



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66327; File No. SR-BATS-2012-008)

February 6, 2012

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”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 1, 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 amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 1, 2012.

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 website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to modify the "Equities Pricing" section of its fee schedule in order to accommodate two additional variations of the Exchange's "TRIM" routing strategy. As defined in BATS Rule 11.13(a)(3)(G), TRIM is a routing option under which an order checks the System⁶ for available shares if so instructed by the entering User⁷ and then is sent to destinations on the System routing table. Accordingly, the Exchange's current TRIM routing strategy will optionally check the Exchange's order book and then route to various venues on the Exchange's routing table, including NASDAQ OMX BX, Inc. ("NASDAQ BX"), BATS Y-Exchange, Inc. ("BYX Exchange"), EDGA EXCHANGE, Inc. ("EDGA"), the New York Stock Exchange LLC

⁶ As defined in BATS Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

⁷ As defined in BATS Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.

(“NYSE”) and certain alternative trading systems available through the Exchange’s “DRT” strategy (“DRT Venues”).⁸ In order to provide additional options related to the TRIM routing strategy to Exchange Users, the Exchange is introducing TRIM2 and TRIM3, both of which will route to fewer venues than the full list of TRIM routing venues.⁹ Specifically, TRIM2 will limit the routing table to NASDAQ BX, BYX Exchange, EDGA and DRT Venues. TRIM3 will further limit the routing table to NASDAQ BX, BYX Exchange and DRT Venues.

All pricing currently applicable to the TRIM routing strategy will apply to TRIM2 and TRIM3, with the exception of TRIM2 and TRIM3 orders executed at NASDAQ BX. In order to fund the development and infrastructure cost of creating and maintaining additional TRIM routing strategies, the Exchange proposes to provide a lower rebate for executions pursuant to TRIM2 and TRIM3 than the rebate actually received for orders executed at NASDAQ BX, which are passed on in full for executions resulting from TRIM routing. Specifically, the Exchange proposes to provide a rebate of \$0.0010 per share for executions at NASDAQ BX that result from TRIM2 or TRIM3 routing, rather than the full rebate of \$0.0014 per share.

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.¹⁰ Specifically, the

⁸ As set forth in BATS Rule 11.13(a)(3)(E), DRT is a routing option in which the entering firm instructs the System to route to alternative trading systems included in the System routing table. Unless otherwise specified, DRT can be combined with and function consistent with all other routing options.

⁹ See also SR-BATS-2012-007, available at www.batstrading.com/regulation.

¹⁰ 15 U.S.C. 78f.

Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ 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 also notes that with respect to the changes proposed in this filing, although routing options are available to all Users, Users are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different venues or can utilize a myriad of other routing solutions that are available to market participants.

The Exchange believes that the proposed rebates and fees for the TRIM2 and TRIM3 routing options for the Exchange are reasonable in that they are equivalent to the fees charged by the Exchange for the TRIM routing strategy, with the exception of executions at NASDAQ BX, as described above. As such, the Exchange believes that the proposed non-standard routing fees are competitive, fair and reasonable, and non-discriminatory in that they are generally designed to mirror the rebate or fee applicable to the execution if such routed orders were executed directly by the Member at each applicable venue. The Exchange believes that the slightly lower rebate provided for TRIM2 and TRIM3 executions at NASDAQ BX is reasonable in order to help the Exchange cover the cost of developing and maintaining additional routing strategies for Users of the Exchange. The Exchange also believes that the proposed rebates and fees for TRIM2 and TRIM3 are fair and equitable and not unreasonably discriminatory in that they apply equally to all Exchange Users.

¹¹ 15 U.S.C. 78f(b)(4).

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

The Exchange does not believe that the proposed rule change 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 Act¹² and Rule 19b-4(f)(2) thereunder,¹³ 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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2012-008 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 Number SR-BATS-2012-008. 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 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-2012-008 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2012-3094 Filed 02/09/2012 at 8:45 am; Publication Date: 02/10/2012]

¹⁴ 17 CFR 200.30-3(a)(12).