

consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission 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 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-2015-46 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-NYSEArca-2015-46. 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 Number SR-NYSEArca-2015-46 and should be submitted on or before June 26, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75085; File No. SR-BATS-2015-39]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend Fees Applicable to Securities Listed on BATS Exchange, Inc. Pursuant to BATS Rule 14.13

June 1, 2015.

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 22, 2015, 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 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 fees applicable to securities listed on the Exchange pursuant to BATS Rule 14.13. Changes to the

Exchange's fees pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](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 August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing, and delisting of companies on the Exchange,<sup>3</sup> which it modified on February 8, 2012 in order to adopt pricing for the listing of exchange traded products ("ETPs")<sup>4</sup> on the Exchange,<sup>5</sup> which it subsequently modified again on June 4, 2014.<sup>6</sup> On October 16, 2014, the Exchange modified Rule 14.13, entitled "Company Listing Fees" to eliminate the annual fees for ETPs that are not participating in the competitive liquidity provider program under Interpretation and Policy .02 to Rule 11.8, but did not eliminate the \$5,000 application fee for ETPs.<sup>7</sup> The Exchange is now proposing to eliminate the \$5,000 application fee for all ETPs, which would eliminate all compulsory fees for both new ETP issues and transfer listings in ETPs on the Exchange.

<sup>3</sup> See Securities Exchange Act Release No. 65225 (August 30, 2011) 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>4</sup> As defined in BATS Rule 11.8(e)(1)(A), the term "ETP" means any security listed pursuant to Exchange Rule 14.11.

<sup>5</sup> See Securities Exchange Act Release No. 66422 (February 17, 2012) 77 FR 11179 (February 24, 2012) (SR-BATS-2012-010).

<sup>6</sup> See Securities Exchange Act Release No. 72377 (June 12, 2014) 79 FR 34822 (June 18, 2014) (SR-BATS-2014-024).

<sup>7</sup> See Securities Exchange Act Release No. 73414 (October 23, 2014) 79 FR 64434 (October 29, 2014) (SR-BATS-2014-050).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

<sup>20</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.

Specifically, the Exchange is proposing that issuers that submit an application to list any ETP on the Exchange shall pay no application fee to the Exchange. Currently, Rule 14.13(b)(1)(C) provides that any ETP shall pay to the Exchange a fee of \$5,000 which represents a non-refundable application fee that will be billed to the Company in the month that the ETP is listed on the Exchange.

The Exchange proposes to implement the amendments to Rule 14.13(b)(1)(C) effective immediately.

## 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>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) and 6(b)(5) of the Act,<sup>9</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange is proposing to eliminate the application fee for ETPs that list on the Exchange, which will eliminate all compulsory fees for new issuers and transfer listings in ETPs, which the Exchange believes is equitable, reasonable, and non-discriminatory because the absence of required fees for listings will be applied equally to all ETPs, both new listings and transfers. The Exchange notes that those ETPs that elect to participate in the CLP Program under Interpretation and Policy .03 to Rule 11.8 may still choose to pay between \$5,000 and \$100,000 in the form of a CLP Fee,<sup>10</sup> however such fees are entirely optional. The Exchange believes that continuing to charge a CLP Fee for ETPs that participate in the CLP Program is equitable and non-discriminatory because the CLP Fee is the exact same amount as the total annual CLP Rebates<sup>11</sup> available to ETP CLPs<sup>12</sup> in a given CLP Security.<sup>13</sup> Further, ETPs participating in the CLP Program may opt out of the CLP Program at any time

in order to be eligible for having no listing fees.

Based on the foregoing, the Exchange believes that its proposed elimination of the application fee for ETPs (and thereby all compulsory listing fees) that are not participating in the CLP Program is a reasonable, equitable, and non-discriminatory allocation of fees to issuers.

### 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. With respect to the proposed new pricing for the listing of ETPs, the Exchange does not believe that the changes burden competition, but instead, enhance competition, as it is intended to increase the competitiveness of the Exchange's listings program by allowing the Exchange to offer ETPs the ability to list on the Exchange without having to pay any initial or annual fees. As such, the proposal is a competitive proposal that is intended to attract additional ETP listings, which will, in turn, benefit the Exchange and all other BATS-listed ETPs.

### 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 Act<sup>14</sup> and Rule 19b-4(f)(2) 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 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-BATS-2015-39 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-2015-39. 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 Number SR-BATS-2015-39 and should be submitted on or before June 26, 2015.

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

**Brent J. Fields,**

Secretary.

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<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> As defined in paragraph (a) of Interpretation and Policy .03 to Rule 11.8.

<sup>11</sup> As defined in paragraph (a) of Interpretation and Policy .03 to Rule 11.8.

<sup>12</sup> As defined in paragraph (b)(1) of Interpretation and Policy .03 to Rule 11.8.

<sup>13</sup> As defined in paragraph (b)(3) of Interpretation and Policy .03 to Rule 11.8.

<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).