

effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>9</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to immediately harmonize its listing requirements with other national securities exchanges enabling the Exchange to compete for listings of products on the same basis as other national securities exchanges. For this reason, the Commission waives the operative delay and designates the proposed rule change to be operative upon filing.<sup>10</sup>

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-50 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-NYSEArca-2013-50. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-NYSEArca-2013-50, and should be submitted on or before June 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-12038 Filed 5-20-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69585; File No. SR-BATS-2013-026]

### 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.

May 15, 2013.

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 May 7, 2013, 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. 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 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 purpose of the proposed to modify fees applicable to Members and non-members in order to encourage use of connectivity that provides redundant access to the Exchange by eliminating any potential fees for logical ports<sup>6</sup> in

<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.

<sup>6</sup> A logical port is commonly referred to as a TCP/IP port, and represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>10</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</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.

connection with such redundant access. The Exchange proposes to modify its fee schedule related to logical ports for BATS Equities and to make necessary changes so that the logical port fee sections of its fee schedule applicable to BATS Options is identical.<sup>7</sup>

The Exchange currently charges a monthly fee for ports used to enter orders in the Exchange's trading system and to receive data from the Exchange. With respect to BATS Equities, the Exchange currently charges \$400.00 per month per "pair" of any port type other than a Multicast PITCH Spin Server Port or a GRP Port.<sup>8</sup> Each pair of ports consists of one port at the Exchange's primary data center and one port at the Exchange's secondary data center. With respect to BATS Options, the Exchange also charges \$400 per month for any port other than a Multicast PITCH Spin Server Port, GRP Port or logical port with bulk-quoting capabilities,<sup>9</sup> and \$1,500 for a port with bulk-quoting capabilities. The Exchange recently began offering connectivity to the Exchange at its secondary data center, enabling BATS Options participants to obtain redundant connectivity, and has not commenced billing for any such connectivity.

Rather than stating that the fee for logical ports with respect to BATS Equities or BATS Options is per "pair", the Exchange proposes to simplify the fee schedule by adding a footnote that states that logical port fees are limited to logical ports in the Exchange's primary data center and that no logical port fees will be assessed for redundant secondary data center ports. Although this change to fee schedule language will not result in any substantive change to Members or non-members, as the Exchange is already providing secondary data center ports free of charge, the Exchange believes that this is a simpler way to bill for ports rather than billing in pairs. Further, this will allow the Exchange to include the concept of a "primary" Multicast PITCH data feed, as described below, without confusion as related to the Exchange's primary data center.

In addition, the Exchange proposes to modify the description of the billing for

is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or Multicast PITCH data receipt.

<sup>7</sup> BATS Equities is the Exchange's platform for trading cash equity securities whereas BATS Options is the Exchange's platform for trading equity options.

<sup>8</sup> Thus, the charges apply to all BATS Equities FIX, FIXDROP, BOE, DROP, TCP PITCH, and TOP ports.

<sup>9</sup> Thus, the charges apply to all BATS Options FIX, FIXDROP, BOE, and DROP ports.

ports related to the Exchange's Multicast PITCH data feed.<sup>10</sup> The Exchange currently provides 32 pairs of Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports.<sup>11</sup> The Exchange charges customers \$400.00 per month per additional set of 32 Multicast PITCH Spin Server Ports or additional pair of GRP Ports. Consistent with the change described above, the Exchange proposes to eliminate the concept of port "pairs" and instead maintain a fee schedule that imposes fees only for logical ports at the Exchange's primary data center. Thus, for both BATS Equities and BATS Options the Exchange will continue to provide at the Exchange's primary data center 32 Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free GRP Port and all redundant Multicast PITCH Spin Server Ports and GRP Ports at the secondary data center will be free of charge. Again, although not a substantive change for Members and non-members, the Exchange believes that this change simplifies the fee schedule and also indicates the Exchange's support for Members and non-members to establish sufficient connectivity for business continuity purposes.

Similarly, the Exchange proposes to modify its fee schedule in order to allow Members and non-members to take redundant Multicast PITCH data feeds from the Exchange. The Exchange's Multicast PITCH data feed for both BATS Equities and BATS Options is currently offered through two primary feeds, identified as the "A feed" and the "C feed", which contain the same information but differ only in the way such feeds are received. The Exchange is in the process of commencing to offer redundant versions of the Multicast PITCH data feed and does not intend for Members and non-members that connect to such feeds to incur additional port fees. As such, the

<sup>10</sup> The Multicast PITCH data feed with respect to BATS Equities is defined in Rule 11.22(c) as "an uncompressed data feed that offers depth of book quotations and execution information based on equity orders entered into the System." The Multicast PITCH data feed with respect to BATS Options is defined in Rule 21.15 as "uncompressed data feed that offers depth of book quotations and execution information based on options orders entered into the System."

<sup>11</sup> The Exchange notes that its fees for Multicast PITCH customers, including the current provision of certain ports free of charge, are designed to encourage use of the Exchange's Multicast PITCH data feed because the Exchange believes that the feed is its most efficient feed, and thus, will reduce infrastructure costs for both the Exchange and those who utilize the feed. Any Member or non-member that has entered into the appropriate agreements with the Exchange is permitted to receive Multicast PITCH Spin Server Ports and GRP Ports from the Exchange.

Exchange is proposing to modify its description of Multicast PITCH logical port fees so that only ports necessary to take a primary feed (either A or C), and not redundant versions of such feed, are subject to logical port fees. Again, the Exchange wishes to encourage Members and non-members to establish connectivity for business continuity purposes, including in the event the Exchange's data center is fully operational but a specific version of an Exchange data feed becomes unavailable.

Based on the proposal, the change applies to Members that obtain ports for direct access to the Exchange, Sponsored Participants sponsored by Members to receive direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, and market data recipients.

## 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>12</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>13</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 believes that its proposed changes to logical port fees are reasonable in light of the fact that all such changes are intended to ensure that Members and non-members are able to establish redundant connections to the Exchange without incurring additional logical port fees. In addition, the Exchange believes that the proposed changes to fees are equitably allocated among Exchange constituents as the cost savings for redundant connectivity will be available to all such constituents. The Exchange reiterates that the change to limit logical port fees [sic] to logical port fees at the primary data center is not a substantive change in that Exchange constituents currently receive without charge a corresponding port at the secondary data center for any port established at the primary data center.

The Exchange also believes that providing financial incentives to use Exchange technology that the Exchange believes is the most technologically

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

efficient for the Exchange and its constituents is a fair and equitable approach to pricing. Accordingly, the Exchange believes that promotion of its Multicast PITCH data feed through the continued offering of free logical ports is fair and equitable. The Multicast PITCH data feed is available to all Members, and as such, all Members have the ability to receive applicable Multicast PITCH ports free of charge. Further, the Exchange believes that promoting the use of redundant connectivity is reasonable, fair and equitable and not unreasonably discriminatory as it is uniform in application amongst Members and non-members and should enable such participants to enhance their business continuity planning.

*(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. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including logical port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

*(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>14</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>15</sup> 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 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-2013-026 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 No. SR-BATS-2013-026. 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 changes 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-2013-026 and should be submitted on or before June 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

[Summary Notice No. PE-2013-21]

**Petition for Exemption; Summary of Petition Received**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATE:** Comments on this petition must identify the petition docket number involved and must be received on or before June 10, 2013.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2013-0322 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202-493-2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

*Docket:* To read background documents or comments received, go to

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).