

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73413; File No. SR-BATS-2014-051]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Related to Fees for Use of BATS Exchange, Inc.

October 23, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 16, 2014, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II and III 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 Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members³ 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

On April 17, 2014, the Exchange filed a proposal to adopt rules to create a Lead Market Maker Program (the “Program”) on an immediately effective basis.⁴ The Exchange then filed a proposal to adopt pricing related to the Program on May 28, 2014.⁵ The Program was implemented on June 2, 2014.

The Program provides enhanced rebates to market makers registered with the Exchange (“Market Makers”) ⁶ that are also registered as a lead market maker (“LMM”) in an LMM Security ⁷ and meet certain minimum quoting standards (“Minimum Performance Standards”) ⁸ in BATS-listed ETPs ⁹ based on the consolidated average daily volume (“CADV”) of the security. The annual listing fee for an ETP is also based on the CADV of the security and was designed to offset the enhanced rebates paid to LMMs in the security. The Program was intended to strengthen market quality for BATS-listed ETPs. The Program, however, has not been adopted by issuers and market participants as readily as the Exchange had originally anticipated and there are currently no BATS-listed ETPs participating in the Program. The purpose of this filing is to eliminate such enhanced rebates and to make corresponding clarifying changes to the fee schedule. In coordination with this filing to eliminate the enhanced rebates for LMMs in LMM Securities, the Exchange has filed a separate filing to eliminate all annual listing fees for BATS-listed ETPs.¹⁰

The Exchange proposes to modify its pricing for orders that add displayed liquidity in LMM Securities entered by LMMs that meet the Minimum Performance Standards (a “Qualified LMM”). The Exchange is proposing to eliminate its existing tiered rebate structure that is based on the CADV of

the LMM Security.¹¹ Currently, unless an LMM otherwise qualifies for a higher rebate, a Qualified LMM shall receive the following rebates for each share of added displayed liquidity: where the CADV is 10,000 or less, \$0.0070; where the CADV is between 10,001 and 40,000, \$0.0050; where the CADV is between 40,001 and 80,000, \$0.0045; where the CADV is between 80,001 and 150,000, \$0.0040; and where the CADV is greater than 150,000, \$0.0035. While not possible under the current pricing structure, in the event that a Qualified LMM is ever eligible to receive a higher per share rebate under non-LMM pricing, the Qualified LMM will receive such higher non-LMM rebate. As currently implemented, LMM rebates are not eligible for additional rebates like the NBBO Setter or NBBO Joiner rebates currently offered by the Exchange. The Exchange is proposing to eliminate enhanced rebates for Qualifying LMMs that add liquidity in LMM securities and instead apply the standard fees and rebates to all Members in all securities, including BATS-listed securities.

The Exchange is not proposing to make any other changes to its existing price structure. The Exchange is also not proposing to terminate operation of the Program. Thus, while LMMs will not receive enhanced rebates in BATS-listed ETPs, Market Makers may continue to register as LMMs in such BATS-listed ETPs in accordance with BATS Rule 11.8(e).

Corresponding Changes

Finally, the Exchange proposes to make several non-substantive changes to the fee schedule, including removal of the text of footnote 3, which defines the term CADV, and reserving the footnote in order to maintain the current numbering of footnotes in the fee schedule.

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.¹² Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) and 6(b)(5) of the

⁴ See Securities Exchange Act Release No. 72020 (April 25, 2014) 79 FR 24807 (May 1, 2014) (SR-BATS-2014-015).

⁵ See Securities Exchange Act Release No. 72333 (June 5, 2014) 79 FR 33630 (June 11, 2014) (SR-BATS-2014-019).

⁶ See BATS Rule 11.5.

⁷ As defined in Rule 11.8(e)(1)(C), LMM Security means an ETP that has an LMM.

⁸ As defined in Rule 11.8(e)(1)(D), Minimum Performance Standards means a set of standards applicable to an LMM that may be determined from time to time by the Exchange.

⁹ As defined in Rule 11.8(e)(1)(A), ETP means any security listed pursuant to Exchange Rule 14.11.

¹⁰ See SR-BATS-2014-050, filed October 16, 2014, available at: http://www.batstrading.com/regulation/rule_filings/bzx/.

¹¹ As defined in the proposed fee schedule, “CADV” means consolidated average daily volume calculated as the average daily volume reported for a security by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the three calendar months preceding the month for which the fees apply.

¹² 15 U.S.C. 78f.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

Act,¹³ 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 and it does not unfairly discriminate between customers, issuers, brokers or dealers. 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 the proposal to eliminate LMM rebates is reasonable, equitable, and not unfairly discriminatory because it will result in standard fees and rebates being applied equally to all Members of the Exchange. Further, the potential decrease in rebates to LMMs in LMM Securities is reasonable, equitable, and not unfairly discriminatory because there are not currently any LMM Securities listed on the Exchange.

The Exchange further believes that the proposal, especially when considered in conjunction with a separate proposal filed today that will eliminate annual listing fees for ETPs listed on the Exchange,¹⁴ will encourage the development of new financial products, provide a better trading environment for investors in ETPs, and generally encourage greater competition between listing venues by allowing the Exchange to provide issuers with a venue on which they are able to list ETPs without having to pay annual fees.

Based on the foregoing, the Exchange believes that the proposed amendments to the fee schedule 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 and it does not unfairly discriminate between customers, issuers, brokers or dealers. Further, the Exchange believes that, combined with the amendment to eliminate annual listing fees, [sic] will enhance the Exchange's ability to compete as a listing venue in ETPs by allowing the Exchange to provide listing services without annual fees that it would otherwise not be able to provide if it continued to offer enhanced rebates. Accordingly, by allowing the Exchange to better compete as a listing venue, the Exchange believes that the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

investors and the public interest. Further, the Exchange believes that the proposal will enhance the Exchange's program for listing securities on the Exchange, which will, in turn, provide issuers with another option for raising capital in the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.¹⁵

Corresponding Changes

Finally, the Exchange believes that the clarifying change that deletes the text of footnote 3 and designates it as being reserved is reasonable as it will help to avoid confusion for those that review the Exchange's fee schedule. The Exchange notes that this proposed change is not designed to amend any fee or rebate, nor alter the manner in which it assesses fees or calculates rebates. The Exchange believes that the proposed amendment is intended to make the fee schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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 Exchange does not believe that the changes burden competition, but instead, enhance competition, as they are made in conjunction with the elimination of annual fees for ETPs listed on the Exchange,¹⁶ as described above, which the Exchange believes will increase the competitiveness of the Exchange's listings program. 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 the [sic] deem fee structures to be unreasonable or excessive. As such, the proposal is a competitive proposal that is intended to enhance the Exchange's ability to compete as a listing venue for ETPs, which will, in turn, benefit the Exchange, ETP issuers, and all Exchange participants. In addition, the Exchange believes that the proposed non-substantive changes to the footnotes on the fee schedule would not affect intermarket nor intramarket competition because the changes do not

alter any fees or rebates on the Exchange or the criteria associated therewith.

C. 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.

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 Act¹⁷ and paragraph (f) of Rule 19b-4 thereunder.¹⁸ 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. Please include File Number SR-BATS-2014-051 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 Number SR-BATS-2014-051. 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

¹³ 15 U.S.C. 78f(b)(4) and (5).

¹⁴ See *supra* note 10.

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See *supra* note 10.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

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 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-BATS-2014-051, and should be submitted on or before November 19, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O' Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73410; File No. SR-BX-2014-048]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of a Proposed Rule Change To Establish the Retail Price Improvement Program on a Pilot Basis Expiring Twelve Months From the Date of Implementation

October 23, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 17, 2014, NASDAQ OMX BX, Inc. ("BX" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change that would adopt new BX Rule 4780 to establish a Retail Price Improvement ("RPI") Program (the "Program" or "proposed rule change") to attract additional retail order flow to the Exchange while also providing the potential for price improvement to such order flow.

The Exchange has designated December 1, 2014 as the date the proposed rule change becomes effective.

The text of the proposed rule change is available from the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.com/Filings/>, at the Exchange's principal office, 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 aspects of such statements.

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

1. Purpose

Background

The Exchange is proposing a one-year pilot program that would add new BX Rule 4780 to establish an RPI Program to attract additional retail order flow to the Exchange while also providing the potential for price improvement to such order flow.³ Under the proposed rule change, the Exchange would create a new class of market participant called a Retail Member Organization ("RMO"), which would be eligible to submit certain retail order flow ("Retail

Orders") to the Exchange. As proposed, BX members ("Members") will be permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is priced more aggressively than the Protected National Best Bid or Offer ("Protected NBBO").⁴

Definitions

The Exchange proposes to adopt the following definitions under proposed BX Rule 4780. First, the term "Retail Member Organization" (or "RMO") would be defined as a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders.

Second, the term "Retail Order" would be defined as an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price (except in the case of a market order being changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The criteria set forth in FINRA Rule 5320.03 adds additional precision to the definition of "Retail Order" by clarifying that an RMO may enter Retail Orders on a riskless principal basis, provided that (i) the entry of such riskless principal orders meet the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO submits a report, contemporaneously with the execution of the facilitated order, that identifies the trade as riskless principal.

The term "Retail Price Improvement Order" or "RPI Order" or collectively "RPI interest" would be defined as non-displayed liquidity on the Exchange that is priced more aggressively than the Protected NBBO by at least \$0.001 and that is identified as an RPI Order in a

⁴ The term Protected Quotation is defined in Chapter XII, Sec. 1(19) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The Protected NBBO is the best-priced protected bid and offer. Generally, the Protected NBBO and the national best bid and offer ("NBBO") will be the same. However, a market center is not required to route to the NBBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBBO is otherwise not available for an automatic execution. In such case, the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This filing is substantially the same to the one establishing the RPI pilot by The NASDAQ Stock Market LLC ("NASDAQ"). The NASDAQ pilot program expires on December 31, 2014. See Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) ("RPI Approval Order") (SR-NASDAQ-2012-129).