OMB APPROVAL
OMB Number: 3235-0045 Expires: September 30, 2011 Estimated average burden hours per response...........38

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2011 - * 043
Amendment No. (req. for Amendments *)

Proposed Rule Change by BATS Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Amendment to the fee schedule of BATS Exchange, Inc.

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 * Anders
Last Name * Franzon
Title * VP, Associate General Counsel
E-mail * afranzon@batstrading.com
Telephone * (913) 815-7154
Fax (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 09/30/2011

By Anders Franzon
(Name *)

VP, Associate General Counsel
(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.

Anders Franzon,

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 Add Remove View	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 Members[3] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on October 3, 2011.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(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.

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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.

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) decrease the fees applicable to Customer[4] orders that remove liquidity from the BATS options market ("BATS Options"); (ii) eliminate a pricing structure that provides a Firm[5] or Market Maker[6] a reduced fee to remove liquidity if such Firm or Market Maker satisfies certain volume thresholds; (iii) increase the rebate applicable to Customer orders that add liquidity to BATS Options; (iv) modify the rebates paid, subject to average daily volume requirements, for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO"); and (v) modify a program intended to incentivize sustained, aggressive quoting in certain specified options series (the "Quoting Incentive Program" or "QIP").

(i) Decrease to Customer Liquidity Removal Fees

The Exchange currently charges standard fees of $0.32 per contract for Customer orders that remove liquidity from BATS Options. The Exchange proposes to decrease

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4 As defined on the Exchange's fee schedule, a "Customer" order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation ("OCC").

5 As defined on the Exchange's fee schedule, a "Firm" order is any transaction identified by a Member for clearing in the Firm range at the OCC.

6 As defined on the Exchange's fee schedule, a "Market Maker" order is any transaction identified by a Member for clearing in the Market Maker range at the OCC.

this fee to $0.30 per contract, 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 a tiered pricing structure through which Members can realize lower liquidity removal fees if such Members have an average daily volume ("ADV")[7] equal to or greater than 0.30% of average total consolidated volume ("TCV").[8] For Members reaching this volume threshold, the Exchange currently charges a fee of $0.29 per contract for Customer orders. Thus, such Members currently save $0.03 per contract as compared to the standard fee to remove liquidity. While the Exchange proposes to maintain this $0.03 savings per contract for Customer orders for Members that reach the volume tier, due to the proposed decrease described above for standard liquidity removal, the Exchange proposes to decrease liquidity removal fees for Members that reach the volume tier by $0.02 per contract for Customer orders. Accordingly, for Members reaching the volume threshold, the Exchange will charge a fee of $0.27 per contract for Customer orders.

(ii) Elimination of Liquidity Removal Discount for Firms and Market Makers

As explained above, the Exchange currently maintains a tiered pricing structure through which Members can realize lower liquidity removal fees if such Members have an ADV equal to or greater than 0.30% of average TCV. For Members reaching this volume threshold, the Exchange currently charges a fee of $0.39 per contract for Firm

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7 As defined on the Exchange's fee schedule, ADV is average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. The fee schedule also provides that routed contracts are not included in ADV calculation.

8 As defined on the Exchange's fee schedule, TCV is 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.

and Market Maker orders, which is $0.03 less than the standard fee of $0.42 for such orders. The Exchange proposes to eliminate the reduced liquidity removal fee for Firm and Market Maker orders of Members that reach the volume threshold. Accordingly, the Exchange proposes to charge a fee of $0.42 per contract for all Firm and Market Maker orders that remove liquidity from BATS Options.

(iii) Increase to Customer Rebates to Add Liquidity

The Exchange currently provides a rebate of $0.22 per contract for Customer orders. The Exchange proposes to increase this rebate to $0.30 per contract. As is the case under the current pricing structure, the removing Member's fee will be determined without regard to the capacity of the adding party.

(iv) Modified Rebates for 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"),[9] subject to certain volume requirements. The NBBO Setter Rebate currently offered by the Exchange to such Members is $0.35 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and $0.45 per contract for Members with an ADV equal to or greater than 1% of TCV. The NBBO Setter Rebate is currently an exclusive rebate structure, in that qualifying executions receive the applicable rebate irrespective of any other condition. For instance, an execution that qualifies for both the NBBO Setter Rebate and the Quoting Incentive

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9 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.

Program (as described below), would simply receive the NBBO Setter Rebate and the Quoting Incentive Program would not alter the amount of the rebate. The Exchange proposes to modify the NBBO Setter Rebate such that it is additive, and thus, can be combined with other incentives and structures offered by the Exchange. Specifically, the Exchange proposes to provide an additional $0.06 per contract for executions that qualify for the NBBO Setter Rebate by Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and an additional $0.10 per contract for qualifying executions by Members with an ADV equal to or greater than 1% of TCV. Accordingly, a Member with an execution in an option that qualifies for both an NBBO Setter Rebate and a QIP rebate (as described below) will receive the applicable initial rebate of $0.22, $0.30, or $0.32 (depending on the capacities of the party or parties to the trade), plus the proposed QIP rebate of $0.05 per contract plus the applicable NBBO Setter Rebate of either $0.06 per contract or $0.10 per contract. As such, whether the NBBO Setter Rebate is an increase or decrease for any particular Member or any particular transaction depends on a number of factors, including the level of a Member's monthly trading activity on the Exchange, whether such Member qualifies for the QIP in the applicable option, the capacity of the orders sent by the Member and, in the case of Firms and Market Makers, the capacity of the party against which such orders execute.

(v) Modification of Quoting Incentive Program (QIP)

BATS Options currently offers a Quoting Incentive Program (QIP), through which Members receive a rebate of $0.03 per contract, in addition to any other liquidity rebate other than an NBBO Setter Program liquidity rebate, for executions subject to the QIP. The QIP currently applies only to executions in options overlying XLF, CSCO, PFE, ORCL, and XRT. To qualify for the QIP a BATS Options Market Maker must be at the NBB or NBO 70% of the time for series trading between $0.03 and $5.00 for the front three (3) expiration months in that underlying during the current trading month. A Member not registered as a BATS Options Market Maker can also qualify for the QIP by quoting at the NBB or NBO 80% of the time in the same series.

The Exchange proposes two changes to the QIP. First, the Exchange proposes to increase the rebate provided pursuant to the QIP from $0.03 per contract to $0.05 per contract. Second, the Exchange proposes to expand the QIP from executions in options overlying specified securities (XLF, CSCO, PFE, ORCL, and XRT) to all options traded on BATS Options. All other aspects of the QIP currently in place will remain the same, though the Exchange does propose changing the description of the QIP on the Exchange's fee schedule because, as described above, the Exchange proposes to permit QIP rebates to be combined with NBBO Setter Rebates. Accordingly, a Member with an execution in an option that qualifies for both the QIP and an NBBO Setter Rebate will receive the applicable initial rebate of $0.22, $0.30, or $0.32 (depending on the capacities of the party or parties to the trade), plus the $0.05 per contract QIP rebate plus the applicable NBBO Setter Rebate of either $0.06 per contract or $0.10 per contract.

As is true under the current operation of the QIP, the Exchange will determine whether a market maker qualifies for QIP rebates at the end of each month by looking back at each Member's (including BATS Options Market Makers) quoting statistics during that month. If at the end of the month a Market Maker meets the 70% criteria or a Member that is not registered as a BATS Options Market Maker meets the 80% criteria, the Exchange will provide the additional rebate for all executions subject to the QIP executed by that Market Maker or Member during that month. The Exchange will provide Members with a report on a daily basis with quoting statistics so such Members can determine whether or not they are meeting the QIP criteria. The Exchange is not proposing to impose any ADV requirements in order to qualify for the QIP at this time.

(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.[10] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] 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 the Exchange by continuing to offer competitive pricing while also creating incentives to providing aggressively priced displayed liquidity. The proposed changes to Customer pricing, including the increase to the rebate provided for Customer orders and decrease to the fee to take liquidity from the Exchange are designed to incentivize firms to send additional Customer orders to the Exchange. While certain

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10 15 U.S.C. 78f.

11 15 U.S.C. 78f(b)(4).

Members that currently reach the volume threshold and remove liquidity from the Exchange with Firm and Market Maker orders will pay higher fees due to the proposal, the increased revenue received by the Exchange will be used to fund programs that the Exchange believes will attract additional liquidity, including Customer liquidity, and thus improve the depth of liquidity available on the Exchange. Accordingly, the Exchange believes that the higher access fees for Firm and Market Maker orders will benefit Members' results in trading on the Exchange to the extent the pricing structure offered by the Exchange with respect to Customer orders, the continued operation of the NBBO Setter Program, and the expansion to the Quoting Incentive Program (QIP) incentivize liquidity providers to provide more aggressively priced liquidity.

Despite the increase in fees for Members that currently receive a discount when removing liquidity with Firm or Market Maker orders, the Exchange also believes that its proposed fee structure is fair and equitable as the Exchange's standard fees generally still remain lower than standard fees charged by other markets with similar fee structures, such as NYSE Arca and Nasdaq.

The Exchange believes that continuing to base its tiered fee structure and NBBO Setter Program based on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing. Volume-based tiers such as the tiers in place on the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates 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 unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Additionally, the Exchange believes that the proposed expansion of the Quoting Incentive Program, which is similar to a fee structure in place on at least one of the Exchange's competitors,[12] will further incentivize the provision of competitively priced, sustained liquidity that will create tighter spreads, benefitting both Members and public investors. The Exchange also believes that conditioning a Member's ability to receive the QIP's additional rebate on reaching one of the Exchange's quoting tiers is consistent with the Act for the reasons described above with respect to volume-based tiers. The Exchange also believes that providing a slightly lower threshold for meeting the QIP to registered BATS Options Market Makers appropriately incentivizes Members of BATS Options to register with the Exchange as Options Market Makers. While the Exchange does wish to allow participation in the QIP by all Members, the Exchange believes that registration by additional Members as Market Makers will help to continue to increase the breadth and depth of quotations available on the Exchange. The Exchange notes that in addition to the fact that the QIP will be available to all Members, the proposal is not unfairly discriminatory despite a slightly higher quotation requirement for non-Market Makers due to the fact that registration as a BATS Options Market Maker is equally available to all Members.

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12 See Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25) (notice of filing and immediate effectiveness of changes to fees and rebates including adoption of specific rebates for market makers qualifying for the Market Maker Plus program).

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 Act[13] and Rule 19b-4(f)(2) thereunder,[14] 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.

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[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b-4(f)(2).

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

The Exchange notes that the QIP is analogous to the Market Maker Plus pricing model implemented by the International Securities Exchange ("ISE").[15] The Exchange notes that the proposed QIP differs from the ISE's Market Maker Plus pricing model in several aspects, including that the QIP as proposed applies to all underlying securities with options that trade on BATS Options, which differs from Market Maker Plus pricing, which specifies certain underlying securities with options that qualify for QIP. Additionally, while Market Maker Plus pricing is only available to market makers registered with ISE, the Exchange has proposed to permit all Options Members to qualify for QIP pricing, albeit with different quoting thresholds depending on whether a Member is registered as an Options Market Maker. Finally, the Exchange has chosen not to differentiate between options whose underlying stock's previous trading day's last sale price was less than $100 or greater than $100, as the ISE Market Maker Plus program does.

9. Exhibits

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

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

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[15] See supra note 12.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-______________; File No. SR-BATS-2011-043)

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 September 30, 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 Act[3] 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 Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the

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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.

fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on October 3, 2011.

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) decrease the fees applicable to Customer[6] orders that remove liquidity from the BATS options market ("BATS Options"); (ii) eliminate a pricing structure that provides a Firm[7] or Market Maker[8] a reduced fee to remove liquidity if such Firm or

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6 As defined on the Exchange's fee schedule, a "Customer" order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation ("OCC").

7 As defined on the Exchange's fee schedule, a "Firm" order is any transaction identified by a Member for clearing in the Firm range at the OCC.

8 As defined on the Exchange's fee schedule, a "Market Maker" order is any transaction identified by a Member for clearing in the Market Maker range at the OCC.

Market Maker satisfies certain volume thresholds; (iii) increase the rebate applicable to Customer orders that add liquidity to BATS Options; (iv) modify the rebates paid, subject to average daily volume requirements, for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO"); and (v) modify a program intended to incentivize sustained, aggressive quoting in certain specified options series (the "Quoting Incentive Program" or "QIP").

(i) Decrease to Customer Liquidity Removal Fees

The Exchange currently charges standard fees of $0.32 per contract for Customer orders that remove liquidity from BATS Options. The Exchange proposes to decrease this fee to $0.30 per contract, 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 a tiered pricing structure through which Members can realize lower liquidity removal fees if such Members have an average daily volume ("ADV")[9] equal to or greater than 0.30% of average total consolidated volume ("TCV").[10] For Members reaching this volume threshold, the Exchange currently charges a fee of $0.29 per contract for Customer orders. Thus, such Members currently save $0.03 per contract as compared to the standard fee to remove liquidity. While the Exchange proposes to maintain this $0.03 savings per contract for Customer orders for Members that reach the volume tier, due to the proposed decrease described above for

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9 As defined on the Exchange's fee schedule, ADV is average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. The fee schedule also provides that routed contracts are not included in ADV calculation.

10 As defined on the Exchange's fee schedule, TCV is 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.

standard liquidity removal, the Exchange proposes to decrease liquidity removal fees for Members that reach the volume tier by $0.02 per contract for Customer orders. Accordingly, for Members reaching the volume threshold, the Exchange will charge a fee of $0.27 per contract for Customer orders.

(ii) <u>Elimination of Liquidity Removal Discount for Firms and Market Makers</u>

As explained above, the Exchange currently maintains a tiered pricing structure through which Members can realize lower liquidity removal fees if such Members have an ADV equal to or greater than 0.30% of average TCV. For Members reaching this volume threshold, the Exchange currently charges a fee of $0.39 per contract for Firm and Market Maker orders, which is $0.03 less than the standard fee of $0.42 for such orders. The Exchange proposes to eliminate the reduced liquidity removal fee for Firm and Market Maker orders of Members that reach the volume threshold. Accordingly, the Exchange proposes to charge a fee of $0.42 per contract for all Firm and Market Maker orders that remove liquidity from BATS Options.

(iii) <u>Increase to Customer Rebates to Add Liquidity</u>

The Exchange currently provides a rebate of $0.22 per contract for Customer orders. The Exchange proposes to increase this rebate to $0.30 per contract. As is the case under the current pricing structure, the removing Member’s fee will be determined without regard to the capacity of the adding party.

(iv) <u>Modified Rebates for NBBO Setter Rebate Program</u>

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"),[11] subject to certain volume requirements. The NBBO Setter Rebate currently offered by the Exchange to such Members is $0.35 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and $0.45 per contract for Members with an ADV equal to or greater than 1% of TCV. The NBBO Setter Rebate is currently an exclusive rebate structure, in that qualifying executions receive the applicable rebate irrespective of any other condition. For instance, an execution that qualifies for both the NBBO Setter Rebate and the Quoting Incentive Program (as described below), would simply receive the NBBO Setter Rebate and the Quoting Incentive Program would not alter the amount of the rebate. The Exchange proposes to modify the NBBO Setter Rebate such that it is additive, and thus, can be combined with other incentives and structures offered by the Exchange. Specifically, the Exchange proposes to provide an additional $0.06 per contract for executions that qualify for the NBBO Setter Rebate by Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and an additional $0.10 per contract for qualifying executions by Members with an ADV equal to or greater than 1% of TCV. Accordingly, a Member with an execution in an option that qualifies for both an NBBO Setter Rebate and a QIP rebate (as described below) will receive the applicable initial rebate of $0.22, $0.30, or $0.32 (depending on the capacities of the party or parties to the trade), plus the proposed QIP rebate of $0.05 per contract plus the applicable NBBO Setter Rebate of either $0.06

[11] 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.

per contract or $0.10 per contract. As such, whether the NBBO Setter Rebate is an increase or decrease for any particular Member or any particular transaction depends on a number of factors, including the level of a Member's monthly trading activity on the Exchange, whether such Member qualifies for the QIP in the applicable option, the capacity of the orders sent by the Member and, in the case of Firms and Market Makers, the capacity of the party against which such orders execute.

(v) Modification of Quoting Incentive Program (QIP)

BATS Options currently offers a Quoting Incentive Program (QIP), through which Members receive a rebate of $0.03 per contract, in addition to any other liquidity rebate other than an NBBO Setter Program liquidity rebate, for executions subject to the QIP. The QIP currently applies only to executions in options overlying XLF, CSCO, PFE, ORCL, and XRT. To qualify for the QIP a BATS Options Market Maker must be at the NBB or NBO 70% of the time for series trading between $0.03 and $5.00 for the front three (3) expiration months in that underlying during the current trading month. A Member not registered as a BATS Options Market Maker can also qualify for the QIP by quoting at the NBB or NBO 80% of the time in the same series.

The Exchange proposes two changes to the QIP. First, the Exchange proposes to increase the rebate provided pursuant to the QIP from $0.03 per contract to $0.05 per contract. Second, the Exchange proposes to expand the QIP from executions in options overlying specified securities (XLF, CSCO, PFE, ORCL, and XRT) to all options traded on BATS Options. All other aspects of the QIP currently in place will remain the same, though the Exchange does propose changing the description of the QIP on the Exchange's fee schedule because, as described above, the Exchange proposes to permit QIP rebates to be combined with NBBO Setter Rebates. Accordingly, a Member with an execution in an option that qualifies for both the QIP and an NBBO Setter Rebate will receive the applicable initial rebate of $0.22, $0.30, or $0.32 (depending on the capacities of the party or parties to the trade), plus the $0.05 per contract QIP rebate plus the applicable NBBO Setter Rebate of either $0.06 per contract or $0.10 per contract.

As is true under the current operation of the QIP, the Exchange will determine whether a market maker qualifies for QIP rebates at the end of each month by looking back at each Member's (including BATS Options Market Makers) quoting statistics during that month. If at the end of the month a Market Maker meets the 70% criteria or a Member that is not registered as a BATS Options Market Maker meets the 80% criteria, the Exchange will provide the additional rebate for all executions subject to the QIP executed by that Market Maker or Member during that month. The Exchange will provide Members with a report on a daily basis with quoting statistics so such Members can determine whether or not they are meeting the QIP criteria. The Exchange is not proposing to impose any ADV requirements in order to qualify for the QIP at this time.

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) of the Act,[13] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

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 the Exchange by continuing to offer competitive pricing while also creating incentives to providing aggressively priced displayed liquidity. The proposed changes to Customer pricing, including the increase to the rebate provided for Customer orders and decrease to the fee to take liquidity from the Exchange are designed to incentivize firms to send additional Customer orders to the Exchange. While certain Members that currently reach the volume threshold and remove liquidity from the Exchange with Firm and Market Maker orders will pay higher fees due to the proposal, the increased revenue received by the Exchange will be used to fund programs that the Exchange believes will attract additional liquidity, including Customer liquidity, and thus improve the depth of liquidity available on the Exchange. Accordingly, the Exchange believes that the higher access fees for Firm and Market Maker orders will benefit Members' results in trading on the Exchange to the extent the pricing structure offered by the Exchange with respect to Customer orders, the continued operation of the NBBO Setter Program, and the expansion to the Quoting Incentive Program (QIP) incentivize liquidity providers to provide more aggressively priced liquidity.

Despite the increase in fees for Members that currently receive a discount when removing liquidity with Firm or Market Maker orders, the Exchange also believes that its proposed fee structure is fair and equitable as the Exchange's standard fees generally still remain lower than standard fees charged by other markets with similar fee structures, such as NYSE Arca and Nasdaq.

The Exchange believes that continuing to base its tiered fee structure and NBBO Setter Program based on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing. Volume-based tiers such as the tiers in place on the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates 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 unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Additionally, the Exchange believes that the proposed expansion of the Quoting Incentive Program, which is similar to a fee structure in place on at least one of the Exchange's competitors,[14] will further incentivize the provision of competitively priced, sustained liquidity that will create tighter spreads, benefitting both Members and public investors. The Exchange also believes that conditioning a Member's ability to receive the QIP's additional rebate on reaching one of the Exchange's quoting tiers is consistent with the Act for the reasons described above with respect to volume-based tiers. The Exchange also believes that providing a slightly lower threshold for meeting the QIP to

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[14] See Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25) (notice of filing and immediate effectiveness of changes to fees and rebates including adoption of specific rebates for market makers qualifying for the Market Maker Plus program).

registered BATS Options Market Makers appropriately incentivizes Members of BATS Options to register with the Exchange as Options Market Makers. While the Exchange does wish to allow participation in the QIP by all Members, the Exchange believes that registration by additional Members as Market Makers will help to continue to increase the breadth and depth of quotations available on the Exchange. The Exchange notes that in addition to the fact that the QIP will be available to all Members, the proposal is not unfairly discriminatory despite a slightly higher quotation requirement for non-Market Makers due to the fact that registration as a BATS Options Market Maker is equally available to all Members.

(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 Act[15] and Rule 19b-4(f)(2) thereunder,[16] 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.

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15 15 U.S.C. 78s(b)(3)(A)(ii).

16 17 CFR 240.19b-4(f)(2).

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-2011-043 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-2011-043. This file number should be included on the subject line if e-mail 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 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-2011-043 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.[17]

Cathy H. Ahn
Deputy Secretary

[17] 17 CFR 200.30-3(a)(12).

Note: Proposed new language is underlined. Proposed deletions are enclosed in brackets.

BATS BZX Exchange Fee Schedule
Effective [September 23]<u>October 3</u>, 2011

The following is the Schedule of Fees (pursuant to Rule 15.1(a) and (c)) for BATS Exchange, Inc. ("BZX Exchange" or "BZX"). The Schedule of Fees is divided into Equities Pricing, Options Pricing and Physical Connection Charges.

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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 for clearing in the Customer range at the Options Clearing Corporation ("OCC")

"Firm" applies to any transaction identified by a Member for clearing in the Firm range at the OCC

"Market Maker" applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC

"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

$[0.29]<u>0.27</u> charge per contract for a Customer order that removes liquidity from the BATS Options order book where the Member has an ADV equal to or greater than 0.30% of average TCV

$[0.32]<u>0.30</u> 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

[$0.39 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 equal to or greater than 0.30% of average TCV]

$0.42 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

Liquidity Rebates for All Securities

$[0.22]0.30 rebate per contract for a Customer order that adds liquidity to the BATS Options order book

$0.22 rebate per contract for a Firm or Market Maker order that adds liquidity to the BATS Options order book that is removed by a Customer order

$0.32 rebate per contract for a Firm or Market Maker order that adds liquidity to the BATS Options order book that is removed by a Firm or Market Maker order

NBBO Setter Liquidity Rebates for All Securities ([superseding] in addition to any other applicable liquidity rebates)

$[0.35]0.06 additional 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 equal to or greater than 0.30% of average TCV but less than 1% of average TCV

$[0.45]0.10 additional 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 equal to or greater than 1% of average TCV

Quoting Incentive Program ("QIP") Liquidity Rebates (in addition to any other applicable liquidity rebates [other than NBBO Setter Liquidity Rebates])

$[0.03]0.05 additional rebate per contract for any order that adds liquidity to the BATS Options order book in options products [overlying XLF, CSCO, PFE, ORCL, and XRT for] in which Members [that] meet one of the following quoting levels:

(1) BATS Options Market Makers that quote at the national best bid or offer 70% of the time for series trading between $0.03 and $5.00 for the front three (3) expiration months in that underlying for the month for which fees apply; or

(2) All other BATS Options Members that quote at the national best bid or offer 80% of the time for series trading between $0.03 and $5.00 for the front three (3) expiration months in that underlying for the month for which fees apply.

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