

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-28 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2010-28. 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 also will be available for inspection and copying at the principal office of NYSE Arca. 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2010-28 and should be submitted on or before May 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-8946 Filed 4-16-10; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61883; File No. SR-BATS-2010-007]

#### 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.

April 9, 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 March 31, 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 April 1, 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>5</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.

<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 April 1, 2010, in order to: (i) Increase the fee charged by the Exchange for its "CYCLE" and "RECYCLE" routing strategies from \$0.0027 per share to \$0.0028 per share; (ii) amend the fees for certain destination specific routing options to continue to offer a "one under" pricing model; (iii) adopt pricing for "BATS + DART Destination Specific Orders"; and (iv) make other technical changes to the fee schedule.

##### *(i) Increase in Routing Fees for "CYCLE" and "RECYCLE" Routing*

Based on increased fees at various market centers to remove liquidity, the Exchange proposes to modify the fee charged by the Exchange for its "CYCLE" and "RECYCLE" routing strategies from \$0.0027 per share to \$0.0028 per share. To be consistent with this change, the Exchange proposes to charge 0.28%, rather than 0.27%, of the total dollar value of the execution for any security (all Tapes) priced under \$1.00 per share that is routed away from the Exchange through CYCLE or RECYCLE.

##### *(ii) One Under Pricing for Destination Specific Orders*

The Exchange has previously provided a discounted price fee for Destination Specific Orders routed to certain of the largest market centers measured by volume (NYSE, NYSE Arca and NASDAQ), which, in each instance has been \$0.0001 less per share for orders routed to such market centers by the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as "One Under" pricing). Based on changes in

pricing at such market centers, BATS is proposing various changes to its prices for Destination Specific Orders to align its fees so they are \$0.0001 less per share for orders routed to such market centers as of April 1, 2010. Specifically, because NASDAQ has eliminated the distinction in its fees between Tape A, B, and C securities the Exchange proposes to eliminate that same distinction for BATS + NASDAQ Destination Specific Orders. Thus, the Exchange proposes to normalize the fee charged for BATS + NASDAQ Destination Specific Orders executed at NASDAQ at \$0.0029 per share. Also, based on a change to pricing at NYSE Arca, the Exchange proposes to increase the charge from \$0.0027 per share to \$0.0028 per share for BATS + NYSE Arca Destination Specific Orders executed at NYSE Arca in Tape A and C securities. The Exchange will retain the fee of \$0.0027 per share for BATS + NYSE Arca Destination Specific Orders executed at NYSE Arca in Tape B securities. Each of the changes described above will result in the Exchange charging \$0.0001 less per share for orders routed to certain market centers as Destination Specific Orders.

(iii) Pricing for BATS + DART Destination Specific Orders

Effective April 1, 2010, the Exchange will offer functionality that will permit Users to designate orders to route to various Alternative Trading Systems selected by the Exchange after first being exposed to the BATS Book (a "BATS + DART Destination Specific Order"). In conjunction with this new functionality, the Exchange is proposing to amend the fee schedule to include pricing for BATS + DART Destination Specific Orders. The Exchange currently offers DART routing as part of its general best execution routing. Consistent with the current pricing for the DART best execution routing functionality, the Exchange proposes to charge \$0.0020 per share for a BATS + DART Destination Specific Order executed by an Alternative Trading System.

(iv) Technical Changes to Fee Schedule

The Exchange proposes to correct a typographical error on the fee schedule. Also, the Exchange proposes to add a clarifying parenthetical to its description of physical connection charges, which are charged based on "pairs." As it does within the Equities Pricing/Port Fees section of the fee schedule, the Exchange proposes to make clear that a pair is comprised of one port at site of the Exchange's primary data center and one port at the

site of the Exchange's secondary data center.

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>6</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</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. In addition, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

(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>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</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.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-8860 Filed 4-16-10; 8:45 am]

BILLING CODE 8011-01-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Privacy Act of 1974: System of Records

**AGENCY:** Bureau of Transportation Statistics, DOT.

**ACTION:** Notice to establish a system of records.

**SUMMARY:** DOT intends to establish a system of records under the Privacy Act of 1974.

**DATES:** *Effective Date:* June 1, 2010. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

**ADDRESSES:** Send comments to: Habib Azarsina, Departmental Privacy Officer, S-80, United States Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, or [habib.azarsina@dot.gov](mailto:habib.azarsina@dot.gov).

**FOR FURTHER INFORMATION CONTACT:** Habib Azarsina, Departmental Privacy Officer, S-80, United States Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, telephone 202-366-1965 or [habib.azarsina@dot.gov](mailto:habib.azarsina@dot.gov)

**SUPPLEMENTARY INFORMATION:** The Department of Transportation system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

**SYSTEM NUMBER:** DOT/ALL 21

**SYSTEM NAME:**

Close Call Confidentiality Reporting System (C<sup>3</sup>RS).

**SECURITY CLASSIFICATION:**

Unclassified, sensitive.

**SYSTEM LOCATION:**

The system is housed on a stand-alone desktop in the C<sup>3</sup>RS secure room located in room E36-311 at the Bureau

of Transportation Statistics, United States Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:**

Railroad employees who report close calls to BTS, either by telephone or mail, as part of a five-year demonstration/research project are covered by this system of records. These individuals are employees of three rail carriers participating in the C<sup>3</sup>RS demonstration project. The rail carriers are: Union Pacific Railroad, Canadian Pacific Railroad, and New Jersey Transit.

The C<sup>3</sup>RS demonstration project is a research effort to improve safety by using information from close call events to prevent serious accidents in the rail industry. A close call or near miss is an unsafe event with the potential for a more serious incident resulting in greater injury to personnel or damage to equipment above FRA's reportable threshold level.

Employees can report about a near miss event that happened to their crew or an event they witnessed about another crew (third party reporting). In the case of third party reporting, the employee does not provide any PII information on those involved in the reported close call. Reporting employees are not allowed to make anonymous close call reports.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the C<sup>3</sup>RS system contain information pertinent to an actual close call event submitted to BTS in a C<sup>3</sup>RS report. The following PII data elements are included in every C<sup>3</sup>RS report accepted into the system: The reporting employee's name, age, job classification, home address, and home and mobile telephone number(s) (if available).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was enacted August 10, 2005 as Public Law 109-59.

**PURPOSES:**

The C<sup>3</sup>RS collects name, home address, and telephone number(s) of railroad employees reporting close calls events to BTS. Qualified BTS/C<sup>3</sup>RS staff will use the contact information as follows:

- The employee's name and home telephone number will be used to generate and give the employee his/her unique confirmation number, upon receiving the employee's close call phone message;

- The employee's name and home telephone number will be used to notify the employee that BTS has received the employee's C<sup>3</sup>RS report and to schedule an interview time with the employee for further discussion of the close call incident;

- The employee's name and home telephone number will be used to initiate the close call interview;
- The employee's name and home address will be used to create and mail out a confirmation/rejection letter notifying the employee about the status of his/her close call report; and
- The employee's job classification will be used to understand the employee's role in the close call incident.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

BTS does not share PII information collected for the C<sup>3</sup>RS study with other entities. A primary goal of the C<sup>3</sup>RS is to protect the identity of any employee who reports a close call incident to BTS. Reports collected and maintained in the C<sup>3</sup>RS are protected from disclosure as provided in the BTS confidentiality statute (49 U.S.C. 111(k)) and the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2002.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The C<sup>3</sup>RS Demonstration Project stores all data in an electronic database in a stand-alone desktop computer attached to a non-network printer. The computer and printer are in a secure data collection room. Hard-copy documents (work papers) are stored in the secure room and shredded after project completion.

**RETRIEVABILITY:**

Records are retrieved from the C<sup>3</sup>RS database by confirmation number, which uniquely identifies individual reports and by employee identification numbers.

**SAFEGUARDS:**

All the information BTS obtains, including the PII data, is kept in a secure room in the Department of Transportation Headquarters building in Washington, DC. Only members of the C<sup>3</sup>RS team who have taken confidentiality training and signed a non-disclosure agreement have access to

<sup>10</sup> 17 CFR 200.30-3(a)(12).