

*Required fields are shown with yellow backgrounds and asterisks.*

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

File No.\* SR - 2012 - \* 010

Amendment No. (req. for Amendments \*)

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"/>
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Rule

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<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



Exhibit 3 Sent As Paper Document

**Description**

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

Proposed rule change to amend the fees applicable to securities listed on the Exchange pursuant to BATS Rule 14.13.

**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 *	afranzone@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 02/08/2012

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change 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 will be effective upon filing.

(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.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

(a) 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> The Exchange proposes to modify Rule 14.13, entitled "Company Listing Fees" to: (i) adopt specified pricing for certain exchange traded products ("ETPs") listed on the Exchange pursuant to Rule 14.11; (ii) provide an exemption from annual listing fees for any security listed on the Exchange that has a consolidated average daily volume ("CADV") equal to or greater than 2 million shares per day for the prior two (2) calendar months; and (iii) apply all annual fees on the anniversary date of a security's listing on the Exchange and make other clarifying changes.

Listing Fees for ETPs

The Exchange currently has in place specified fees for listing of Tier I and Tier II securities on the Exchange, including both initial and annual listing fees. The Exchange proposes to amend Rule 14.13(b) to adopt initial and annual fees for ETPs listed pursuant to Rule 14.11. The Exchange proposes to commence its listings business by charging Initial Listing Fees of \$10,000 for all ETPs. This initial primary listing fee will include a \$5,000 non-refundable application fee. The Exchange also proposes to charge an annual fee of \$35,000 for ETPs, provided, however, that ETPs with CADV equal to or greater than 2 million shares per day for the prior two (2) calendar months will not be assessed

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

an annual fee, as described below. The Exchange also proposes to re-number the remainder of Rule 14.13(b) following the insertion of the proposed fees for ETPs.

#### Waiver of Annual Listing Fees for Certain Listed Securities

In order to incentivize larger, more established companies and ETP sponsors to list securities on the Exchange and to incentivize companies that list on the Exchange and grow to be more established companies to maintain their listings on the Exchange, the Exchange proposes to waive the annual listing fee for any security that is listed on the Exchange and has had a CADV equal to or greater than 2 million shares per day for the prior two (2) calendar months. This fee waiver will apply equally to securities that transfer from another listings market and become listed on the Exchange as well as those securities already listed on the Exchange when the annual listing fee becomes due (upon the anniversary of the security's listing, as described below).

#### Billing of Annual Fees and Additional Clarifying Changes

The Exchange proposes to modify its intended billing of annual fees, which the Exchange originally intended to assess on a pro-rated basis. The Exchange proposes to make clear that unless otherwise specified, the Exchange will assess all annual fees set forth in Rule 14.13(b)(2) upon a security's initial listing and then on each anniversary of a security's listing on the Exchange. The Exchange believes that billing each issuer on an annual basis from the date the applicable security is first listed on the Exchange is a more straightforward billing process than billing on a calendar year basis, which requires pro-rating of annual listing fees in the initial billing cycle.

The Exchange also proposes to delete current paragraphs (F) and (G) of Rule 14.13(b)(2), as such paragraphs are duplicative of existing paragraphs (C) and (D) (which the Exchange proposes to re-number as (D) and (E)).

Finally, the Exchange proposes to correct and expand an internal cross-reference set forth in Rule 14.13(b)(2)(E) (proposed to be re-numbered as sub-paragraph (b)(2)(F)). As currently in effect, BATS Rule 14.13(b)(2)(E), states that the Exchange will not apply the standard annual fee for a dually-listed security but will instead charge an annual fee of \$15,000. Although this was intended and described as applicable to both Tier I and Tier II securities in the Exchange's rule filing that proposed rules applicable to Exchange-listed securities,<sup>4</sup> the rule text inaccurately limits this dual-listings fee to Tier I securities. The Exchange proposes to expand the cross-reference to include Tier II securities as well as the newly added provision setting forth annual listing fees for ETPs.

(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.<sup>5</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,<sup>6</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.

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<sup>4</sup> See Securities Exchange Act Release No. 64546 (May 25, 2011), 76 FR 31660 (June 1, 2011) (SR-BATS-2011-018); see also id.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (b)(5).

As proposed, consistent with pricing already in place for Tier I and Tier II securities, the Exchange is proposing a clear-cut and simple pricing structure for ETPs that is not variable based on the number of shares or other metrics. The proposed fees applicable to ETPs are therefore equitable and non-discriminatory because they will apply equally to all ETPs listed on the Exchange. Further, the Exchange believes its proposed pricing for ETPs is reasonable, as the Exchange has not proposed additional fees that issuers incur at other exchanges, including fees for issuance of additional shares, name changes and other corporate actions. Finally, the Exchange notes that its proposed pricing, while not necessarily cheaper for all issuers at all other markets, is in many cases roughly equivalent or less than issuers would pay at other exchanges. For instance, derivative securities products and structured products listed on the NYSE Arca are assessed fees between \$5,000 and \$45,000 initially (depending on the type of product and number of shares) and between \$5,000 and \$55,000 annually, compared to proposed Exchange fees for ETP listings of \$10,000 initially and \$35,000 annually. Also, as noted above, most other listings markets charge multiple other fees applicable to additional shares issued by listed companies, corporate actions and related activities of issuers, whereas the Exchange's proposed fees do not include such additional fees.

The Exchange believes it is equitable, reasonable and non-discriminatory to waive the annual fee for issuers that have consolidated average daily volume ("CADV") equal to or greater than 2 million shares per day for the prior two (2) calendar months. As a general matter, listed companies that are better known and well-established are frequently more actively traded, liquid securities. The Exchange believes that the benefits to both the Exchange and other Exchange constituents of attracting and retaining such companies

to list on the Exchange justifies the Exchange waiving annual listing fees for these issuers. As it relates to other issuers, the ability of the Exchange to attract well-known, recognizable companies to list on the Exchange will help the Exchange to establish its status and reputation as a primary listing market. The Exchange's reputation as a primary listing market, in turn, will positively impact all issuers that are listed on the Exchange. Further, the Exchange believes that additional revenue generated from the Exchange's auction processes for actively traded Exchange-listed securities will offset the cost of operating a program for listed companies on the Exchange. Because issuers with higher CADV are likely to generate additional revenue for the Exchange, the Exchange believes it is reasonable to waive annual listing fees for such issuers. Based on the foregoing, the Exchange believes that waiver of annual listing fees to companies with certain CADV is a fair and equitable allocation of fees to issuers.

Finally, the Exchange believes it is reasonable and equitable to assess annual fees as of a security's initial listing date, rather than pro-rating annual fees and billing on a calendar basis. In particular, the Exchange believes that this annual billing will provide for more certainty to issuers than a billing model that requires proration.

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<sup>7</sup> and Rule 19b-4(f)(2) thereunder,<sup>8</sup> 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.

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2012-010)

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 8, 2012, 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 due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to institute a fee change applicable to securities listed on the Exchange. Changes to the Exchange’s fees pursuant to this proposal will be effective upon filing.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.<sup>5</sup> The Exchange proposes to modify Rule 14.13, entitled "Company Listing Fees" to: (i) adopt specified pricing for certain exchange traded products ("ETPs") listed on the Exchange pursuant to Rule 14.11; (ii) provide an exemption from annual listing fees for any security listed on the Exchange that has a consolidated average daily volume ("CADV") equal to or greater than 2 million shares per day for the prior two (2) calendar months; and (iii) apply all annual fees on the anniversary date of a security's listing on the Exchange and make other clarifying changes.

Listing Fees for ETPs

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<sup>5</sup> See Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011).

The Exchange currently has in place specified fees for listing of Tier I and Tier II securities on the Exchange, including both initial and annual listing fees. The Exchange proposes to amend Rule 14.13(b) to adopt initial and annual fees for ETPs listed pursuant to Rule 14.11. The Exchange proposes to commence its listings business by charging Initial Listing Fees of \$10,000 for all ETPs. This initial primary listing fee will include a \$5,000 non-refundable application fee. The Exchange also proposes to charge an annual fee of \$35,000 for ETPs, provided, however, that ETPs with CADV equal to or greater than 2 million shares per day for the prior two (2) calendar months will not be assessed an annual fee, as described below. The Exchange also proposes to re-number the remainder of Rule 14.13(b) following the insertion of the proposed fees for ETPs.

#### Waiver of Annual Listing Fees for Certain Listed Securities

In order to incentivize larger, more established companies and ETP sponsors to list securities on the Exchange and to incentivize companies that list on the Exchange and grow to be more established companies to maintain their listings on the Exchange, the Exchange proposes to waive the annual listing fee for any security that is listed on the Exchange and has had a CADV equal to or greater than 2 million shares per day for the prior two (2) calendar months. This fee waiver will apply equally to securities that transfer from another listings market and become listed on the Exchange as well as those securities already listed on the Exchange when the annual listing fee becomes due (upon the anniversary of the security's listing, as described below).

#### Billing of Annual Fees and Additional Clarifying Changes

The Exchange proposes to modify its intended billing of annual fees, which the Exchange originally intended to assess on a pro-rated basis. The Exchange proposes to make clear that unless otherwise specified, the Exchange will assess all annual fees set

forth in Rule 14.13(b)(2) upon a security's initial listing and then on each anniversary of a security's listing on the Exchange. The Exchange believes that billing each issuer on an annual basis from the date the applicable security is first listed on the Exchange is a more straightforward billing process than billing on a calendar year basis, which requires pro-rating of annual listing fees in the initial billing cycle.

The Exchange also proposes to delete current paragraphs (F) and (G) of Rule 14.13(b)(2), as such paragraphs are duplicative of existing paragraphs (C) and (D) (which the Exchange proposes to re-number as (D) and (E)).

Finally, the Exchange proposes to correct and expand an internal cross-reference set forth in Rule 14.13(b)(2)(E) (proposed to be re-numbered as sub-paragraph (b)(2)(F)). As currently in effect, BATS Rule 14.13(b)(2)(E), states that the Exchange will not apply the standard annual fee for a dually-listed security but will instead charge an annual fee of \$15,000. Although this was intended and described as applicable to both Tier I and Tier II securities in the Exchange's rule filing that proposed rules applicable to Exchange-listed securities,<sup>6</sup> the rule text inaccurately limits this dual-listings fee to Tier I securities. The Exchange proposes to expand the cross-reference to include Tier II securities as well as the newly added provision setting forth annual listing fees for ETPs.

## 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

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<sup>6</sup> See Securities Exchange Act Release No. 64546 (May 25, 2011), 76 FR 31660 (June 1, 2011) (SR-BATS-2011-018); see also id.

Act.<sup>7</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,<sup>8</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.

As proposed, consistent with pricing already in place for Tier I and Tier II securities, the Exchange is proposing a clear-cut and simple pricing structure for ETPs that is not variable based on the number of shares or other metrics. The proposed fees applicable to ETPs are therefore equitable and non-discriminatory because they will apply equally to all ETPs listed on the Exchange. Further, the Exchange believes its proposed pricing for ETPs is reasonable, as the Exchange has not proposed additional fees that issuers incur at other exchanges, including fees for issuance of additional shares, name changes and other corporate actions. Finally, the Exchange notes that its proposed pricing, while not necessarily cheaper for all issuers at all other markets, is in many cases roughly equivalent or less than issuers would pay at other exchanges. For instance, derivative securities products and structured products listed on the NYSE Arca are assessed fees between \$5,000 and \$45,000 initially (depending on the type of product and number of shares) and between \$5,000 and \$55,000 annually, compared to proposed Exchange fees for ETP listings of \$10,000 initially and \$35,000 annually. Also, as noted above, most other listings markets charge multiple other fees applicable to additional shares issued by listed companies, corporate actions and related activities of issuers, whereas the Exchange's proposed fees do not include such additional fees.

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<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (b)(5).

The Exchange believes it is equitable, reasonable and non-discriminatory to waive the annual fee for issuers that have consolidated average daily volume (“CADV”) equal to or greater than 2 million shares per day for the prior two (2) calendar months. As a general matter, listed companies that are better known and well-established are frequently more actively traded, liquid securities. The Exchange believes that the benefits to both the Exchange and other Exchange constituents of attracting and retaining such companies to list on the Exchange justifies the Exchange waiving annual listing fees for these issuers. As it relates to other issuers, the ability of the Exchange to attract well-known, recognizable companies to list on the Exchange will help the Exchange to establish its status and reputation as a primary listing market. The Exchange’s reputation as a primary listing market, in turn, will positively impact all issuers that are listed on the Exchange. Further, the Exchange believes that additional revenue generated from the Exchange’s auction processes for actively traded Exchange-listed securities will offset the cost of operating a program for listed companies on the Exchange. Because issuers with higher CADV are likely to generate additional revenue for the Exchange, the Exchange believes it is reasonable to waive annual listing fees for such issuers. Based on the foregoing, the Exchange believes that waiver of annual listing fees to companies with certain CADV is a fair and equitable allocation of fees to issuers.

Finally, the Exchange believes it is reasonable and equitable to assess annual fees as of a security’s initial listing date, rather than pro-rating annual fees and billing on a calendar basis. In particular, the Exchange believes that this annual billing will provide for more certainty to issuers than a billing model that requires proration.

(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<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> 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

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2012-010 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-2012-010. 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-2012-010 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.<sup>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).

## Rule 14.13. Company Listing Fees

- (a) (No changes.)
- (b) Fees Applicable to Listings
  - (1) Entry Fee

(A) *Tier I Securities:* A Company that submits an application to list any class of its securities (not otherwise identified in this Rule) on the Exchange as a Tier I security, shall pay to the Exchange a fee of \$100,000. This fee will be assessed on the date of listing on the Exchange, except for \$25,000 which represents a non-refundable application fee, and which must be submitted with the Company's application.

(B) *Tier II Securities:* A Company that submits an application to list any class of its securities (not otherwise identified in this Rule) on the Exchange as a Tier II security, shall pay to the Exchange a fee of \$50,000. This fee will be assessed on the date of listing on the Exchange, except for \$25,000 which represents a non-refundable application fee, and which must be submitted with the Company's application.

(C) *Exchange Traded Products:* A Company that submits an application to list any exchange traded product ("ETP"), which term includes all securities set forth in Rule 14.11, shall pay to the Exchange a fee of \$10,000. This fee will be assessed on the date of listing on the Exchange, except for \$5,000 which represents a non-refundable application fee, and which must be submitted with the Company's application.

~~[(C)](D)~~ The Exchange Board of Directors or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

~~[(D)](E)~~ If the application is withdrawn or is not approved, the entry fee (less the non-refundable application fee) shall be refunded.

~~[(E)](F)~~ The fees described in this Rule 14.13(b)(1) shall not be applicable with respect to any securities that:

- (i) are listed on another national securities exchange but not listed on the Exchange, if the issuer of such securities transfers their listing exclusively to the Exchange;
- (ii) are listed on another national securities exchange and the Exchange, if the issuer of such securities ceases to maintain their listing on the other exchange and the securities instead are designated as national market system securities under Rule 14.3(d); or

(iii) are listed on another national securities exchange but not listed on the Exchange, if the issuer of such securities is acquired by an unlisted company and, in connection with the acquisition, the unlisted company lists exclusively on the Exchange.

~~[(F)](G)~~ The fees described in this Rule 14.13(b)(1) shall not be applicable to a Company:

(i) whose securities are listed on another national securities exchange and designated as national market securities pursuant to the plan governing such securities at the time such securities are approved for listing on the Exchange; and

(ii) that maintains such listing and designation after it lists such securities on the Exchange.

(2) Annual Fee

(A) *Tier I Securities:* The issuer of each class of securities (not otherwise identified in this Rule) that is a domestic or foreign issue listed on the Exchange as a Tier I security shall pay to the Exchange an annual fee of \$35,000.

(B) *Tier II Securities:* The issuer of each class of securities (not otherwise identified in this Rule) that is a domestic or foreign issue listed on the Exchange as a Tier II security shall pay to the Exchange an annual fee of \$20,000.

(C) *Exchange Traded Products:* The issuer of each class of securities (not otherwise identified in this Rule) that is a domestic or foreign issue listed on the Exchange as an ETP shall pay to the Exchange an annual fee of \$35,000.

~~[(C)](D)~~ The Exchange Board of Directors or its designee may, in its discretion, defer or waive all or any part of the annual fee prescribed herein.

~~[(D)](E)~~ If a class of securities is removed from the Exchange that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded.

~~[(E)](F)~~ In lieu of the fees described in Rules 14.13(b)(2)(A) through (C), the annual fee shall be \$15,000 for each Company:

(i) whose securities are listed on another national securities exchange and designated as national market system securities pursuant to the plan governing such securities at the time such securities are approved for listing on the Exchange; and

(ii) that maintains such listing and designation after it lists such securities on the Exchange. Such annual fee shall be assessed on the first anniversary of the Company's listing on the Exchange.

(G) The fees described in this Rule 14.13(b)(2) shall not be applicable with respect to any securities that have had a consolidated average daily volume equal to or greater than 2 million shares per day for the immediately preceding two (2) calendar months.

(H) Unless otherwise specified, the Exchange will assess all annual fees set forth in this Rule 14.13(b)(2) upon initial listing and on each anniversary of the security's listing on the Exchange.

[(F) The Exchange's Board of Directors or its designee may, in its discretion, defer or waive all or any part of the annual fee prescribed herein.]

(G) If a class of securities is removed from the Exchange, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded.]