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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66273; File No. SR-BATS-2012-003)

January 30, 2012

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 January 24, 2012 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 member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes [sic] amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

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.

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

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

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

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

1. Purpose

The Exchange recently proposed and received approval of rules governing auctions conducted on the Exchange for securities listed on the Exchange ("Exchange Auctions").⁶ Specifically, the Exchange adopted rules for conducting an opening auction on the Exchange ("Opening Auction"), a closing auction on the Exchange ("Closing Auction"), an auction in the event of an initial public offering ("IPO") or a halt of trading in the security ("IPO Auction" or "Halt Auction", respectively). In preparation for commencement of its listings business, and in turn, the commencement of Exchange Auctions, the Exchange proposes pricing for executions that occur in Exchange Auctions, as set forth below.

The Exchange proposes to charge fees of \$0.0005 per share that executes in an Opening Auction, IPO Auction or Halt Auction and \$0.0010 per share that executes in a Closing Auction.

⁶ See Securities Exchange Act Release No. 65619 (October 25, 2011), 76 FR 67238 (October 31, 2011) (SR-BATS-2011-032).

These rates are equivalent to the fees assessed by the NASDAQ Stock Market LLC (“NASDAQ”) for executions that occur in crosses on NASDAQ.⁷

Also similar to NASDAQ, the Exchange proposes to exempt certain executions from fees, specifically any executions in an Exchange Auction of any Continuous Book,⁸ Late-Limit-On-Open (“LLOO”)⁹ or Late-Limit-On-Close (“LLOC”)¹⁰ orders as defined in BZX Exchange Rule 11.23(a). Accordingly, excluding LLOOs and LLOCs, the Exchange will assess fees of either \$0.0005 per share or \$0.0010 per share (depending on the applicable Exchange Auction) for all “Eligible Auction Orders,” which term includes Market-On-Open,¹¹ Limit-On-Open,¹² Market-On-Close,¹³ Limit-On-Close,¹⁴ any Regular Hours Only¹⁵ order prior to the Opening Auction, and any limit or market order not designated to exclusively participate in the Opening

⁷ See NASDAQ Rule 7018(d)-(f).

⁸ A “Continuous Book Order” is defined in Rule 11.23(a) as all orders on the Exchange’s order book that are not Eligible Auction Orders.

⁹ The term “Late-Limit-On-Open” or “LLOO” is defined in Rule 11.23(a) as a “BATS limit order that is designated for execution only in the Opening Auction.” Users may only submit LLOO orders between 9:28 a.m. and 9:30 a.m. Eastern Time. A “User” is defined in Rule 1.5(cc) as any Member or sponsored participant with access to the Exchange.

¹⁰ The term “Late-Limit-On-Close” or “LLOC” is defined in Rule 11.23(a) as a “BATS limit order that is designated for execution only in the Closing Auction.” Users may only submit LLOC orders between 3:55 p.m. and 4:00 p.m. Eastern Time.

¹¹ A “Market-On-Open” order is defined in Rule 11.23(a) as a “BATS market order that is designated for execution only in the Opening Auction.”

¹² A “Limit-On-Open” order is defined in Rule 11.23(a) as a “BATS limit order that is designated for execution only in the Opening Auction.”

¹³ A “Market-On-Close” order is defined in Rule 11.23(a) as a “BATS market order that is designated for execution only in the Closing Auction.”

¹⁴ A “Limit-On-Close” order is defined in Rule 11.23(a) as a “BATS limit order that is designated for execution only in the Closing Auction.”

¹⁵ A “Regular Hours Only” order is defined in Rule 11.23(a) as a “BATS order that is designated for execution only during Regular Trading Hours, which includes the Opening Auction, the Closing Auction, and IPO/Halt Auctions.” “Regular Trading Hours” is defined in Rule 1.5(w) as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.”

Auction or Closing Auction entered during the Quote-Only Period¹⁶ of an IPO Auction or Halt Auction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.¹⁷ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁸ 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 the proposed fees for executions of Eligible Auction Orders that occur in Exchange Auctions (other than LLOOs and LLOCs) are reasonable in that they are equivalent to the fees charged by at least one of the Exchange's competitors, as described above. The Exchange also believes that the proposed fees are fair and equitable and not unreasonably discriminatory in that they apply equally to all Exchange participants. The Exchange believes that excluding Continuous Book orders from fee liability in Exchange Auctions is reasonable because such orders, if already posted to the Exchange's order book, would be eligible for rebates provided by the Exchange, and would not be assessed fees. Accordingly, while the

¹⁶ The "Quote Only Period" is defined in Rule 11.23(a) as "a designated period of time prior to a Halt Auction or an IPO during which Users may submit orders to the Exchange for participation in the auction."

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(4).

Exchange does not propose to provide a rebate for any execution that occurs in an Exchange Auction, the Exchange believes it is reasonable to provide executions of Continuous Book orders free of charge. Similarly, the Exchange believes that excluding LLOOs and LLOCs from fee liability in Exchange Auctions is reasonable because such orders are late arriving orders that are likely to improve the execution quality received by other orders submitted to the Auction. Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality. As is true for the fees to be assessed on executions that occur in Exchange Auctions, the exclusion of fees for Continuous Book orders, LLOOs and LLOCs is fair and equitable and not unreasonably discriminatory because this fee treatment is equally available to all Exchange Users.

The Exchange notes that NASDAQ also excludes its equivalent of Continuous Book orders from fee liability in the NASDAQ opening and closing crosses.¹⁹ While the Exchange does not have a direct equivalent to the NASDAQ “imbalance only” order, which are also executed free of charge by NASDAQ in the NASDAQ opening and closing crosses,²⁰ the Exchange’s LLOOs and LLOCs are analogous in some ways in that LLOOs and LLOCs are late arriving limit orders that are likely to provide additional liquidity against which Eligible Auction Orders will be able to execute.

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.

¹⁹ See NASDAQ Rule 7018(d) and (e).

²⁰ Id.

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 Act²¹ and Rule 19b-4(f)(2) thereunder,²² 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.

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 proposed rule change 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 Number SR-BATS-2012-003 on the subject line.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²² 17 CFR 240.19b-4(f)(2).

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 Number SR-BATS-2012-003. 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 a.m. and 3:00 p.m. Copies of the 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 Number SR-BATS-2012-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Kevin M. O'Neill
Deputy Secretary

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²³ 17 CFR 200.30-3(a)(12).