

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71935; File No. SR-BATS-2014-010]

### 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.

April 11, 2014.

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, 2014, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

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, 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 applicable to use of the Exchange in order to modify the way that, for purposes of tiered pricing on the Exchange's equities trading platform ("BATS Equities"), the Exchange calculates ADV, ADAV, and average daily TCV (as such terms are defined below). Similarly, the Exchange proposes to modify the way that, for purposes of tiered pricing applicable to use of the Exchange's equity options trading platform ("BATS Options"), the Exchange calculates ADV and TCV.

Currently, with respect to BATS Equities, the Exchange determines the liquidity adding rebate that it will provide to Members based on the Exchange's tiered pricing structure by excluding from the calculation of ADV,<sup>6</sup> ADAV,<sup>7</sup> and average daily TCV<sup>8</sup> any day that an Exchange Outage occurs. An Exchange Outage is defined as any day that trading is not available on the Exchange for more than sixty (60) minutes during regular trading hours<sup>9</sup> but continues on other markets during such time.<sup>10</sup> The Exchange proposes to modify the definition of Exchange Outage to include situations where the Exchange experiences a systems

<sup>6</sup> As provided in the fee schedule, for purposes of BATS Equities pricing, "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day on a monthly basis; routed shares are not included in ADV calculation.

<sup>7</sup> As provided in the fee schedule, for purposes of BATS Equities pricing, "ADAV" means average daily volume [sic] calculated as the number of shares added per day on a monthly basis; routed shares are not included in ADV [sic] calculation.

<sup>8</sup> As provided in the fee schedule, for purposes of BATS Equities pricing, "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

<sup>9</sup> The term "regular trading hours" means the "time between 9:30 a.m. and 4:00 p.m. Eastern Time." See Exchange Rule 1.5(w).

<sup>10</sup> The Exchange notes that it also excludes the last Friday of June from the calculation of ADAV, ADV and average daily TCV for purposes of BATS Equities pricing. The last day of June is the day that Russell Investments reconstitutes its family of indexes ("Russell Reconstitution"), resulting in particularly high trading volumes, much of which the Exchange believes derives from market participants who are not generally as active entering the market to rebalance their holdings in-line with the Russell Reconstitution.

disruption that lasts for more than 60 minutes during regular trading hours, even if such disruption would not be categorized as a complete outage of the Exchange's system, and to rename it as an "Exchange System Disruption." As an example, an Exchange System Disruption may occur where a certain group of securities (i.e., securities in a select symbol range such as A through C) traded on the Exchange is unavailable for trading due to an Exchange system issue. Similarly, the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead Members that rely on such process to avoid utilizing the Exchange until the Exchange's entire system was operational.

The Exchange believes that this modification is reasonable because the intent of the current Exchange Outage exclusion has always been to avoid penalizing Members that might otherwise qualify for certain tiered pricing but that, because of a significant Exchange system problem, did not participate on the Exchange to the extent that they might have otherwise participated. The Exchange believes that certain systems disruptions could preclude some Members from submitting orders to the Exchange even if such issue is not actually a complete systems outage. The Exchange notes that it is not proposing to modify any of the existing rebates or the percentage thresholds at which a Member may qualify for certain rebates pursuant to the tiered pricing structure. Rather, as mentioned above, the Exchange is proposing to modify its fee schedule to exclude trading activity occurring on any day that the Exchange experiences an Exchange System Disruption.

The Exchange also currently applies a tiered pricing structure to BATS Options, determining the fees charged for removing liquidity and rebates provided for adding liquidity based on the Member's ADV<sup>11</sup> as a percent of average daily TCV.<sup>12</sup> The Exchange notes that its definitions of ADV and TCV do not currently contain any exclusions. The Exchange proposes to

<sup>11</sup> As provided in the fee schedule, for purposes of BATS Options pricing, "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis; routed contracts are not included in ADV calculation.

<sup>12</sup> As provided in the fee schedule, for purposes of BATS Options pricing, "TCV" means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

<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.

adopt for the definitions of both ADV and TCV for BATS Options the same Exchange System Disruption exclusion for BATS Equities described above. Such exclusion would apply to situations where the Exchange experiences a systems disruption that lasts for more than 60 minutes during regular trading hours. As is true for BATS Equities, the Exchange believes that certain systems disruptions could preclude some Members of BATS Options from submitting orders to the Exchange even if such issue is not actually a complete systems outage. The Exchange notes that it is not proposing to modify any of the existing rebates or the percentage thresholds at which a Member may qualify for certain rebates pursuant to the tiered pricing structure. Rather, as mentioned above, the Exchange is proposing to modify its fee schedule to exclude trading activity occurring on any day that the Exchange experiences an Exchange System Disruption. The Exchange also notes that it is not proposing to adopt for BATS Options the Russell Reconstitution exclusion that is currently available for BATS Equities.<sup>13</sup>

The Exchange believes that eliminating days where an Exchange System Disruption occurs from the definition of ADV, ADAV and TCV for BATS Equities, and ADV and TCV for BATS Options, will provide Members with increased certainty as to their monthly cost for trades executed on the Exchange. The amended definition for BATS Equities would enable the Exchange to eliminate the day an Exchange System Disruption occurs from the calculation as it relates to rebates and fees based on trading activity on the Exchange, thereby providing Members greater certainty as to their monthly ADV or ADAV as a percentage of average daily TCV and the tiered rebates or fees for which they will qualify. Adopting the modified definition for BATS Options will enable the Exchange to provide the same additional certainty with respect to tiered pricing for BATS Options and will also promote uniformity between the Exchange's trading platforms.

## 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>14</sup> Specifically, the Exchange believes that

the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>15</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.

With respect to the proposed changes to the tiered pricing structure for adding liquidity to BATS Equities and for both removing liquidity from and adding liquidity to BATS Options, the Exchange believes that its proposal is reasonable because, as explained above, it will help provide Members with a greater level of certainty as to their level of rebates and costs for trading in any month where the Exchange experiences an Exchange System Disruption on one or more trading days. The Exchange is not proposing to amend the thresholds a Member must achieve to become eligible for, or the dollar value associated with, the tiered rebates or fees. By eliminating the inclusion of a trading day on which an Exchange System Disruption occurs the Exchange would almost certainly be excluding a day that would otherwise lower a Member's ADV and/or ADAV as a percentage of average daily TCV. Thus, the proposed change will make the majority of Members more likely to meet the minimum or higher tier thresholds, incentivizing Members to increase their participation on the Exchange in order to meet the next highest tier. In addition, the Exchange believes that the proposed changes to its fee schedule are equitably allocated among Exchange constituents and not unfairly discriminatory as the methodology for calculating ADV, ADAV and TCV will apply equally to all Members of BATS Equities, and the methodology for calculating ADV and TCV will apply equally to all Members of BATS Options. While, although unlikely, certain Members may have a higher ADV or ADAV as a percentage of average daily TCV with their activity included from days where the Exchange experiences an Exchange System Disruption, the proposal will make all Members' cost of trading on the Exchange more predictable, regardless of how the proposal affects their ADV or ADAV as a percentage of average daily TCV.

Volume-based tiers such as the liquidity adding tiers maintained by the

Exchange have been widely adopted, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide higher rebates or lower fees that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is equitably allocated and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality. Further, the Exchange believes that a tiered pricing model not significantly altered by a day of atypical trading behavior which allows Members to predictably calculate what their costs associated with trading activity on the Exchange will be is reasonable, fair and equitable and not unreasonably discriminatory as it is uniform in application amongst Members and should enable such participants to operate their business without concern of unpredictable and potentially significant changes in expenses.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed change will help to promote intramarket competition by avoiding a penalty to Members for days when trading on the Exchange is disrupted for a significant portion of the day. As stated above, 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 structures to be unreasonable or excessive.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## 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) of the Act<sup>16</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>17</sup> At any time within

<sup>13</sup> See *supra* note 10.

<sup>14</sup> 15 U.S.C. 78f.

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2014-010 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-2014-010. This file number should be included on the subject line if email 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 10:00 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-2014-010 and should be submitted on or before May 8, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71931; File No. SR-NASDAQ-2014-032]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rule 4120(c)(8) With Respect to Initial Pricing of Certain Securities Not Subject to an Initial Public Offering

April 11, 2014.

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 April 7, 2014, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 the Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 4120(c)(8). Such rule will allow, under certain circumstances, the process for halting and initial pricing of a security that is the subject of an initial public offering to be used for the initial pricing of other securities that have not been listed on a national securities exchange or traded on the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing. NASDAQ proposes to implement the change immediately.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

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<sup>18</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.

4120. Limit Up-Limit Down Plan and Trading Halts

- (a)-(b) No change.  
(c) Procedure for Initiating and Terminating a Trading Halt  
(1)-(7) No change.

(8) *For purposes of this Rule and Rule 4753, the process for halting and initial pricing of a security that is the subject of an initial public offering shall also be available for the initial pricing of any other security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(7)(B) that are performed by an underwriter with respect to an initial public offering.*

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#### 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 aspects 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 amend Rule 4120 to add a new Rule 4120(c)(8) to modify the process by which trading commences in the securities of certain companies listing on NASDAQ that are not conducting an initial public offering of securities ("IPO") at the time of listing on NASDAQ. Under the proposed amendment, securities of companies that have not previously been listed on a national securities exchange or traded in the over the counter market immediately prior to listing on NASDAQ could also be launched for trading using the same crossing mechanism currently available for IPOs.

Securities of companies listing on NASDAQ in an IPO are released for trading in the IPO Halt Cross process outlined in Rule 4120(c)(7)(B) and (C)