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-Professional Users.

#### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on July 1, 2015.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>13</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data. The Exchange believes the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients. Lastly, the Exchange also believes that the proposed fees are reasonable and non-discriminatory because they will apply uniformly to all recipients.

The Exchange also believes that the proposed rule change is consistent with

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<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

Section 11(A) of the Act<sup>14</sup> in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,<sup>15</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. Multicast PITCH is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other

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<sup>14</sup> 15 U.S.C. 78k-1.

<sup>15</sup> See 17 CFR 242.603.

exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to Multicast PITCH further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute Multicast PITCH, prospective Users likely would not subscribe to, or would cease subscribing to, the Multicast PITCH.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.<sup>16</sup>

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<sup>16</sup> The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including the Commission, to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return,

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for Multicast PITCH is equitable and reasonable because it will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for Multicast PITCH is reasonable because it provides an additional method for retail investors to access Multicast PITCH data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized for by the Exchange for the BATS One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.<sup>17</sup> Offering Multicast

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and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's website at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. See also Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (SR-NYSE-2014-64) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Access Fee for the NYSE Best Quote and Trades Data Feed, Operative December 1, 2014).

<sup>17</sup> See the Initial BATS One Feed Fee Filings, supra note 12. See also, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); Nasdaq Rules 7023(b), 7047.

PITCH to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients.

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by the NYSE Arca, Inc. (“NYSE Arca”). Specifically, NYSE Arca offers NYSE ArcaBook for Arca Options – Depth of Book, which includes depth of book information for options traded on NYSE Arca, for a monthly fee of \$50.00 per professional subscriber and \$1.00 per non-professional subscriber.<sup>18</sup> The Exchange’s proposed per User Fees for Multicast PITCH is less than or equal to the NYSE Arca’s fees for NYSE ArcaBook for Arca Options – Depth of Book.

Enterprise Fee. The proposed Enterprise Fee for Multicast PITCH is equitable and reasonable as the fees proposed are less than the enterprise fees currently charged for NYSE ArcaBook for Arca Options – Depth of Book. NYSE Arca provides a fee cap \$5,000 per month for NYSE ArcaBook for Arca Options – Depth of Book for non-professional user only,<sup>19</sup> while the Exchange is proposing a monthly Enterprise Fee of \$3,500 per month for both Professional and Non-Professional Users. In addition, the Enterprise Fee proposed by the Exchange could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the Multicast PITCH, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional

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<sup>18</sup> See NYSE Market Data Pricing dated May 2015 available at <http://www.nyxdata.com/>.

<sup>19</sup> Id.

Users, the Exchange believes that more firms may choose to receive and to distribute the Multicast PITCH, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

Distributor Fee. The Exchange believes that the proposed Distributor Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions between internal and external distribution.<sup>20</sup> The Exchange believes that the Distributor Fees for Multicast PITCH are reasonable and fair in light of alternatives offered by other

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<sup>20</sup> The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. See BATS Exchange Fee Schedules, supra note 6. See also Nasdaq Rule 019(b); Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

market centers. For example, NYSE Arca charges an internal distribution fee of \$3,000 per month and an external distribution fee of \$2,000 per month for NYSE ArcaBook for Arca Options – Depth of Book,<sup>21</sup> while the Exchange is proposing a monthly Distribution Fee of \$1,500 per month for both Internal and External Distribution.

#### Definitions Applicable to Market Data Fees

The Exchange believes that the proposed definitions are consistent with Section 6(b) of the Act,<sup>22</sup> in general, and Section 6(b)(4) of the Act,<sup>23</sup> in particular, in that it provides for an equitable allocation of reasonable fees among recipients of the data and is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that the proposed definitions are reasonable because they are designed to provide greater transparency with regard to how the Exchange assesses fees for market data. The Exchange believes that recipients of Exchange data would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees. These definitions are intended to make the fee schedule clearer and less confusing for investors, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Lastly, the proposed definitions are based on existing definitions in fee schedules of the BATS Exchanges.<sup>24</sup>

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<sup>21</sup> See NYSE Market Data Pricing dated May 2015 available at <http://www.nyxdata.com/>.

<sup>22</sup> 15 U.S.C. 78f.

<sup>23</sup> 15 U.S.C. 78f(b)(4).

<sup>24</sup> See BATS Exchange Fee Schedules, supra note 6.

(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.

Multicast PITCH Fees

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. The Exchange's ability to price Multicast PITCH is constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, Multicast PITCH competes with a number of alternative products. For instance, Multicast PITCH does not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the Options Price Reporting Authority ("OPRA"), the several TRFs, and Electronic Communication Networks

(“ECN”) that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce similar data products, and many currently do, including the Nasdaq Stock Market LLC (“Nasdaq”) and the New York Stock Exchange, Inc. (“NYSE”).

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange’s compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to Multicast PITCH, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

#### Definitions Applicable to Market Data Fees

The proposed definitions applicable to market data fees will not result in any burden on competition. The proposed definitions are not designed to amend any fee, nor alter the manner in which it assesses fees. The Exchange believes that recipients of Exchange data would benefit from clear guidance in its fee schedule that describes the manner in which the Exchange would assess fees for market data. These definitions are intended to make the Fee Schedule clearer and less confusing for investors and are not designed to have a competitive impact.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>25</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>26</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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.

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<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f).

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](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2015-46 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-2015-46. 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 website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2015-46 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.<sup>27</sup>

Robert W. Errett  
Deputy Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).

Proposed new language is underlined. Proposed deletions are marked by [brackets].

## **BATS Options Exchange Fee Schedule**

Effective [~~June 9~~]July 1, 2015

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### **Market Data Fees:**

#### **Definitions**

- A Distributor of an Exchange Market Data product is any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.
- An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity.
- An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.
- A User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.
- A Non-Professional User of an Exchange Market Data product is a natural person who is not: (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.
- A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

#### **Multicast PITCH:**

<b><u>Internal Distribution Fee</u></b>	<u>\$1,500/month</u>
<b><u>External Distribution Fee</u></b>	<u>\$1,500/month</u>
<b><u>Professional User Fee</u></b>	<u>\$30/month</u>

<b><u>Non-Professional User Fee</u></b>	<u>\$1.00/month</u>
<b><u>Enterprise Fee*</u></b>	<u>\$3,500/month</u>

\* As an alternative to User fees, a recipient firm may purchase a monthly Enterprise license to receive the Multicast PITCH Feed from a Distributor for distribution to an unlimited number of Professional and Non-Professional Users. A recipient firm must pay a separate Enterprise Fee for each Distributor that controls the display of the Multicast PITCH if it wishes such User to be covered by the Enterprise Fee.

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