

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information

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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

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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 of the Exchange pursuant to BATS Rules 15.1(a) and (c). The Exchange intends to implement its amended fee schedule on December 12, 2008.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on December 8, 2008. This action constitutes requisite approval under the Exchange’s By-Laws.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (212) 378-8523.

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.

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

(a) Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective December 12, 2008 in order to (i) implement new pricing for orders routed away from the Exchange that are executed at dark liquidity venues as part of the Exchange's routing strategies, and (ii) substitute the current fee schedule with a fee schedule in a revised format.

(i) Orders Routed to and Executed at Dark Liquidity Venues

The Exchange recently amended its Rule 11.13 to provide additional flexibility to the Exchange's affiliated routing broker-dealer, BATS Trading, Inc. (the "Outbound Router") in making routing determinations.⁴ This rule change was primarily made to permit the Outbound Router to send orders to Trading Centers (as defined in Exchange Rule 2.11),⁵ without limiting the permissible destinations to execution venues with "protected quotations" (as defined in Rule 600(b)(58) of the Act).⁶ Such Trading Centers may include execution venues known as dark liquidity venues, which do not publish quotations. Because dark liquidity venues provide the possibility of executions at reduced rates, the Exchange is proposing to charge Members \$0.0020 per share executed at such a dark liquidity venue. The Exchange will continue to charge \$0.0029 per share

⁴ See Securities Exchange Act Release No. 34-58776 (October 14, 2008), 73 FR 63529 (October 24, 2008) (SR-BATS-2008-007).

⁵ The Exchange's definition of Trading Center, contained in Rule 2.11, is consistent with the definition of "trading center" contained in Rule 600(b)(78) of Regulation NMS.

⁶ 17 CFR 242.600(b)(58).

executed at any other Trading Center. The proposed fee schedule also notes, consistent with the Exchange's technical specifications, that the default best execution routing strategy first attempts to route to dark liquidity venues ("DART" routing) and then to other Trading Centers ("CYCLE" routing).

(ii) Non-Substantive, Structural Changes

In addition to the proposed change above related to orders routed to and executed at dark liquidity venues, the Exchange is proposing to make certain non-substantive, structural changes to its fee schedule. First, the Exchange is proposing to restructure its fee schedule to distinguish between its standard routing charges (i.e., those charges for orders routed away by the Outbound Router under its best execution strategies) and non-standard routing charges imposed for specific order types and securities (e.g., Destination Specific Orders, odd lot orders and securities priced below \$1.00 per share). In addition, the Exchange proposes to consolidate into one list certain Destination Specific Orders⁷ which were previously listed separately, as such order types are each charged the same fee.⁸ The Exchange believes that the revised format of the fee schedule is more transparent and easy to understand with respect to fees charged for routed orders.

(b) 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

⁷ As defined in BATS Rule 11.9(c)(10).

⁸ The Exchange charges \$0.0029 per share for Destination Specific Orders routed to the NASDAQ Stock Market, the International Securities Exchange, and the National Securities Exchange.

Act.⁹ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ 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 venues, and that reduced transaction fees for shares executed at dark liquidity venues will benefit market participants. Also, although routing options are available to all Members, Members are not required to use the Exchange's Outbound Router for routing to other Trading Centers. The Exchange also believes that the reformatted fee schedule sets forth the fees applicable to routed orders in a more transparent manner. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all 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.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

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 Act¹¹ and Rule 19b-4(f)(2) thereunder,¹² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to its members, which renders the proposed rule change effective upon filing.

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 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-BATS-2008-012)

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 9, 2008, BATS Exchange, Inc. (“BATS” or the “Exchange”) 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 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 use of the Exchange effective December 12, 2008 in order to (i) implement new pricing for orders routed away from the Exchange that are executed at dark liquidity venues as part of the

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).

Exchange's routing strategies, and (ii) substitute the current fee schedule with a fee schedule in a revised format.

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 its fee schedule in order to implement new pricing for orders routed away from the Exchange that are executed at dark liquidity venues as part of the Exchange's routing strategies. In addition, the Exchange proposes to reformat the fee schedule to better reflect the routing charges applicable to Members.

(a) Orders Routed to and Executed at Dark Liquidity Venues

The Exchange recently amended its Rule 11.13 to provide additional flexibility to the Exchange's affiliated routing broker-dealer, BATS Trading, Inc. (the "Outbound

Router”) in making routing determinations.⁵ This rule change was primarily made to permit the Outbound Router to send orders to Trading Centers (as defined in Exchange Rule 2.11),⁶ without limiting the permissible destinations to execution venues with “protected quotations” (as defined in Rule 600(b)(58) of the Act).⁷ Such Trading Centers may include execution venues known as dark liquidity venues, which do not publish quotations. Because dark liquidity venues provide the possibility of executions at reduced rates, the Exchange is proposing to charge Members \$0.0020 per share executed at such a dark liquidity venue. The Exchange will continue to charge \$0.0029 per share executed at any other Trading Center. The proposed fee schedule also notes, consistent with the Exchange’s technical specifications, that the default best execution routing strategy first attempts to route to dark liquidity venues (“DART” routing) and then to other Trading Centers (“CYCLE” routing).

(b) Non-Substantive, Structural Changes

In addition to the proposed change above related to orders routed to and executed at dark liquidity venues, the Exchange is proposing to make certain non-substantive, structural changes to its fee schedule. First, the Exchange is proposing to restructure its fee schedule to distinguish between its standard routing charges (i.e., those charges for orders routed away by the Outbound Router under its best execution strategies) and non-standard routing charges imposed for specific order types and securities (e.g., Destination

⁵ See Securities Exchange Act Release No. 34-58776 (October 14, 2008), 73 FR 63529 (October 24, 2008) (SR-BATS-2008-007).

⁶ The Exchange’s definition of Trading Center, contained in Rule 2.11, is consistent with the definition of “trading center” contained in Rule 600(b)(78) of Regulation NMS.

⁷ 17 CFR 242.600(b)(58).

Specific Orders, odd lot orders and securities priced below \$1.00 per share). In addition, the Exchange proposes to consolidate into one list certain Destination Specific Orders⁸ which were previously listed separately, as such order types are each charged the same fee.⁹ The Exchange believes that the revised format of the fee schedule is more transparent and easy to understand with respect to fees charged for routed orders.

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 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 believes that its fees and credits are competitive with those charged by other venues, and that reduced transaction fees for shares executed at dark liquidity venues will benefit market participants. Also, although routing options are available to all Members, Members are not required to use the Exchange's Outbound

⁸ As defined in BATS Rule 11.9(c)(10).

⁹ The Exchange charges \$0.0029 per share for Destination Specific Orders routed to the NASDAQ Stock Market, the International Securities Exchange, and the National Securities Exchange.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

Router for routing to other Trading Centers. The Exchange also believes that the reformatted fee schedule sets forth the fees applicable to routed orders in a more transparent manner. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

(B) Self-Regulatory Organization's Statement of 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 Regarding 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 Act¹² and Rule 19b-4(f)(2) thereunder,¹³ 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.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(6).

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-2008-012 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2008-012. 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 inspection and copying 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-2008-012 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.¹⁴

Florence E. Harmon
Acting Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

Note: Proposed new language is underlined. Proposed deletions are enclosed in brackets.

BATS Exchange, Inc. Fee Schedule

Effective [October 24]December 12, 2008

The following reflects the Schedule of Fees (pursuant to Rule 15.1(a) and Rule 15.1(c)) for BATS Exchange, Inc. (the "Exchange"). All references to "per share" mean "per share executed."

Fees for Accessing Liquidity for All Securities

\$0.0025 charge per share that removes liquidity from the BATS book

Note: Reduced fees apply in certain instances (see Dark Match Pricing, below)

Liquidity Rebates

\$0.0030 rebate per share that adds liquidity to the BATS book for Tape B

\$0.0024 rebate per share that adds liquidity to the BATS book for Tapes A & C

Note: Reduced rebates apply for certain non-displayed order types (see Dark Match Pricing, below)

Securities Priced Below \$1.00

Free – Free. No charge or liquidity rebate for stocks priced below \$1.00 traded on the BATS book.

Note: 0.29% charge of the total dollar value for orders routed to and executed at other markets

Standard Routing Charges – Best Execution Routing

\$0.0020 charge per share for shares executed at a dark liquidity venue ("DART" routing)

\$0.0029 charge per share for shares executed at any other venue ("CYCLE" routing)

Note: Default Best Execution Routing = DART + CYCLE

Non-Standard Routing Charges – Specific Order Types, Odd Lots, and Securities Priced Below \$1.00

- BATS + NASDAQ, BATS + ISE, and BATS + NSX Destination Specific Orders: \$0.0029 charge per share

[- BATS + ISE Destination Specific Order: \$0.0029 charge per share

- BATS + NSX Destination Specific Order: \$0.0029 charge per share]

- BATS + ARCA Destination Specific Orders: \$0.0028 charge per share

- BATS + NYSE Destination Specific Orders: \$0.0009 charge per share (other than ETFs, if applicable)

- BATS Modified Destination Specific Orders routed to a dark liquidity venue ("Dark Scan"): \$0.0005 charge per share

- Directed ISO's: \$0.0035 charge per share

- ARCA Odd Lots Tape A: \$0.03 charge per share

- ARCA Odd Lots Tape B: \$0.03 charge per share

- ARCA Odd Lots Tape C: \$0.004 charge per share

- Stocks Priced Below \$1.00: 0.29% charge of the total dollar value for orders routed to and executed at other markets (all Tapes)

[- All other routing options offered by the Exchange, including CYCLE (Default Best Execution Routing): \$0.0029 charge per share]

Dark Match Pricing (for non-displayed liquidity on the BATS book)

Rebates: Non-displayed order types, which include all forms of Pegged, Mid-Point Peg and Non-Displayed Limit orders, will receive rebates according to the pricing table below. The Dark Match rebate schedule does not apply to Reserve or Discretionary orders.

Access Fees: All inbound marketable orders that remove non-displayed liquidity are eligible for the reduced access fees according to the pricing table below.

Dark Match Pricing Table:

Trade Size	Rebate/Share	Fee/Share
1-500	\$0.0020	\$0.0025
501-5,000	\$0.0020	\$0.0024
5,001-10,000	\$0.0016	\$0.0020
10,001-25,000	\$0.0010	\$0.0018
25,001+	\$0.0005	\$0.0015