

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="23"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2011"/> - * <input type="text" value="012"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Proposed Rule Change by BATS Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="text"/> Date Expires * <input type="text"/>			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * <input type="text" value="Anders"/>	Last Name * <input type="text" value="Franzon"/>
Title * <input type="text" value="VP, Associate General Counsel"/>	
E-mail * <input type="text" value="afranzon@batstrading.com"/>	
Telephone * <input type="text" value="(913) 815-7154"/>	Fax <input type="text" value="(913) 815-7119"/>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By

(Name *)

(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change 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 will be effective upon filing.

(a) The text of the proposed rule change is below. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

**BATS BZX Exchange Fee Schedule
Effective [March 1]April 1, 2011**

* * * * *

Options Pricing:

All references to “per contract” mean “per contract executed[.]”

“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; with prior notice to the Exchange, a Member may aggregate ADV with other Members that control, are controlled by, or are under common control with such Member

“Customer” applies to any transaction identified by a [member]Member for clearing in the Customer range at the Options Clearing Corporation (“OCC”)[.]

“Firm” applies to any transaction identified by a [member]Member for clearing in the Firm range at the OCC[.]

“Market Maker” applies to any transaction identified by a [member]Member for clearing in the Market Maker range at the OCC[.]

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

“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

Fees for Accessing Liquidity for All Securities

[\$0.25 charge per contract for a Customer order that removes liquidity from the BATS Options order book where the Member has an ADV of 50,000 or more contracts]

\$0.27 charge per contract for a Customer order that removes liquidity from the BATS Options order book where the Member has an ADV [of 15,000 or more, but fewer than, 50,000 contracts] equal to or greater than 0.30% of average TCV

[\$0.28]0.30 charge per contract for a Customer order that removes liquidity from the BATS Options order book and such Member does not qualify for a lower charge based on their ADV

[\$0.35 charge per contract for a Firm or Market Maker order that removes liquidity from the BATS Options order book where the Member has an ADV of 50,000 or more contracts]

\$0.37 charge per contract for a Firm or Market Maker order that removes liquidity from the BATS Options order book where the Member has an ADV [of 15,000 or more, but fewer than, 50,000 contracts] equal to or greater than 0.30% of average TCV

[\$0.38]0.40 charge per contract for a Firm or Market Maker order that removes liquidity from the BATS Options order book and such Member does not qualify for a lower charge based on their ADV

* * * * *

NBBO Setter Liquidity Rebates for All Securities *(superseding any other applicable liquidity rebates)*

\$0.40 rebate per contract for any order that adds liquidity to the BATS Options order book that sets a new national best bid or offer where the adding Member has an ADV [of 15,000 or more,] equal to or greater than 0.30% of average TCV but [fewer] less than [50,000, contracts] 1% of average TCV

\$0.50 rebate per contract for any order that adds liquidity to the BATS Options order book that sets a new national best bid or offer where the adding Member has an ADV [of 50,000 or more contracts] equal to or greater than 1% of average TCV

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on November 10, 2009. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (913) 815-7000.

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

(a) Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule to: (i) adopt a definition for Total Consolidated Volume ("TCV"), to be used for purposes of the tiered pricing structure offered by the BATS options market ("BATS Options"); (ii) modify the fees applicable to removing liquidity from BATS Options; (iii) modify the program that provides a rebate specifically for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO") subject to average daily volume requirements; and (iv) adopt other changes to other definitions used for purposes of the fee schedule.

(i) Definition and Use of Total Consolidated Volume for Pricing

Rather than basing its pricing structure on a static number of contracts, the Exchange proposes to modify its tiered pricing structure such that it is based on Total Consolidated Volume, or TCV, and is thus variable based on overall volumes in the

options industry. In order to achieve this change, the Exchange proposes to adopt the definition of TCV as meaning “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.” To illustrate the Exchange’s application of TCV, if the overall volume of options contracts traded as reported by all options exchanges is 200 million contracts in a given month, this amount will be used as the TCV against which the Exchange’s tiered pricing will be measured for all trading activity during the month. The amount of overall TCV in the month will be divided by the number of trading days to determine average TCV; for instance, 200 million contracts divided by 20 trading days is an average TCV of 10 million contracts per day. Using these volumes as an example, to reach the Exchange’s highest proposed tier, which, as described in further detail below will be 1% or more of average TCV, a Member would need to have an ADV of at least 100,000 contracts traded on BATS Options per day. If, in the next month, options volumes doubled, and the TCV for the month was 400 million contracts, then a Member would need to have an ADV of at least 200,000 contracts traded on BATS Options to have an ADV equal to 1% of average TCV. The Exchange believes that basing its tiered pricing on TCV rather than a specific number of contracts is a preferable measure of overall activity given the fluctuation of volumes in the options industry.

(ii) Fees to Remove Liquidity

The Exchange currently charges standard fees of \$0.28 per contract for customer orders and \$0.38 per contract for Firm and Market Maker orders that remove liquidity from BATS Options. The Exchange proposes to increase this fee to \$0.30 per contract for customer orders and \$0.40 per contract for Firm and Market Maker orders that

remove liquidity from BATS Options, subject to potential reduction for any Member with an ADV of 0.30% or more of average TCV on BATS Options, as described below.

The Exchange currently maintains two tiers through which Members can realize lower liquidity removal fees. The first tier is available for any Member with an ADV⁴ of 50,000 or more contracts; such Members are currently charged a fee of \$0.25 per contract for customer orders and \$0.35 per contract for Firm and Market Maker orders, and thus realize savings of \$0.03 per contract as compared to the current standard fees. The second tier is available for any member with an ADV of 15,000 or more, but less than 50,000, contracts; such Members are currently charged a fee of \$0.27 per contract for customer orders and \$0.37 per contract for Firm and Market Maker orders, and thus realize savings of \$0.01 per contract as compared to the current standard fees.

The Exchange proposes to modify its tiered pricing structure to apply a single, reduced liquidity removal rate to all Members with an ADV equal to or greater than 0.30% of average TCV. For Members reaching this volume threshold, the Exchange will charge a fee of \$0.27 per contract for customer orders and \$0.37 per contract for Firm and Market Maker orders. Thus, such Members will save \$0.03 per contract as compared to the standard fee to remove liquidity. Using examples set forth above, during a month with a total of 200 million contracts traded, in order to receive the discounted removal fee based on a requirement of 0.30% of average TCV, a Member would be

⁴ As currently defined, ADV means average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. ADV does not include contracts routed away from the Exchange and executed at a different options exchange.

required to trade 600,000 contracts on BATS Options during the month (an ADV requirement of 30,000 contracts).

(iii) Expansion and Modification of NBBO Setter Rebate Program

The Exchange currently offers a rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the “NBBO Setter Rebate”)⁵ so long as the Member submitting the order achieves either an ADV of between 15,000 and 49,999 contracts or an ADV of 50,000 or more contracts during the calendar month. The NBBO Setter Rebate currently offered by the Exchange to such Members is \$0.40 per contract and \$0.50 per contract, respectively. The Exchange proposes to modify the threshold to meet the ADV requirement for the \$0.40 NBBO Setter Rebate to 0.30% of average TCV and to modify the threshold to meet the ADV requirement for the \$0.50 NBBO Setter Rebate to 1% of average TCV. As explained above, assuming a monthly TCV of 200 million contracts in a month with 20 trading days, a Member would need an ADV of at least 30,000 contracts to receive the \$0.40 NBBO Setter Rebate, and an ADV of at least 100,000 contracts to receive the \$0.50 NBBO Setter Rebate.

(iv) Other Changes to Definitions

In addition to the changes described above, including adoption of a definition for TCV, the Exchange proposes to modify other definitions contained in the Options Pricing section of the fee schedule. First, the Exchange proposes to modify the definition of ADV to allow affiliated entities to aggregate their order flow for purposes of the

⁵ An order that is entered at the most aggressive price both on the BATS Options book and according to then current OPRA data will be determined to have set the NBB or NBO for purposes of the NBBO Setter Rebate without regard to whether a more aggressive order is entered prior to the original order being executed.

Exchange's pricing tiers if such entities provide prior notice to the Exchange.

Specifically, to the extent two or more affiliated companies maintain separate BATS Options memberships and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such Members to count overall volume of the affiliates in calculating ADV. In addition, the Exchange proposes to capitalize the term "Member" throughout the definitions.

(b) 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.⁶ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ 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.

The changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to BATS Options by continuing to offer competitive pricing while also permitting the Exchange to avoid significant monetary losses.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

The Exchange believes that basing its tiered pricing structure on overall TCV, rather than a static number irrespective of overall options volumes, is a fair and equitable approach to pricing. Volume-based discounts such as the liquidity removal fee tiers proposed in this filing have been widely adopted in the cash equities markets, and are equitable and not unreasonably discriminatory because they are open to all members on an equal basis and provide discounts 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 not unreasonably discriminatory because it is consistent with the overall goals of enhancing market quality. Additionally, the Exchange believes that the NBBO Setter Rebate, now in place on BATS Options for three months, has and will continue to incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors.

The proposed increase in fees to remove liquidity will have variable effects on Members of BATS Options, dependent on the volume of transaction activity they conduct on BATS Options. The Exchange notes that only a small subset of Members currently meeting the ADV tier of 15,000 to 49,999 will not be impacted by any increase in fees. Despite this increase in fees for most Members, the Exchange believes that its proposed fee structure is fair and equitable as the Exchange's standard removal fees (either \$0.30 or \$0.40 per contract) and the reduced removal fees (either \$0.27 or \$0.37 per contract) still remain lower than other markets with similar fee structures, such as the NASDAQ Options Market and NYSE Arca in Make/Take Issues. The increase in liquidity removal fees so that the Exchange is earning a slightly greater fee will provide

the Exchange with additional revenue to both fund the NBBO Setter Rebate and to fund its operations generally.

The proposed language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. By way of example, subject to appropriate information barriers, many firms that are Members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access BATS Options. Absent the proposed policy, such corporate affiliates would not receive the same treatment as firms operating similar business lines within a single entity that is a Member of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

Finally, the Exchange believes that the adoption of a definition for TCV will help to avoid potential confusion regarding the Exchange's fee schedule.

4. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

Exhibits 2 - 5: Not applicable.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2011-012)

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.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 1, 2011, 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

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 the "Options Pricing" section of its fee schedule to: (i) adopt a definition for Total Consolidated Volume ("TCV"), to be used for purposes of the tiered pricing structure offered by the BATS options market ("BATS Options"); (ii) modify the fees applicable to removing liquidity from BATS Options; (iii) modify the program that provides a rebate specifically for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO") subject to average daily volume requirements; and (iv) adopt other changes to other definitions used for purposes of the fee schedule.

(i) Definition and Use of Total Consolidated Volume for Pricing

Rather than basing its pricing structure on a static number of contracts, the Exchange proposes to modify its tiered pricing structure such that it is based on Total Consolidated Volume, or TCV, and is thus variable based on overall volumes in the

options industry. In order to achieve this change, the Exchange proposes to adopt the definition of TCV as meaning “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.” To illustrate the Exchange’s application of TCV, if the overall volume of options contracts traded as reported by all options exchanges is 200 million contracts in a given month, this amount will be used as the TCV against which the Exchange’s tiered pricing will be measured for all trading activity during the month. The amount of overall TCV in the month will be divided by the number of trading days to determine average TCV; for instance, 200 million contracts divided by 20 trading days is an average TCV of 10 million contracts per day. Using these volumes as an example, to reach the Exchange’s highest proposed tier, which, as described in further detail below will be 1% or more of average TCV, a Member would need to have an ADV of at least 100,000 contracts traded on BATS Options per day. If, in the next month, options volumes doubled, and the TCV for the month was 400 million contracts, then a Member would need to have an ADV of at least 200,000 contracts traded on BATS Options to have an ADV equal to 1% of average TCV. The Exchange believes that basing its tiered pricing on TCV rather than a specific number of contracts is a preferable measure of overall activity given the fluctuation of volumes in the options industry.

(ii) Fees to Remove Liquidity

The Exchange currently charges standard fees of \$0.28 per contract for customer orders and \$0.38 per contract for Firm and Market Maker orders that remove liquidity from BATS Options. The Exchange proposes to increase this fee to \$0.30 per contract for customer orders and \$0.40 per contract for Firm and Market Maker orders that

remove liquidity from BATS Options, subject to potential reduction for any Member with an ADV of 0.30% or more of average TCV on BATS Options, as described below.

The Exchange currently maintains two tiers through which Members can realize lower liquidity removal fees. The first tier is available for any Member with an ADV⁶ of 50,000 or more contracts; such Members are currently charged a fee of \$0.25 per contract for customer orders and \$0.35 per contract for Firm and Market Maker orders, and thus realize savings of \$0.03 per contract as compared to the current standard fees. The second tier is available for any member with an ADV of 15,000 or more, but less than 50,000, contracts; such Members are currently charged a fee of \$0.27 per contract for customer orders and \$0.37 per contract for Firm and Market Maker orders, and thus realize savings of \$0.01 per contract as compared to the current standard fees.

The Exchange proposes to modify its tiered pricing structure to apply a single, reduced liquidity removal rate to all Members with an ADV equal to or greater than 0.30% of average TCV. For Members reaching this volume threshold, the Exchange will charge a fee of \$0.27 per contract for customer orders and \$0.37 per contract for Firm and Market Maker orders. Thus, such Members will save \$0.03 per contract as compared to the standard fee to remove liquidity. Using examples set forth above, during a month with a total of 200 million contracts traded, in order to receive the discounted removal fee based on a requirement of 0.30% of average TCV, a Member would be

⁶ As currently defined, ADV means average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. ADV does not include contracts routed away from the Exchange and executed at a different options exchange.

required to trade 600,000 contracts on BATS Options during the month (an ADV requirement of 30,000 contracts).

(iii) Expansion and Modification of NBBO Setter Rebate Program

The Exchange currently offers a rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the “NBBO Setter Rebate”)⁷ so long as the Member submitting the order achieves either an ADV of between 15,000 and 49,999 contracts or an ADV of 50,000 or more contracts during the calendar month. The NBBO Setter Rebate currently offered by the Exchange to such Members is \$0.40 per contract and \$0.50 per contract, respectively. The Exchange proposes to modify the threshold to meet the ADV requirement for the \$0.40 NBBO Setter Rebate to 0.30% of average TCV and to modify the threshold to meet the ADV requirement for the \$0.50 NBBO Setter Rebate to 1% of average TCV. As explained above, assuming a monthly TCV of 200 million contracts in a month with 20 trading days, a Member would need an ADV of at least 30,000 contracts to receive the \$0.40 NBBO Setter Rebate, and an ADV of at least 100,000 contracts to receive the \$0.50 NBBO Setter Rebate.

(iv) Other Changes to Definitions

In addition to the changes described above, including adoption of a definition for TCV, the Exchange proposes to modify other definitions contained in the Options Pricing section of the fee schedule. First, the Exchange proposes to modify the definition of ADV to allow affiliated entities to aggregate their order flow for purposes of the Exchange’s pricing tiers if such entities provide prior notice to the Exchange.

⁷ An order that is entered at the most aggressive price both on the BATS Options book and according to then current OPRA data will be determined to have set the NBB or NBO for purposes of the NBBO Setter Rebate without regard to whether a more aggressive order is entered prior to the original order being executed.

Specifically, to the extent two or more affiliated companies maintain separate BATS Options memberships and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange will permit such Members to count overall volume of the affiliates in calculating ADV. In addition, the Exchange proposes to capitalize the term “Member” throughout the definitions.

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.⁸ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ 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.

The changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to BATS Options by continuing to offer competitive pricing while also permitting the Exchange to avoid significant monetary losses.

The Exchange believes that basing its tiered pricing structure on overall TCV, rather than a static number irrespective of overall options volumes, is a fair and equitable

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

approach to pricing. Volume-based discounts such as the liquidity removal fee tiers proposed in this filing have been widely adopted in the cash equities markets, and are equitable and not unreasonably discriminatory because they are open to all members on an equal basis and provide discounts 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 not unreasonably discriminatory because it is consistent with the overall goals of enhancing market quality. Additionally, the Exchange believes that the NBBO Setter Rebate, now in place on BATS Options for three months, has and will continue to incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors.

The proposed increase in fees to remove liquidity will have variable effects on Members of BATS Options, dependent on the volume of transaction activity they conduct on BATS Options. The Exchange notes that only a small subset of Members currently meeting the ADV tier of 15,000 to 49,999 will not be impacted by any increase in fees. Despite this increase in fees for most Members, the Exchange believes that its proposed fee structure is fair and equitable as the Exchange's standard removal fees (either \$0.30 or \$0.40 per contract) and the reduced removal fees (either \$0.27 or \$0.37 per contract) still remain lower than other markets with similar fee structures, such as the NASDAQ Options Market and NYSE Arca in Make/Take Issues. The increase in liquidity removal fees so that the Exchange is earning a slightly greater fee will provide the Exchange with additional revenue to both fund the NBBO Setter Rebate and to fund its operations generally.

The proposed language permitting aggregation of volume amongst corporate affiliates for purposes of the ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. By way of example, subject to appropriate information barriers, many firms that are Members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access BATS Options. Absent the proposed policy, such corporate affiliates would not receive the same treatment as firms operating similar business lines within a single entity that is a Member of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure.

Finally, the Exchange believes that the adoption of a definition for TCV will help to avoid potential confusion regarding the Exchange's fee schedule.

(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

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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 e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2011-012 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-2011-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

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 am and 3:00 pm. 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-2011-012 and should be submitted on or before [_____21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Cathy H. Ahn
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).