

is both equitable and reasonable for the reasons listed hereafter.

The proposed fees are consistent with the equitable price differentials that exist today at all option exchanges. For example, the fees and rebates assessed by the Exchange are similar, and in some cases less than, the fees and rebates assessed by the Boston Options Exchange Group, LLC ("BOX")¹⁷ and the International Securities Exchange ("ISE")¹⁸ for orders executed in a price improvement mechanism. For example a BOX participant could be assessed total fees of \$0.35 per contract as the price improvement period ("PIP") initiator and receive a rebate for their customer PIP order of \$0.25 per contract (in this example the net fee charged the BOX participant would be \$0.10), whereas the PIP responder could be assessed a fee of \$0.50 per contract. This is a differential of \$0.40 per contract between two BOX participants for participating in the PIP auction, which is equal to or less than the differentials that exist in the Exchange's proposal. With respect to ISE, the Exchange pays a rebate for certain PIXL executions, which is similar to the \$0.15 rebate ISE pays for its price improvement mechanism.

The Exchange operates in a fiercely competitive market place in which Exchange members and member organizations are highly sophisticated and highly knowledgeable. As is the case, members and member organizations readily and swiftly direct order flow or post liquidity to competing venues if they deem fee levels at a particular options exchange to be excessive, unfair or unreasonable. The Exchange believes the proposal is an equitable allocation of fees and not unfairly discriminatory for the reasons stated above.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

¹⁷ See Securities and Exchange Act Release No. 62632 (August 3, 2010), 75 FR 47869 (August 3, 2010) (SR-BX-2010-049).

¹⁸ See the ISE schedule of fee as of August 2, 2010.

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)(ii) of the Act.¹⁹ 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-Phlx-2010-130 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-Phlx-2010-130. 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,²⁰ 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

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁰ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will 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-Phlx-2010-130 and should be submitted on or before November 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010-26175 Filed 10-15-10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63085; File No. SR-BATS-2010-026]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Related to Fees for Use of BATS Exchange, Inc.

October 13, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on September 30, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On October 12, 2010, the Exchange filed Amendment No. 1, which modified the original filing.³ BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange provided additional basis for the proposed rule change in the Statutory Basis section.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

proposed rule change, as modified by Amendment No. 1, 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 Members⁶ 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 October 1, 2010.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov>, 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 "Options Pricing" section of its fee schedule to: (i) Adopt definitions of "Customer," "Firm," and "Market Maker" for purposes of routing pricing; (ii) modify its pricing for standard best execution routing; (iii) implement discounted pricing for Destination Specific Orders; and (iv) modify its pricing for Directed ISOs. In addition, the Exchange proposes to modify the fee schedule applicable to equities trading by changing the reference to the default best execution strategy.

(i) Adoption of Definitions

The Exchange proposes to distinguish pricing for routed orders that are executed at away options exchanges

based on the clearing status of the order due to the fact that most other options exchanges to which orders are routed maintain such distinctions. Accordingly the Exchange proposes to adopt definitions of "Customer," "Firm," and "Market Maker" for purposes of its fee schedule. The proposed definitions state that each category applies to transactions identified by a Member for clearing in the applicable range (*i.e.*, Customer, Firm or Market Maker) at the Options Clearing Corporation ("OCC").

(ii) Standard Best Execution Routing Pricing

The Exchange currently charges \$0.05 per contract for transactions executed at away markets pursuant to its best execution routing strategies, and passes through, in addition to that fee, all destination exchange fees charged to the Exchange for executing on away markets. The Exchange proposes to further simplify its pricing for best execution routing strategies by setting flat rates for transactions executed at away markets pursuant to any of its best execution routing strategies (*i.e.*, "CYCLE", "RECYCLE", "Parallel D" and "Parallel 2D"). As proposed, regardless of the best execution strategy selected, the charge for a Customer transaction executed away will be \$0.30 per contract and the charge for a Firm or Market Maker transaction executed away will be \$0.50 per contract.

(iii) Discounted Pricing for Destination Specific Orders

The Exchange proposes to adopt for its options platform a pricing model similar to a pricing model it offers to users of its equities platform. Specifically, the Exchange proposes to introduce discounted fees for use of its Destination Specific Order⁷ routing strategies. The Exchange proposes to charge flat rates for Customer, Firm and Market Maker transactions executed at away markets pursuant to Destination Specific routing, which rates will vary depending on the venue at which transactions execute, as described in further detail below.

The Exchange proposes to charge for Destination Specific Orders that are executed at away options exchanges that are divided into three categories. The Exchange proposes to adopt pricing for two distinct categories of options exchanges with "Make/Take" pricing.⁸

⁷ As defined in BATS Rule 21.1(d)(7).

⁸ As proposed to be defined on the fee schedule, Make/Take pricing refers to executions at the identified Exchange under which "Post Liquidity" or "Maker" rebates ("Make") are credited by that exchange and "Take Liquidity" or "Taker" fees ("Take") are charged by that Exchange.

The first category of Make/Take pricing is proposed to apply to Destination Specific Orders executed at the International Stock Exchange ("ISE") or NASDAQ OMX PHLX ("PHLX") in issues for which Make/Take pricing applies. The fee for this first category of Make/Take markets is proposed as \$0.20 per contract for Customer transactions and \$0.50 per contract for Firm or Market Maker transactions. The second category of Make/Take pricing is proposed to apply to Destination Specific Orders executed at NYSE Arca Options ("NYSE Arca") in issues for which Make/Take pricing applies or the NASDAQ Options Market ("NOM"). The fee for the second category of Make/Take markets is proposed as \$0.40 per contract for Customer transactions and \$0.50 per contract for Firm or Market Maker transactions. Finally, the Exchange proposes to categorize options exchanges as "Classic" to the extent such options exchanges do not have a Make/Take pricing structure or do not apply Make/Take pricing to certain transactions. For executions that occur at Classic venues, including the American Stock Exchange ("AMEX"), Boston Options Exchange ("BOX") and Chicago Board Options Exchange ("CBOE") as well as the ISE, PHLX and NYSE Arca Options in non-Make/Take issues, the Exchange proposes to charge \$0.05 per contract for Customer transactions and \$0.50 per contract for Firm or Market Maker transactions.

The Exchange believes that the proposed Destination Specific Order pricing in most instances will result in lower execution fees at away venues in each category than if orders were routed directly by a Member to such venues. To the extent any anomalies exist or away options exchanges modify pricing such that the Destination Specific fee is not, in fact, a discount from pricing that the Member may pay directly, the Exchange believes that Members will benefit from the simplicity of the pricing structure.

(iv) Directed ISO Pricing

The Exchange currently charges \$0.10 per contract for routed Directed ISOs executed at away markets,⁹ and passes through, in addition to that fee, all destination exchange fees charged to the Exchange for executing on away markets. The Exchange proposes to further simplify its pricing for Directed ISOs by setting flat rates for Directed ISOs that bypass the Exchange's order book and execute at away venues. As proposed, the charge for a Customer Directed ISO transaction will be \$0.50 per contract and the charge for a Firm

⁹ As defined in BATS Rule 21.1(d)(12).

⁶ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

or Market Maker Directed ISO transaction will be \$0.60 per contract.

(v) *Equities Best Execution Routing*

In the "Equities Pricing" portion of the fee schedule the Exchange currently reflects its default best execution routing strategy as "DRT + CYCLE". Effective October 1, 2010, the Exchange's default best execution routing strategy will be "DRT + Parallel D."¹⁰ The Exchange proposes to modify the reference to the default strategy in light of this change.

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.¹¹ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² 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. As described below, the Exchange believes that its fees and credits are competitive with those charged by other venues and that the changes the Exchange has proposed will simplify the Exchange's pricing model.

The various routing fees proposed by this filing, including fees for destination specific orders and best execution routing strategies offered by the Exchange, are intended to attract order flow to BATS Options by offering competitive and easy to understand rates to Exchange Members, especially those representing order flow that clears in the Customer range at the OCC. Accordingly, some of the changes the Exchange has proposed will result in reduced fees that will benefit Members due to the obvious economic savings those Members will receive and the potential of increased available liquidity at the Exchange. In addition, the Exchange believes that the simplicity and certainty of its fee schedule will be a benefit to some Members. The Exchange notes that it does not currently operate any auctions through which orders are held and broadcast to its membership, nor does the Exchange engage in any payment for order flow practices. Rather, the Exchange is proposing to enhance its transparent

market structure with an easy to understand and transparent pricing structure by further simplifying its routing fees. The Exchange believes that its proposed flat routing rates are, on average, better than or equal to the fees a market participant would pay if routing directly to certain market centers, especially with respect to Customer orders. 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. Also, although routing options are available to all Members, Members 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 options exchanges or can utilize a myriad of other routing solutions that are available to market participants.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

No written comments were solicited or received.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and Rule 19b-4(f)(2) thereunder,¹⁴ because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission 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-2010-026 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-2010-026. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will 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-2010-026 and should be submitted on or before November 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

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¹⁰ The Exchange's routing strategies are defined in BATS Rule 11.13

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ 17 CFR 200.30-3(a)(12).