

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 15	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2010 - * 039	Amendment No. (req. for Amendments *)
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Proposed Rule Change by BATS Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule		
			<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)	

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

Amendment to fee schedule of BATS Exchange, Inc. to commence charging for 10G direct circuit connections and other changes.

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

First Name * Anders Last Name * Franzon
 Title * VP, Associate General Counsel
 E-mail * afranzon@batstrading.com
 Telephone * (913) 815-7154 Fax (913) 815-7119

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

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

Date 12/22/2010
 By Anders Franzon (Name *) VP, Associate General Counsel (Title *)

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

Anders Franzon,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required)

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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 (required)

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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 and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Pursuant to the proposed rule change, the Exchange will commence charging fees to Members and non-members for 10G direct circuit connections, change pricing for certain other physical ports, and begin passing through in full certain hardware expenses incurred by the Exchange that are directly related to completing a cross-connect. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on January 3, 2011.

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

**BATS BZX Exchange Fee Schedule
Effective January 3, 2011⁴**

* * * * *

Physical Connection Charges^{*}:**

- 1G [P]physical ports: up to 4 pairs (primary and secondary data center) free of charge; \$[2,000.00]2,500.00 per month for each additional single physical port
- 10G physical ports: \$2,500.00 per month for each single physical port

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.

⁴ The date of the Exchange’s fee schedule was already changed from November 1, 2010 to January 3, 2011 in SR-BATS-2010-038.

*** The Exchange will pass-through in full any fees or costs in excess of \$1,000.00 incurred by the Exchange to complete a cross-connect

(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 Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (913) 815-7000.

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

(a) Purpose

The purpose of the proposed rule change is to establish fees for direct 10G circuit connections, to raise the monthly fees for "physical" ports into the Exchange at the data centers where the Exchange's servers are located, and to pass through in full any hardware costs or connectivity fees incurred by the Exchange that are directly related to completing a cross-connect where the cost or fee exceeds \$1,000. The Exchange already provides Members and non-Members four pairs⁵ of 1G physical ports free of charge and charges \$2,000 per month for each additional single physical port.

⁵ Each pair of ports consists of one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

The Exchange proposes to provide the option to connect directly with the Exchange via 10G physical ports to any Member or non-member that has been approved to connect to the Exchange. Due to the infrastructure costs associated with providing the additional bandwidth for 10G physical ports, the Exchange proposes to charge \$2,500 per month for each single physical 10G port provided by the Exchange to any Member or non-member in any data center. The Exchange's proposal is intended to permit those Members and non-members that require additional bandwidth and wish to establish 10G physical ports to do so if such constituent is willing to pay for such ports. The Exchange notes that other market centers provide similar services to their Members and non-members.⁶

The Exchange also proposes to increase the fee for each 1G physical port used by Members and non-members in excess of the four ports provided free of charge from \$2,000 per port each month to \$2,500 per port each month. The proposal is intended to account for increasing infrastructure costs associated with providing physical ports while at the same time permitting those Members and non-members that wish to establish additional physical ports do so if such constituents are willing to pay for such ports. Based on the proposal, the change applies to all Exchange constituents with 1G physical connections, including Members that obtain ports for direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, Sponsored Participants, and market data recipients. There are

⁶ See Securities Exchange Act Release Nos. 62663 (August 9, 2010), 75 FR 49543 (August 13, 2010) (SR-NASDAQ-2010-077) (order approving fees for both 1G and 10G non-co-located port connections); Securities Exchange Act Release No. 62681 (August 10, 2010), 75 FR 50020 (August 16, 2010)(SR-EDGA-2010-06) (order approving fees for both 1G and 10G port connections).

zero non-members and very few Members that currently require more than four physical ports for their operations related to the Exchange and thus, the proposal should not affect many of the Exchange's constituents.

Lastly, the Exchange proposes to pass through in full any hardware costs or connectivity fees incurred that are directly related to completing a cross-connect where the expense to the Exchange billed by a third party exceeds \$1,000. The Exchange proposes to pass through the expense as an alternative to the flat installation fees charged by the Exchange's primary competitors. The Exchange does not anticipate that passing through these expenses will affect many of the Exchange's constituents, because the majority of cross-connect completions cost less than \$1,000. For this reason, the Exchange proposes to pass-through the charges associated with cross-connect completions that cost more than \$1,000 rather than to subsidize these expensive completions by charging an installation fee for all completions regardless of their cost.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other

⁷ 15 U.S.C. 78f(b)(4).

venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and non-members.

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

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

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

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 the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.¹⁰

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ See Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both.

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

Not applicable.

9. Exhibits

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

Exhibit 2 – 5: Not applicable.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2010-039)

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 December 22, 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. The Exchange has designated the proposed rule change as one establishing or changing a 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 and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Pursuant to the proposed rule change, the Exchange will commence charging fees to Members and non-

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.

members for 10G direct circuit connections, change pricing for certain other physical ports, and begin passing through in full certain hardware expenses incurred by the Exchange that are directly related to completing a cross-connect. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on January 3, 2011.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish fees for direct 10G circuit connections, to raise the monthly fees for "physical" ports into the Exchange at the data centers where the Exchange's servers are located, and to pass through in full any hardware costs or connectivity fees incurred by the Exchange that are directly related to completing a cross-connect where the cost or fee exceeds \$1,000. The Exchange already

provides Members and non-Members four pairs⁶ of 1G physical ports free of charge and charges \$2,000 per month for each additional single physical port.

The Exchange proposes to provide the option to connect directly with the Exchange via 10G physical ports to any Member or non-member that has been approved to connect to the Exchange. Due to the infrastructure costs associated with providing the additional bandwidth for 10G physical ports, the Exchange proposes to charge \$2,500 per month for each single physical 10G port provided by the Exchange to any Member or non-member in any data center. The Exchange's proposal is intended to permit those Members and non-members that require additional bandwidth and wish to establish 10G physical ports to do so if such constituent is willing to pay for such ports. The Exchange notes that other market centers provide similar services to their Members and non-members.⁷

The Exchange also proposes to increase the fee for each 1G physical port used by Members and non-members in excess of the four ports provided free of charge from \$2,000 per port each month to \$2,500 per port each month. The proposal is intended to account for increasing infrastructure costs associated with providing physical ports while at the same time permitting those Members and non-members that wish to establish additional physical ports do so if such constituents are willing to pay for such ports. Based on the proposal, the change applies to all Exchange constituents with 1G physical

⁶ Each pair of ports consists of one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

⁷ See Securities Exchange Act Release Nos. 62663 (August 9, 2010), 75 FR 49543 (August 13, 2010) (SR-NASDAQ-2010-077) (order approving fees for both 1G and 10G non-co-located port connections); Securities Exchange Act Release No. 62681 (August 10, 2010), 75 FR 50020 (August 16, 2010)(SR-EDGA-2010-06) (order approving fees for both 1G and 10G port connections).

connections, including Members that obtain ports for direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, Sponsored Participants, and market data recipients. There are zero non-members and very few Members that currently require more than four physical ports for their operations related to the Exchange and thus, the proposal should not affect many of the Exchange's constituents.

Lastly, the Exchange proposes to pass through in full any hardware costs or connectivity fees incurred that are directly related to completing a cross-connect where the expense to the Exchange billed by a third party exceeds \$1,000. The Exchange proposes to pass through the expense as an alternative to the flat installation fees charged by the Exchange's primary competitors. The Exchange does not anticipate that passing through these expenses will affect many of the Exchange's constituents, because the majority of cross-connect completions cost less than \$1,000. For this reason, the Exchange proposes to pass-through the charges associated with cross-connect completions that cost more than \$1,000 rather than to subsidize these expensive completions by charging an installation fee for all completions regardless of their cost.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to

⁸ 15 U.S.C. 78f(b)(4).

competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and non-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

Pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.¹¹

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ See Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase "on any person, whether or not the person is a member of the self-regulatory organization" after "due, fee or other charge imposed by the self-regulatory organization." As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both.

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.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2010-039 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-2010-039. 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 Web site viewing and printing 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-2010-039 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).