

Required fields are shown with yellow backgrounds and asterisks.

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

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).
Amendments 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 09/10/2012
By Anders Franzon VP, Associate General Counsel
(Name *) (Title *)

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

Anders Franzon,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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)

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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

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 Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members³ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

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

* * * * *

**BATS BZX Exchange Fee Schedule
Effective [September 4]September 10, 2012**

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.

* * * * *

Options Pricing:

* * * * *

Standard Best Execution Routing or Destination Specific Routing (“BATS Options+”)

Charge per contract for contracts executed using “CYCLE”, “RECYCLE”, “Parallel D”, “Parallel 2D”, or BATS Options+ routing:

	Customer	Professional/ Firm/Market Maker
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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.

AMEX BOX CBOE BX Options	ARCA (Classic issues) ⁷ ISE (Classic issues) ⁷ PHLX (Classic issues) ⁷	\$0.10	\$0.55
ISE (Make/Take issues) ⁷		\$0.30	\$0.55
C2 [NOM] ARCA (Make/Take issues) ⁷ PHLX (Make/Take issues) ⁷		\$0.50	\$0.55
<u>NOM (non-Specified Symbols)⁸</u>		<u>\$0.50</u>	<u>\$0.57</u>
<u>NOM Specified Symbols⁸</u>		<u>\$0.90</u>	<u>\$0.95</u>

Directed ISO Fee

\$0.60 charge per contract for orders executed at Member directed destinations when bypassing the BATS Options order book; \$0.95 for orders executed at NOM in NOM Specified Symbols⁸

* * * * *

Physical Connection Charges^{[8]9}:

* * * * *

⁸ The term NOM Specified Symbols currently refers to FB, GOOG and GRPN.

^{[8]9} The Exchange will pass-through in full any fees or costs in excess of \$1,000.00 incurred by the Exchange to complete a cross-connect.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on November 10, 2009. Exchange staff will advise the Board of Directors of the Exchange of any

action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

(a) Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule effective September 10, 2012, in order to modify pricing related to executions that occur on the NASDAQ Options Market ("NOM"). NOM implemented certain pricing changes effective September 4, 2012,⁴ including: (i) modification of the fee charged to participants classified by NOM as professionals, customers and market makers to remove liquidity in penny pilot options, and (ii) the adoption of specific fees for NOM "Specified Symbols," as described below. In order to maintain routing fees that approximate the routing costs to NOM, the Exchange proposes to modify pricing for Professional,⁵ Firm, and Market Maker⁶ orders routed to NOM in non-Specified Symbols and to adopt pricing for orders routed to NOM in Specified Symbols. In addition to these

⁴ See Nasdaq Options Trader Alert #2012-54, *NOM and PHLX Update Pricing, Effective September 4, 2012* (August 31, 2012) (the "NOM Notice").

⁵ The term "Professional" is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

⁶ As defined on the Exchange's fee schedule, the terms "Firm" and "Market Maker" apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation ("OCC").

changes, the Exchange also proposes renumbering a footnote associated with Physical Connection Charges from 8 to 9.

The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into three groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (i.e., clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, "Routing Costs"). For routing to options exchanges in the Exchange's highest price grouping, the Exchange currently assesses fees of \$0.50 per contract for Customer orders and \$0.55 per contract for orders on behalf of all other participants. With the recent change by NOM to charge non-Customer executions a rate of \$0.47 per contract for penny pilot options, the Exchange believes NOM no longer fits in this category. This is due, in part, to the fact that NOM charges \$0.50 per contract for non-Customer orders in non-penny pilot options, and the Exchange incurs various Routing Costs in addition to this fee. Accordingly, the Exchange proposes to adopt a new category for NOM under which it will charge a fee of \$0.57 per contract for Professional, Firm, or Market Maker orders routed to and executed at NOM in options other than Specified Symbols, which are described in further detail below. This fee will help the Exchange to recoup clearing and transaction charges incurred by the Exchange, as well as other Routing Costs, in connection with routing to NOM.

NOM also recently implemented specific fees for options on specified securities that the Exchange proposes to identify as “NOM Specified Symbols.”⁷ Such NOM Specified Symbols, as announced by NOM, will originally include options on Facebook (“FB”), Google (“GOOG”) and Groupon (“GRPN”). As announced by NOM, the fee to remove liquidity in NOM Specified Symbols is \$0.79 per contract for NOM customer and NOM market maker orders and \$0.85 per contract for all other participant capacities. As noted above, the Exchange generally imposes routing fees that approximate the fee to remove liquidity from other options exchanges as well as associated Routing Costs. Accordingly, the Exchange proposes to charge \$0.90 for Customer orders and \$0.95 for Professional, Firm, or Market Maker orders routed to and executed at NOM in Specified Symbols. In addition, the Exchange currently charges a flat fee of \$0.60 per contract for any Directed ISO routed to any options exchange. In order to cover the cost of removing liquidity in Specified Symbols at NOM, including Routing Costs, the Exchange proposes to charge \$0.95 per contract for Directed ISOs to NOM in NOM Specified Symbols.

(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.⁸ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ in that it provides for the equitable allocation of reasonable

⁷ See NOM Notice, *supra* note 4.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

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 Exchange believes that the proposed modifications to routing fees applicable for orders routed to and executed at NOM is fair, equitable and reasonable because the fees are an approximation of the cost to the Exchange for routing orders to NOM. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for orders routed to and executed at NOM. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to NOM. Specifically, the Exchange believes that the proposed routing fees will enable the Exchange to recover the remove fees assessed for the Exchange's routing to NOM, plus other Routing Costs associated with the execution of orders that have been routed to NOM. The Exchange also believes that its increase to fees for Directed ISO's to NOM in Specified Symbols to \$0.95 per contract (from the current charge of \$0.60 per contract for all other Directed ISO's) is fair, equitable and reasonable because the fees are also an approximation of the cost to the Exchange for routing orders to NOM in Specified Symbols. The Exchange

also believes that the proposed fee structure for orders routed to and executed at NOM, including Directed ISOs in Specified Symbols, is not unreasonably discriminatory, again, because it is based on and intended to approximate the cost of routing to NOM.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the change to routing fees will assist the Exchange in recouping costs for routing orders to NOM on behalf of its participants, and absent such change, the Exchange would be subsidizing routing to NOM by Exchange participants. The Exchange also notes that Users may choose to mark their orders as ineligible for routing to avoid incurring routing fees.¹⁰

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.

¹⁰ See BATS Rule 21.1(d)(8) (describing "BATS Only" orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

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 Act¹¹ and Rule 19b-4(f)(2) thereunder,¹² 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 – 5: Not applicable.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-BATS-2012-038)

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 10, 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

The text of the proposed rule change is available at the Exchange's 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

The Exchange proposes to modify the "Options Pricing" section of its fee schedule effective September 10, 2012, in order to modify pricing related to executions that occur on the NASDAQ Options Market ("NOM"). NOM implemented certain pricing changes effective September 4, 2012,⁶ including: (i) modification of the fee charged to participants classified by NOM as professionals, customers and market makers to remove liquidity in penny pilot options, and (ii) the adoption of specific fees for NOM "Specified Symbols," as described below. In order to maintain routing fees that approximate the routing costs to NOM, the Exchange proposes to modify pricing for

⁶ See Nasdaq Options Trader Alert #2012-54, *NOM and PHLX Update Pricing, Effective September 4, 2012* (August 31, 2012) (the "NOM Notice").

Professional,⁷ Firm, and Market Maker⁸ orders routed to NOM in non-Specified Symbols and to adopt pricing for orders routed to NOM in Specified Symbols. In addition to these changes, the Exchange also proposes renumbering a footnote associated with Physical Connection Charges from 8 to 9.

The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into three groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (i.e., clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, "Routing Costs"). For routing to options exchanges in the Exchange's highest price grouping, the Exchange currently assesses fees of \$0.50 per contract for Customer orders and \$0.55 per contract for orders on behalf of all other participants. With the recent change by NOM to charge non-Customer executions a rate of \$0.47 per contract for penny pilot options, the Exchange believes NOM no longer fits in this category. This is due, in part, to the fact that NOM charges \$0.50 per contract for non-Customer orders in non-penny pilot options, and the Exchange incurs various Routing Costs in addition to this fee. Accordingly, the Exchange proposes to adopt a new category for NOM under which it will charge a fee of \$0.57 per contract for Professional, Firm, or Market Maker orders routed to and executed at NOM in options other than

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⁸ As defined on the Exchange's fee schedule, the terms "Firm" and "Market Maker" apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation ("OCC").

Specified Symbols, which are described in further detail below. This fee will help the Exchange to recoup clearing and transaction charges incurred by the Exchange, as well as other Routing Costs, in connection with routing to NOM.

NOM also recently implemented specific fees for options on specified securities that the Exchange proposes to identify as “NOM Specified Symbols.”⁹ Such NOM Specified Symbols, as announced by NOM, will originally include options on Facebook (“FB”), Google (“GOOG”) and Groupon (“GRPN”). As announced by NOM, the fee to remove liquidity in NOM Specified Symbols is \$0.79 per contract for NOM customer and NOM market maker orders and \$0.85 per contract for all other participant capacities. As noted above, the Exchange generally imposes routing fees that approximate the fee to remove liquidity from other options exchanges as well as associated Routing Costs. Accordingly, the Exchange proposes to charge \$0.90 for Customer orders and \$0.95 for Professional, Firm, or Market Maker orders routed to and executed at NOM in Specified Symbols. In addition, the Exchange currently charges a flat fee of \$0.60 per contract for any Directed ISO routed to any options exchange. In order to cover the cost of removing liquidity in Specified Symbols at NOM, including Routing Costs, the Exchange proposes to charge \$0.95 per contract for Directed ISOs to NOM in NOM Specified Symbols.

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

⁹ See NOM Notice, *supra* note 4.

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 Exchange believes that the proposed modifications to routing fees applicable for orders routed to and executed at NOM is fair, equitable and reasonable because the fees are an approximation of the cost to the Exchange for routing orders to NOM. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for orders routed to and executed at NOM. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to NOM. Specifically, the Exchange believes that the proposed routing fees will enable the Exchange to recover the remove fees assessed for the Exchange's routing to NOM, plus other Routing Costs

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

associated with the execution of orders that have been routed to NOM. The Exchange also believes that its increase to fees for Directed ISO's to NOM in Specified Symbols to \$0.95 per contract (from the current charge of \$0.60 per contract for all other Directed ISO's) is fair, equitable and reasonable because the fees are also an approximation of the cost to the Exchange for routing orders to NOM in Specified Symbols. The Exchange also believes that the proposed fee structure for orders routed to and executed at NOM, including Directed ISOs in Specified Symbols, is not unreasonably discriminatory, again, because it is based on and intended to approximate the cost of routing to NOM.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the change to routing fees will assist the Exchange in recouping costs for routing orders to NOM on behalf of its participants, and absent such change, the Exchange would be subsidizing routing to NOM by Exchange participants. The Exchange also notes that Users may choose to mark their orders as ineligible for routing to avoid incurring routing fees.¹²

(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.

¹² See BATS Rule 21.1(d)(8) (describing "BATS Only" orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ 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.

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-2012-038 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-2012-038. This file number should be included on the subject line if e-mail is used. To help the Commission process and

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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-2012-038 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).