

outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the manager of managers structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and to recommend their hiring, termination and replacement.

3. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a change of Sub-Adviser is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser derives an inappropriate advantage.

6. Within 90 days of hiring any new Sub-Adviser, the affected Fund's shareholders will be furnished all information about the new Sub-Adviser that would be contained in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Sub-Adviser. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Sub-Adviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

7. The Adviser will provide general investment advisory services to the Funds, including overall supervisory responsibility for the general

management and investment of each Fund's assets, and, subject to review and approval by the Board, the Adviser will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to manage all or part of each Fund's assets; (iii) when appropriate, allocate and reallocate each applicable Fund's assets among multiple Sub-Advisers; (iv) monitor and evaluate the performance of the Sub-Advisers, and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of a Trust, or director or officer of the Adviser, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser, except for: (i) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. Independent legal counsel, as defined in rule 0-1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

10. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

11. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

12. The Adviser will provide the Board, no less frequently than quarterly, with information about the Adviser's profitability, on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

13. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61650; File No. SR-BATS-2010-005]

### 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.

March 4, 2010.

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 February 25, 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. 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 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 proposes to modify its fee schedule applicable to Members<sup>5</sup> 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 26, 2010.

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

<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).

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

## 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 its fee schedule applicable to use of the Exchange effective February 26, 2010, in order to (i) establish fees for executions that occur on the BATS Exchange options market ("BATS Options");<sup>6</sup> (ii) establish fees for executions routed via BATS Options to other options exchanges; and (iii) make other technical changes to the fee schedule.

#### (i) Fees for Executions on BATS Options

The Exchange proposes to implement fees based on the pricing model currently in place for the trading of equities via the Exchange. Specifically, the Exchange will assess fees for the execution of options contracts based upon which Member provides liquidity to the BATS Options order book and which Member takes liquidity from BATS Options order book. This model seeks to attract liquidity to BATS Options by providing credits to Members that provide liquidity, and to assess a fee to the Member whose order executes against an order that has provided liquidity. An order that provides liquidity is any order that is entered into BATS Options and is placed on the BATS Options order book for potential execution. An order that takes liquidity is one that is entered into BATS Options and that executes against an order resting on the BATS Options order book.

The Exchange is proposing to charge \$0.30 per contract for executions that remove liquidity from BATS Options and to rebate \$0.20 per contract for

executions that add liquidity to BATS Options.

#### (ii) Routing Fees for Orders Routed Away From BATS Options

The Exchange proposes to charge the routing charges per contract as described below. All charges by the Exchange for routing away from BATS Options are applicable only in the event that an order is executed. In other words, there is no charge for orders that are routed away from the Exchange but are not filled.

BATS Options will pass through the charges assessed by other markets for the execution of options orders, plus an additional charge. Specifically, in connection with routing of orders other than directed ISOs away from BATS Options, the Exchange proposes to charge \$0.05 per contract plus all destination exchange fees incurred for the execution. In connection with routing of directed ISOs away from BATS Options, the Exchange proposes to charge \$0.10 per contract plus all destination exchange fees incurred for the execution. For instance, if the Exchange routes an order (other than a directed ISO) to another options exchange and is charged \$0.30 for the execution, then the total charge billed to the Member will be \$0.35. Similarly, if the Exchange routes a directed ISO to another options exchange and is charged \$0.30 for the execution, then the total charge billed to the Member will be \$0.40. With respect to orders that are executed at other options exchanges without a charge to the Exchange, such orders will only be assessed the applicable additional charge (*i.e.*, \$0.05 per contract for all orders other than directed ISOs and \$0.10 per contract for all directed ISOs).

#### (iii) Technical Changes to Fee Schedule

The Exchange proposes to create headings to make clear which fees apply to the Exchange's pre-existing equity securities trading platform, the BATS Options trading platform, which will commence operations on February 26, 2010, or both. At this time, the Exchange is not proposing to charge for logical ports for Members who connect to BATS Options. Accordingly, the Exchange has intentionally left the portions of the fee schedule that set forth fees for logical ports classified under the new "Equities Pricing" heading. However, the Exchange's proposal to implement physical port fees, which was recently approved,<sup>7</sup> was intended to operate such that physical

port fees charged by the Exchange apply to any Member or non-Member that maintains more than four (4) physical ports at either of the Exchange's data centers, regardless of their activities on the Exchange (*e.g.*, equities trading, options trading, receipt of Exchange market data or some combination of the foregoing). Accordingly the Exchange has also created a heading to make clear that such physical connection charges are applicable to all Exchange constituents.

In addition, the Exchange proposes an amendment to the description of pricing for executions on the Exchange in equity securities priced below \$1.00 to make clear that the 0.10% fee applies to executions on the Exchange that remove liquidity from the Exchange by adding the words "to remove liquidity" to the existing text.

#### 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.<sup>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</sup> 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. Upon launch, BATS Options will be the eighth options market in the national market system. Joining BATS Options and electing to trade options via BATS Options is entirely voluntary. Under these circumstances, the fees for trading on and through BATS Options must be competitive in order for BATS Options to attract order flow, execute orders, and grow as a market. The Exchange believes that the fees and credits proposed for BATS Options are competitive with those charged by other venues. In addition, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

<sup>6</sup> On January 26, 2010, the Commission approved SR-BATS-2009-031, which proposed rules for the trading of equity options on the Exchange. See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031).

<sup>7</sup> See Securities Exchange Act Release No. 61545 (February 19, 2010) (SR-BATS-2009-032).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 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**

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder,<sup>11</sup> 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 may summarily abrogate 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](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2010-005 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-2010-005. 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 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-2010-005 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-61656; File No. SR-CHX-2010-04]**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. To Aggregate Trading Activity of Affiliated Participants To Calculate Average Daily Trading Volume for Billing Purposes**

March 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2010, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the

proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal 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 CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule"), effective March 1, 2010, to aggregate the activity of affiliate entities when computing and assessing certain fees of the Exchange. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm) and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

**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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change***1. Purpose**

Through this filing, the Exchange would amend its Fee Schedule, effective March 1, 2010, to permit the aggregation of the trading activity of affiliated CHX Participants for the purposes of calculating and assessing certain fees. A Participant must request the aggregation of affiliate activity by submitting an Application to the Exchange.<sup>5</sup> The Exchange shall have the right to request additional information in order to verify the affiliate status of an entity.

Once approved, the Exchange will aggregate the activity of affiliated

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

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

<sup>5</sup> The Exchange will post the Application form on its public Web site.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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

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

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