

*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 - \* 011

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 in connection with a competitive liquidity provider program for BATS registered market makers.

**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)**

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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)**

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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**

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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**

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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**

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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**

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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 institute a fee change in connection with an incentive program for Exchange-registered market makers (“Market Makers”) in securities listed on the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed on the members and non-members of a self-regulatory organization, and therefore the proposed rule change is effective immediately 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.

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

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

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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of securities of issuers on the Exchange.<sup>3</sup> More recently, the Exchange received approval to operate a program that is designed to incentivize certain market makers registered with the Exchange as Competitive Liquidity Providers ("CLPs") to enhance liquidity on the Exchange in securities listed on the Exchange (the "Competitive Liquidity Provider Program" or "CLP Program").<sup>4</sup> The Exchange proposes to adopt financial incentives for the Competitive Liquidity Provider Program, as described below. These incentives include competition amongst CLPs for daily rebates awarded based on quoting activity and the ability to earn free executions in Exchange auctions of Exchange-listed securities.

Daily Rebates

Pursuant to the CLP Program, the Exchange will measure the performance of CLPs in assigned securities by calculating Size Event Tests ("SETs") in each second of trading during every day on which the Exchange is open for business. At a randomly selected point in time during Regular Trading Hours, at least once per second, the Exchange will measure each CLP's quoted size at the NBB and NBO. The CLP with the

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

<sup>4</sup> See Securities Exchange Act Release No. 66307 (February 2, 2012) (SR-BATS-2011-051).

greatest aggregate size at the NBB and NBO at each SET (i.e., the combined size at the NBB and NBO) will be considered to have a “winning SET.” A CLP must have at least 10% of the winning SETs on any trading day in order meet its daily quoting requirement and to be eligible for the daily rebates proposed below.

As proposed, any Market Maker registered in a security as a CLP that has satisfied the daily quoting requirement will be eligible to receive a single daily financial rebate for each day’s quoting activity as follows:

Class of Security	Amount of Total Daily Rebate	Allocation of Daily Rebate
Tier I Securities Listed on the Exchange Pursuant to Rule 14.8 for Six Months Commencing from the Date of Initial Listing on the Exchange	\$500 per day	80% (\$400) to CLP with highest number of winning SETs; 20% (\$100) to CLP with second highest number of winning SETs
Tier I Securities Listed on the Exchange Pursuant to Rule 14.8 for Remaining Time Subject to CLP Program	\$250 per day	80% (\$200) to CLP with highest number of winning SETs; 20% (\$50) to CLP with second highest number of winning SETs
Tier II Securities Listed on the Exchange Pursuant to Rule 14.9	\$100 per day	100% to CLP with highest number of winning SETs
ETPs Listed Pursuant to Rule 14.11	\$250 per day	80% (\$200) to CLP with highest number of winning SETs; 20% (\$50) to CLP with second highest number of winning SETs

As set forth in the chart above, for all Tier I securities and exchange traded products (“ETPs”) listed on the Exchange, the Exchange proposes to offer quoting incentives to the two CLPs with the highest number of winning SETs during Regular

Trading Hours on the Exchange. For each award, the Exchange will provide 80% of the incentive to the first-place CLP and 20% of the incentive to the second-place CLP. In the event only one CLP is eligible for the daily rebate, 100% of such rebate will be provided to such CLP. In the event that multiple CLPs have an equal number of winning SETs, the CLP with the highest executed volume in the security will be awarded the applicable daily rebate. For Tier II securities listed on the Exchange, the Exchange will provide 100% of the quoting incentive to the first-place CLP.

The Exchange proposes to offer a daily quoting incentive of \$500 for CLPs (\$400 for the first-place CLP and \$100 for the second-place CLP) CLPs for the first six months that a Tier I corporate security is listed on the Exchange pursuant to Rule 14.8. Such listing could either be the result of an issuers initial public offering (“IPO”) on the Exchange or due to the transfer of an issuer from another exchange to the Exchange. For the remainder of the time a Tier I corporate security is listed on the Exchange, and for all ETPs, the Exchange proposes to offer a \$250 daily quoting incentive (\$200 for the first-place CLP and \$50 for the second-place CLP). Finally, the Exchange proposes to offer a daily quoting incentive of \$100 for Tier II securities listed on the Exchange pursuant to Rule 14.9.

#### Waiver of Fees for Auction Executions

In order to further incentivize Members to register as CLPs and participate in the CLP Program, the Exchange proposes to waive applicable execution fees in Exchange auctions for any CLP that receives a daily rebate for a specific Exchange-listed security on at least two (2) trading days during a calendar month. The auction fee waiver will be provided on a security-by-security basis in the subsequent calendar month for CLPs that

qualify. Further, because a CLP cannot qualify for this incentive until at least the second calendar month of a security's listing, in the initial calendar month of a security's listing on the Exchange, a CLP that is assigned the security will not be charged for any executions in the security that occur in any auction of the security that is conducted by the Exchange pursuant to Rule 11.23.

(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.

At the outset, the Exchange believes that the proposal is not unfairly discriminatory due to the fact that registration as an Exchange Market Maker, and, in turn, as a CLP, is equally available to all Members that satisfy the requirements of Rule 11.8. The Exchange believes that by allocating pricing benefits to CLPs that make tangible commitments to enhancing market quality for securities listed on the Exchange, the proposal will encourage the development of new financial products, provide a better trading environment for investors in Exchange-listed securities, and generally encourage greater competition between listing venues.

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

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

As proposed, the CLP Program is designed to enhance the Exchange's competitiveness as a listing venue and to strengthen its market quality for Exchange-listed securities. The Exchange is launching its listings business at a time in which there are two dominant primary listing venues, the New York Stock Exchange and Nasdaq. The Exchange believes that the proposed change would increase competition by incenting Exchange Market Makers to register as CLPs, which will enhance the quality of quoting in Exchange-listed securities and will further assist the Exchange to develop an alternative to Nasdaq and the New York Stock Exchange for an issuer seeking to list its securities. Accordingly, the Exchange believes that the proposal will compliment the Exchange's program for listing securities on the Exchange, which will, in turn, provide issuers with another option for raising capital in the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.<sup>7</sup>

The Exchange believes that the proposed quoting incentives are fair and equitable in that registered CLPs will be competing for rewards that are calculated based solely on the Exchange's measurement of SETs, and the quoting incentive provided varies only depending on the type of security for which such CLP is registered. The Exchange further believes that differentiation between various types of Exchange-listed securities is fair and equitable and not unreasonably discriminatory because the risks and necessary incentives for a market maker to make a market in different securities vary, as described in further detail below.

The Exchange proposes a lower quoting incentive for Tier II corporate issues than other Exchange listed securities. Specifically, the Exchange proposes to provide an

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<sup>7</sup> 15 U.S.C. 78f(b)(5).

incentive of \$100 per day for the CLP with the highest number of winning SETs during the applicable trading day with respect to a Tier II corporate issue subject to the CLP Program. The Exchange has also chosen not to offer a quoting incentive to the CLP with the second highest number of winning SETs during the applicable trading day for Tier II corporate issues. The Exchange believes that this quoting incentive structure for Tier II corporate issues is reasonable because the Exchange does not expect to have as many registered CLPs for Tier II corporate issues as compared to Tier I corporate issues and ETPs. This is because if there is indeed less competition in Tier II issues, then the registered CLPs in Tier II issues will have a better opportunity to receive the daily quoting incentive. Also, because the quoting incentive is lower, the Exchange believes it is reasonable to simply provide a single quoting incentive to the CLP with the highest number of winning SETs during the applicable trading day for Tier II corporate issues.

The Exchange proposes a daily quoting incentive of \$250 per day for ETPs listed pursuant to Exchange Rule 14.11, with \$200 for the first-place CLP and \$50 for the second-place CLP. The Exchange believes that this quoting incentive is reasonable because the Exchange expects to have several competing CLPs for each ETP, and thus, the daily quoting incentive must be slightly larger (to incent competition even by CLPs that may receive the incentive less frequently). Due to the additional competition, the Exchange also believes it is reasonable to provide a quoting incentive to both the first and second-place CLP for ETPs.

The Exchange also expects to have several competing CLPs for Tier I corporate issues. While the value of an ETP can be readily monitored and updated based on analysis conducted of the underlying securities or products, market making for a

corporate issue requires additional analysis and imposes different risks. Due to the additional risks, the Exchange believes that additional incentives are necessary and appropriate in order to encourage CLPs to register as CLPs for Tier I corporate issues listed on the Exchange pursuant to Rule 14.8 for a six-month period commencing from the date of initial listing on the Exchange. Based on the additional risks and the additional competition, the Exchange believes that the proposed quoting incentive for Tier I corporate issues of \$500 is reasonable for the first six months that a security is listed on the Exchange. After six months, because CLPs should become more familiar with the market for the applicable issue, the Exchange believes it is reasonable to provide the same quoting incentive as it provides for ETPs.

Finally, as described above, in order to further incentivize Members to register as CLPs and participate in the CLP Program, the Exchange proposes to waive applicable execution fees in Exchange auctions for any CLP that receives a daily rebate for a specific Exchange-listed security on at least two (2) trading days during a calendar month. The Exchange believes that the waiver of auction fees is equitable and not unreasonably discriminatory because it will be available to all CLPs registered for the applicable issue and will be awarded based on objective criteria. Also, as noted above, registration as an Exchange Market Maker, and, in turn, as a CLP, is equally available to all Members that satisfy the requirements of Rule 11.8. The Exchange believes that the waiver of auction fees is reasonable because it is based on a relatively low threshold, and thus, will help to incentivize Members to register as CLPs and participate in the CLP Program and to stay registered in the CLP Program even if such Members rarely receive the applicable daily quoting incentive.

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>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2012-011)

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 member 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 in connection with an incentive program for Exchange-registered market makers (“Market Makers”) in 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 website 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 securities of issuers on the Exchange.<sup>5</sup> More recently, the Exchange received approval to operate a program that is designed to incentivize certain market makers registered with the Exchange as Competitive Liquidity Providers ("CLPs") to enhance liquidity on the Exchange in securities listed on the Exchange (the "Competitive Liquidity Provider Program" or "CLP Program").<sup>6</sup> The Exchange proposes to adopt financial incentives for the Competitive Liquidity Provider Program, as described below. These incentives include competition amongst CLPs for

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<sup>5</sup> See Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>6</sup> See Securities Exchange Act Release No. 66307 (February 2, 2012) (SR-BATS-2011-051).

daily rebates awarded based on quoting activity and the ability to earn free executions in Exchange auctions of Exchange-listed securities.

#### Daily Rebates

Pursuant to the CLP Program, the Exchange will measure the performance of CLPs in assigned securities by calculating Size Event Tests (“SETs”) in each second of trading during every day on which the Exchange is open for business. At a randomly selected point in time during Regular Trading Hours, at least once per second, the Exchange will measure each CLP’s quoted size at the NBB and NBO. The CLP with the greatest aggregate size at the NBB and NBO at each SET (i.e., the combined size at the NBB and NBO) will be considered to have a “winning SET.” A CLP must have at least 10% of the winning SETs on any trading day in order meet its daily quoting requirement and to be eligible for the daily rebates proposed below.

As proposed, any Market Maker registered in a security as a CLP that has satisfied the daily quoting requirement will be eligible to receive a single daily financial rebate for each day’s quoting activity as follows:

Class of Security	Amount of Total Daily Rebate	Allocation of Daily Rebate
Tier I Securities Listed on the Exchange Pursuant to Rule 14.8 for Six Months Commencing from the Date of Initial Listing on the Exchange	\$500 per day	80% (\$400) to CLP with highest number of winning SETs; 20% (\$100) to CLP with second highest number of winning SETs
Tier I Securities Listed on the Exchange Pursuant to Rule 14.8 for Remaining Time Subject to CLP Program	\$250 per day	80% (\$200) to CLP with highest number of winning SETs; 20% (\$50) to CLP with second highest number of winning SETs
Tier II Securities Listed on the Exchange Pursuant to	\$100 per day	100% to CLP with highest number of winning SETs

Rule 14.9		
ETPs Listed Pursuant to Rule 14.11	\$250 per day	80% (\$200) to CLP with highest number of winning SETs; 20% (\$50) to CLP with second highest number of winning SETs

As set forth in the chart above, for all Tier I securities and exchange traded products (“ETPs”) listed on the Exchange, the Exchange proposes to offer quoting incentives to the two CLPs with the highest number of winning SETs during Regular Trading Hours on the Exchange. For each award, the Exchange will provide 80% of the incentive to the first-place CLP and 20% of the incentive to the second-place CLP. In the event only one CLP is eligible for the daily rebate, 100% of such rebate will be provided to such CLP. In the event that multiple CLPs have an equal number of winning SETs, the CLP with the highest executed volume in the security will be awarded the applicable daily rebate. For Tier II securities listed on the Exchange, the Exchange will provide 100% of the quoting incentive to the first-place CLP.

The Exchange proposes to offer a daily quoting incentive of \$500 for CLPs (\$400 for the first-place CLP and \$100 for the second-place CLP) CLPs for the first six months that a Tier I corporate security is listed on the Exchange pursuant to Rule 14.8. Such listing could either be the result of an issuers initial public offering (“IPO”) on the Exchange or due to the transfer of an issuer from another exchange to the Exchange. For the remainder of the time a Tier I corporate security is listed on the Exchange, and for all ETPs, the Exchange proposes to offer a \$250 daily quoting incentive (\$200 for the first-place CLP and \$50 for the second-place CLP). Finally, the Exchange proposes to offer a

daily quoting incentive of \$100 for Tier II securities listed on the Exchange pursuant to Rule 14.9.

#### Waiver of Fees for Auction Executions

In order to further incentivize Members to register as CLPs and participate in the CLP Program, the Exchange proposes to waive applicable execution fees in Exchange auctions for any CLP that receives a daily rebate for a specific Exchange-listed security on at least two (2) trading days during a calendar month. The auction fee waiver will be provided on a security-by-security basis in the subsequent calendar month for CLPs that qualify. Further, because a CLP cannot qualify for this incentive until at least the second calendar month of a security's listing, in the initial calendar month of a security's listing on the Exchange, a CLP that is assigned the security will not be charged for any executions in the security that occur in any auction of the security that is conducted by the Exchange pursuant to Rule 11.23.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.<sup>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.

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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).

At the outset, the Exchange believes that the proposal is not unfairly discriminatory due to the fact that registration as an Exchange Market Maker, and, in turn, as a CLP, is equally available to all Members that satisfy the requirements of Rule 11.8. The Exchange believes that by allocating pricing benefits to CLPs that make tangible commitments to enhancing market quality for securities listed on the Exchange, the proposal will encourage the development of new financial products, provide a better trading environment for investors in Exchange-listed securities, and generally encourage greater competition between listing venues.

As proposed, the CLP Program is designed to enhance the Exchange's competitiveness as a listing venue and to strengthen its market quality for Exchange-listed securities. The Exchange is launching its listings business at a time in which there are two dominant primary listing venues, the New York Stock Exchange and Nasdaq. The Exchange believes that the proposed change would increase competition by incentivizing Exchange Market Makers to register as CLPs, which will enhance the quality of quoting in Exchange-listed securities and will further assist the Exchange to develop an alternative to Nasdaq and the New York Stock Exchange for an issuer seeking to list its securities. Accordingly, the Exchange believes that the proposal will compliment the Exchange's program for listing securities on the Exchange, which will, in turn, provide issuers with another option for raising capital in the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.<sup>9</sup>

The Exchange believes that the proposed quoting incentives are fair and equitable in that registered CLPs will be competing for rewards that are calculated based solely on

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

the Exchange's measurement of SETs, and the quoting incentive provided varies only depending on the type of security for which such CLP is registered. The Exchange further believes that differentiation between various types of Exchange-listed securities is fair and equitable and not unreasonably discriminatory because the risks and necessary incentives for a market maker to make a market in different securities vary, as described in further detail below.

The Exchange proposes a lower quoting incentive for Tier II corporate issues than other Exchange listed securities. Specifically, the Exchange proposes to provide an incentive of \$100 per day for the CLP with the highest number of winning SETs during the applicable trading day with respect to a Tier II corporate issue subject to the CLP Program. The Exchange has also chosen not to offer a quoting incentive to the CLP with the second highest number of winning SETs during the applicable trading day for Tier II corporate issues. The Exchange believes that this quoting incentive structure for Tier II corporate issues is reasonable because the Exchange does not expect to have as many registered CLPs for Tier II corporate issues as compared to Tier I corporate issues and ETPs. This is because if there is indeed less competition in Tier II issues, then the registered CLPs in Tier II issues will have a better opportunity to receive the daily quoting incentive. Also, because the quoting incentive is lower, the Exchange believes it is reasonable to simply provide a single quoting incentive to the CLP with the highest number of winning SETs during the applicable trading day for Tier II corporate issues.

The Exchange proposes a daily quoting incentive of \$250 per day for ETPs listed pursuant to Exchange Rule 14.11, with \$200 for the first-place CLP and \$50 for the second-place CLP. The Exchange believes that this quoting incentive is reasonable because the Exchange expects to have several competing CLPs for each ETP, and thus,

the daily quoting incentive must be slightly larger (to incent competition even by CLPs that may receive the incentive less frequently). Due to the additional competition, the Exchange also believes it is reasonable to provide a quoting incentive to both the first and second-place CLP for ETPs.

The Exchange also expects to have several competing CLPs for Tier I corporate issues. While the value of an ETP can be readily monitored and updated based on analysis conducted of the underlying securities or products, market making for a corporate issue requires additional analysis and imposes different risks. Due to the additional risks, the Exchange believes that additional incentives are necessary and appropriate in order to encourage CLPs to register as CLPs for Tier I corporate issues listed on the Exchange pursuant to Rule 14.8 for a six-month period commencing from the date of initial listing on the Exchange. Based on the additional risks and the additional competition, the Exchange believes that the proposed quoting incentive for Tier I corporate issues of \$500 is reasonable for the first six months that a security is listed on the Exchange. After six months, because CLPs should become more familiar with the market for the applicable issue, the Exchange believes it is reasonable to provide the same quoting incentive as it provides for ETPs.

Finally, as described above, in order to further incentivize Members to register as CLPs and participate in the CLP Program, the Exchange proposes to waive applicable execution fees in Exchange auctions for any CLP that receives a daily rebate for a specific Exchange-listed security on at least two (2) trading days during a calendar month. The Exchange believes that the waiver of auction fees is equitable and not unreasonably discriminatory because it will be available to all CLPs registered for the applicable issue and will be awarded based on objective criteria. Also, as noted above,

registration as an Exchange Market Maker, and, in turn, as a CLP, is equally available to all Members that satisfy the requirements of Rule 11.8. The Exchange believes that the waiver of auction fees is reasonable because it is based on a relatively low threshold, and thus, will help to incentivize Members to register as CLPs and participate in the CLP Program and to stay registered in the CLP Program even if such Members rarely receive the applicable daily quoting incentive.

(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>10</sup> and Rule 19b-4(f)(2) thereunder,<sup>11</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.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2012-011 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-2012-011. 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 website (<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 website 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-2012-011 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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

Rule 11.8. Obligations of Market Makers

(a)–(e) (No changes.)

Interpretations and Policies

.01 (No changes.)

.02 Competitive Liquidity Provider Program

(a)-(i) (No changes.)

(j) Financial Incentives for CLPs.

(1) Daily Rebates. Eligible CLPs, as defined in sub-paragraph (g)(1)(A) above, shall compete for a single daily financial rebate based on each day’s quoting activity as follows:

<u>Class of Security</u>	<u>Amount of Total Daily Rebate</u>	<u>Allocation of Daily Rebate*</u>
<u>Tier I Securities Listed on the Exchange Pursuant to Rule 14.8 for Six Months Commencing from the Date of Initial Listing on the Exchange</u>	<u>\$500 per day</u>	<u>80% (\$400) to CLP with highest number of winning SETs**;</u>  <u>20% (\$100) to CLP with second highest number of winning SETs</u>
<u>Tier I Securities Listed on the Exchange Pursuant to Rule 14.8 for Remaining Time Subject to CLP Program</u>	<u>\$250 per day</u>	<u>80% (\$200) to CLP with highest number of winning SETs;</u>  <u>20% (\$50) to CLP with second highest number of winning SETs</u>
<u>Tier II Securities Listed on the Exchange Pursuant to Rule 14.9</u>	<u>\$100 per day</u>	<u>100% to CLP with highest number of winning SETs</u>
<u>ETPs Listed Pursuant to Rule 14.11</u>	<u>\$250 per day</u>	<u>80% (\$200) to CLP with highest number of winning</u>

		<p><u>SETs;</u></p> <p><u>20% (\$50) to CLP with second highest number of winning SETs</u></p>
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\* In the event only one CLP is eligible for the daily rebate, 100% of such rebate will be provided to such CLP. In the event that multiple CLPs have an equal number of winning SETs, the CLP with the highest executed volume in the security will be awarded the applicable daily rebate.

\*\* Size Event Tests, or SETs, are defined in paragraph (g) above.

(2) Auction Executions. Any CLP that receives a daily rebate for a specific Exchange-listed security on at least two (2) trading days during a calendar month will not be charged in the subsequent calendar month for any executions of transactions in such security in any auction conducted by the Exchange of such security pursuant to Rule 11.23. In the initial calendar month of a security's listing on the Exchange, a CLP that is assigned the security will not be charged for any executions in the security that occur in any auction of the security that is conducted by the Exchange pursuant to Rule 11.23.

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