OMB APPROVAL
OMB Number: 3235-0045 Expires: August 31, 2011 Estimated average burden hours per response............38

Required fields are shown with yellow backgrounds and asterisks.

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

File No.* SR - 2010 - * 038

Amendment No. (req. for Amendments *)

Proposed Rule Change by BATS Exchange

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

Initial * ☑ Amendment * ☐ Withdrawal ☐

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

Rule

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

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

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

Amendment to fee schedule of BATS Exchange, Inc. to modify pricing applicable to BATS Options with an operative date of January 3, 2011.

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 12/21/2010

By Anders Franzon
(Name *)

VP, Associate General Counsel
(Title *)

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

Anders Franzon,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required) Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change (required) Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] BATS Exchange, Inc. (the "Exchange" or "BATS") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the fee schedule applicable to Members[3] of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on January 3, 2011.

(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 [November 1, 2010]January 3, 2011

* * * * *

Options Pricing:

All references to "per contract" mean "per contract executed."

"Customer" applies to any transaction identified by a member for clearing in the Customer range at the Options Clearing Corporation ("OCC").

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

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

Fees for Accessing Liquidity for All Securities

$0.25[30] charge per contract for a Customer order that removes liquidity from the BATS Options order book

$0.35 charge per contract for a Firm or Market Maker order that removes liquidity from the BATS Options order book

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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.

Liquidity Rebates for All Securities

$0.[20]25 rebate per contract for a Customer order that adds liquidity to the BATS Options order book

$0.25 rebate per contract for a Firm or Market Maker order that adds liquidity to the BATS Options order book that is removed by a Customer order

$0.35 rebate per contract for a Firm or Market Maker order that adds liquidity to the BATS Options order book that is removed by a Firm or Market Maker order

$0.50 rebate per contract for any order that adds liquidity to the BATS Options order book that sets a new national best bid or offer where the adding Member has an average daily volume of 20,000 contracts per day on a monthly basis. This rebate supersedes any other applicable liquidity rebates

Standard [Routing Pricing –]Best Execution Routing or Destination Specific Routing ("BATS Options+")

Charge per contract for contracts executed using "CYCLE", "RECYCLE", "Parallel D", [or]"Parallel 2D", or BATS Options+ routing:

[Customer	Firm	Market Maker
$0.30	$0.50	$0.50]

[Discounted Destination Specific Routing ("BATS Options+")

Charge per contract:]

		Customer	Firm/Market Maker
[BATS Options + Classic (non-Make/Take pricing at destination exchange)]	[BATS +]AMEX [BATS +]ARCA [BATS +]BOX [BATS +]CBOE [BATS +]ISE [BATS +]PHLX	$0.05	$0.[50]54
	C2	$0.20	$0.54
	ISE (Make/Take issues)**	$0.25	$0.54
	PHLX (Make/Take issues)**	$0.29	$0.54
	NOM	$0.48	$0.54
	ARCA (Make/Take issues)**	$0.49	$0.54
[BATS Options + Make/Take (1)	BATS + ISE (Make/Take issues)** BATS + PHLX (Make/Take issues)** BATS + C2	$0.20	$0.50

BATS Options + Make/Take (2)	BATS + ARCA (Make/Take issues)** BATS + NOM	$0.40	$0.50]

**** [**BATS Options + (exchange)]Pricing in Make/Take [pricing]issues is for executions at the identified exchange under which “Post Liquidity” or “Maker” rebates (“Make”) are credited by that exchange and “Take Liquidity” or “Taker” fees (“Take”) are charged by that exchange.

Directed ISO Fee

[Charge]$0.60 charge per contract for [contracts]orders executed at member directed destinations[,] when bypassing the BATS Options order book[:]

[Customer	**Firm**	**Market Maker**
$0.50	$0.60	$0.60]

* * * * *

(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 BATS Exchange Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

(a) Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule to: (i) modify its pricing for Customer[4] orders by decreasing the fee for removing liquidity from the Exchange and increasing the rebate for adding liquidity to the Exchange; (ii) add a rebate specifically for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO") where the Member meets certain average daily volume requirements; (iii) modify its pricing for Firm[5] and Market Maker[6] orders by increasing the fee for all orders that remove liquidity while also increasing the rebate for orders that add liquidity by either $0.05 or $0.15 per contract depending on the capacity of the remover of the liquidity; (iv) modify its pricing for Customer Directed ISO[7] orders; and (v) establish fees that will apply to all best execution routing strategies offered by the Exchange[8] and to Destination Specific Order[9] routing strategies in order to eliminate the disparate pricing between the two types of routing.

(i) Customer Pricing

4 As defined on the Exchange's fee schedule, the term "Customer" applies to any transaction identified by a member for clearing in the Customer range at the OCC.

5 As defined on the Exchange's fee schedule, the term "Firm" applies to any transaction identified by a member for clearing in the Firm range at the OCC.

6 As defined on the Exchange's fee schedule, the term "Market Maker" applies to any transaction identified by a member for clearing in the Market Maker range at the OCC.

7 As defined in BATS Rule 21.1(d)(12).

8 The Exchange's routing strategies are defined in BATS Rule 21.9(a)(2)

9 As defined in BATS Rule 21.1(d)(7).

The Exchange currently charges $0.30 per contract for all orders that remove liquidity from the BATS Exchange options market ("BATS Options") and pays $0.20 per contract for all orders that add liquidity to BATS Options. The Exchange proposes to both lower the fee for removing liquidity to $0.25 per contract and raise the rebate for adding liquidity to $0.25 for Customer orders. The Exchange believes that this change will generate an increase in Customer order flow and will provide more liquidity on the Exchange.

(ii) NBBO Setter Rebate

The Exchange proposes to adopt for its options platform a $0.50 per contract rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the "NBBO Setter Rebate")[10] so long as the Member submitting the order achieves an average daily volume of 20,000 contracts executed on the BATS Options book for the calendar month. Average daily volume will be calculated by taking the total number of contracts traded on the Exchange (which excludes routed orders) during the calendar month by the Member divided by the number of trading days in the month. For example, in January of 2011, a month with twenty (20) trading days, a Member must trade at least 400,000 contracts (20 trading days multiplied by 20,000 contracts per day) in the month to be eligible for the NBBO Setter Rebate. If a Member meets this volume requirement, all of the Member's orders that set the NBB or NBO that were executed in January would

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

be eligible for the NBBO Setter Rebate. The NBBO Setter Rebate supersedes any other applicable liquidity rebates.

The Exchange believes that the proposed NBBO Setter Rebate is analogous to similar proposals designed to encourage market participants to submit aggressively priced orders previously implemented at other options exchanges.[11] The Exchange also believes that its proposed use of a volume threshold to qualify for the rebate is substantively identical to tiered pricing structures that are in place at other exchanges.[12] Additionally, the Exchange believes that the proposed NBBO Setter Rebate will incentivize the entry of more aggressive orders which will create tighter spreads, benefitting both Members and public investors.

(iii) Firm and Market Maker Pricing

As mentioned above, the Exchange currently charges $0.30 per contract for orders that remove liquidity and pays $0.20 per contract for orders that add liquidity. The Exchange proposes to raise the fee for removing liquidity to $0.35 for Firm and Market Maker orders. The Exchange also proposes to increase the rebate for Firm and Market

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11 See Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25)(notice of filing and immediate effectiveness to amend fees applicable to the International Securities Exchange, including providing increased rebates to market makers for being on the NBB or NBO for at least 80% during a given month); Securities Exchange Act Release No. 61987 (April 27, 2010), 75 FR 24771 (May 5, 2010) (SR-C2-2010-001)(notice of filing and immediate effectiveness to establish fees applicable to C2 Options Exchange, including providing Preferred Market Makers with participation entitlements when they are at the NBBO, regardless of time priority).

12 See Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR-Phlx-2008-08)(notice of filing and immediate effectiveness to amend fees applicable to the Philadelphia Stock Exchange, including adopting a tiered floor broker options subsidy based on meeting specified trading volume requirements).

Maker orders that are removed by Customer orders to $0.25 per contract and to increase the rebate for orders that are removed by Firm or Market Maker orders to $0.35 per contract. The removing Member's fee will be determined without regard to the capacity of the adding party.

The Exchange believes that the proposed change to the Firm and Market Maker pricing will encourage Firms and Market Makers to add more liquidity to the Exchange. The Exchange also believes that, because Members can neither see the capacity of orders in the Exchange's order book nor determine the capacity of the Member that removes an order,[13] the proposal will not disadvantage public investors or Members. Lastly, the Exchange believes that the proposed change to the fee schedule is substantively similar to a pricing plan in place at NASDAQ OMX PHLX.[14]

(iv) Directed ISO Pricing

The Exchange currently charges $0.50 per contract for a Customer Directed ISO transaction and $0.60 per contract for Firm and Market Maker Directed ISO transactions. The Exchange proposes to further simplify its pricing for Directed ISOs by setting flat rates for Directed ISOs that bypass the Exchange's order book and execute at away

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13 The Exchange notes that its proposed amendment to Rule 21.1 from Securities Exchange Act Release No. 63403 (December 1, 2010) (SR-BATS-2010-34) to add directed orders will not be subject to the proposed Firm and Market Maker Pricing. The Exchange intends to file a separate fee filing upon approval of the proposed amendment to implement directed order pricing.

14 See Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR-Phlx-2008-08)(notice of filing and immediate effectiveness to amend fees applicable to the Philadelphia Stock Exchange, including adopting a tiered subsidy that does not apply to Customer-to-Customer transactions).

venues, regardless of capacity. As proposed, the charge for all Directed ISO transactions will be $0.60 per contract.

(v) Routing Pricing

The Exchange proposes to adjust its fees for options order routing and simplify its routing pricing by eliminating the different pricing between Destination Specific Orders and Standard Best Execution Routing. Currently, the Exchange charges a flat fee per contract for standard routing and a fee based on the pricing model of the destination exchange for Destination Specific Orders. In most instances, the pricing for Destination Specific Orders results in Members being charged lower execution fees than if the orders were routed directly by the Member to an away venue. Rather than continuing to subsidize its Members' routing strategies, the Exchange proposes to adjust routing fees to more closely reflect the Exchange's cost of executing those orders at the away markets. Specifically, the Exchange proposes to assess a routing fee of $0.54 per contract for all Firm and Market Maker orders that are routed to any away exchange pursuant to Standard Best Execution Routing or Destination Specific Order routing. The Exchange proposes to assess the following per contract fees for Customer orders that are routed to the named away exchange: $0.05 for all orders in non-"Make/Take" issues[15], if applicable, routed to NYSE Amex, NYSE Arca, the Boston Options Exchange, the Chicago Board Options Exchange, the International Stock Exchange, or NASDAQ OMX PHLX; $0.20 for all orders routed to the Chicago Board Options Exchange 2; $0.25 for

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15 As defined on the fee schedule, Make/Take pricing refers to executions at the identified Exchange under which "Post Liquidity" or "Maker" rebates ("Make") are credited by that exchange and "Take Liquidity" or "Taker" fees ("Take") are charged by that exchange.

all orders routed to the International Stock Exchange in Make/Take issues; $0.29 for all orders routed to NASDAQ OMX PHLX in Make/Take issues; $0.48 for all orders routed to NASDAQ Options Market; and $0.49 for all orders routed to NYSE Arca in Make/Take issues.

The Exchange believes that the proposed routing fees are competitive, fair and reasonable, and non-discriminatory in that they approximate the cost to the Exchange of executing routed orders at an away market and are similar to those fees charged by other exchanges. The Exchange also believes that Members will benefit from the simplicity of the pricing structure.

(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. Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act, 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. As described below, the Exchange believes that its fees and credits are competitive with those charged by other venues.

The various changes to Exchange execution fees, execution rebates and routing fees proposed by this filing are intended to attract order flow to BATS Options by offering competitive pricing, especially for those who add liquidity that sets the NBB or NBO. Most of the changes the Exchange has proposed to its execution fees and rebates will result in reduced fees or increased payments that will benefit Members due to the obvious economic savings and increased revenue those Members will receive and the potential of increased available liquidity at the Exchange. The Exchange notes that it does not currently operate any auctions through which orders are held and broadcast to its membership, nor does the Exchange engage in any payment for order flow practices. Rather, the Exchange is proposing to enhance its transparent market structure with an easy to understand and transparent pricing structure by adding incentives for aggressive quoting. The Exchange believes that its proposed routing rates are, on average, better than or equal to the fees a market participant would pay if routing through another market center. 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. Also, although routing options are available to all Members, Members are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants.

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) of the Act[16] and Rule 19b-4(f)(2) thereunder,[17] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to its members, which renders the proposed rule change effective upon filing.

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.

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-_____________; File No. SR-BATS-2010-038)

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 December 21, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to modify its fee schedule applicable to Members[5] of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

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

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

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

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

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

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

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

1. Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule to: (i) modify its pricing for Customer[6] orders by decreasing the fee for removing liquidity from the Exchange and increasing the rebate for adding liquidity to the Exchange; (ii) add a rebate specifically for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO") where the Member meets certain average daily volume requirements; (iii) modify its pricing for Firm[7] and Market Maker[8]

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6 As defined on the Exchange's fee schedule, the term "Customer" applies to any transaction identified by a member for clearing in the Customer range at the OCC.

7 As defined on the Exchange's fee schedule, the term "Firm" applies to any transaction identified by a member for clearing in the Firm range at the OCC.

orders by increasing the fee for all orders that remove liquidity while also increasing the rebate for orders that add liquidity by either $0.05 or $0.15 per contract depending on the capacity of the remover of the liquidity; (iv) modify its pricing for Customer Directed ISO[9] orders; and (v) establish fees that will apply to all best execution routing strategies offered by the Exchange[10] and to Destination Specific Order[11] routing strategies in order to eliminate the disparate pricing between the two types of routing.

(i) Customer Pricing

The Exchange currently charges $0.30 per contract for all orders that remove liquidity from the BATS Exchange options market ("BATS Options") and pays $0.20 per contract for all orders that add liquidity to BATS Options. The Exchange proposes to both lower the fee for removing liquidity to $0.25 per contract and raise the rebate for adding liquidity to $0.25 for Customer orders. The Exchange believes that this change will generate an increase in Customer order flow and will provide more liquidity on the Exchange.

(ii) NBBO Setter Rebate

The Exchange proposes to adopt for its options platform a $0.50 per contract rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the "NBBO Setter Rebate")[12] so long as the Member submitting the order achieves an

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8 As defined on the Exchange's fee schedule, the term "Market Maker" applies to any transaction identified by a member for clearing in the Market Maker range at the OCC.

9 As defined in BATS Rule 21.1(d)(12).

10 The Exchange's routing strategies are defined in BATS Rule 21.9(a)(2)

11 As defined in BATS Rule 21.1(d)(7).

12 An order that is entered at the most aggressive price both on the BATS Options book and according to then current OPRA data will be determined to have set the

average daily volume of 20,000 contracts executed on the BATS Options book for the calendar month. Average daily volume will be calculated by taking the total number of contracts traded on the Exchange (which excludes routed orders) during the calendar month by the Member divided by the number of trading days in the month. For example, in January of 2011, a month with twenty (20) trading days, a Member must trade at least 400,000 contracts (20 trading days multiplied by 20,000 contracts per day) in the month to be eligible for the NBBO Setter Rebate. If a Member meets this volume requirement, all of the Member's orders that set the NBB or NBO that were executed in January would be eligible for the NBBO Setter Rebate. The NBBO Setter Rebate supersedes any other applicable liquidity rebates.

The Exchange believes that the proposed NBBO Setter Rebate is analogous to similar proposals designed to encourage market participants to submit aggressively priced orders previously implemented at other options exchanges.[13] The Exchange also believes that its proposed use of a volume threshold to qualify for the rebate is substantively identical to tiered pricing structures that are in place at other exchanges.[14] Additionally,

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NBB or NBO for purposes of the NBBO Setter Rebate without regard to whether a more aggressive order is entered prior to the original order being executed.

13 See Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25)(notice of filing and immediate effectiveness to amend fees applicable to the International Securities Exchange, including providing increased rebates to market makers for being on the NBB or NBO for at least 80% during a given month); Securities Exchange Act Release No. 61987 (April 27, 2010), 75 FR 24771 (May 5, 2010) (SR-C2-2010-001)(notice of filing and immediate effectiveness to establish fees applicable to C2 Options Exchange, including providing Preferred Market Makers with participation entitlements when they are at the NBBO, regardless of time priority).

14 See Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR-Phlx-2008-08)(notice of filing and immediate effectiveness to amend fees applicable to the Philadelphia Stock Exchange,

the Exchange believes that the proposed NBBO Setter Rebate will incentivize the entry of more aggressive orders which will create tighter spreads, benefitting both Members and public investors.

(iii) Firm and Market Maker Pricing

As mentioned above, the Exchange currently charges $0.30 per contract for orders that remove liquidity and pays $0.20 per contract for orders that add liquidity. The Exchange proposes to raise the fee for removing liquidity to $0.35 for Firm and Market Maker orders. The Exchange also proposes to increase the rebate for Firm and Market Maker orders that are removed by Customer orders to $0.25 per contract and to increase the rebate for orders that are removed by Firm or Market Maker orders to $0.35 per contract. The removing Member's fee will be determined without regard to the capacity of the adding party.

The Exchange believes that the proposed change to the Firm and Market Maker pricing will encourage Firms and Market Makers to add more liquidity to the Exchange. The Exchange also believes that, because Members can neither see the capacity of orders in the Exchange's order book nor determine the capacity of the Member that removes an order,[15] the proposal will not disadvantage public investors or Members. Lastly, the

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including adopting a tiered floor broker options subsidy based on meeting specified trading volume requirements).

15 The Exchange notes that its proposed amendment to Rule 21.1 from Securities Exchange Act Release No. 63403 (December 1, 2010) (SR-BATS-2010-34) to add directed orders will not be subject to the proposed Firm and Market Maker Pricing. The Exchange intends to file a separate fee filing upon approval of the proposed amendment to implement directed order pricing.

Exchange believes that the proposed change to the fee schedule is substantively similar to a pricing plan in place at NASDAQ OMX PHLX.[16]

(iv) Directed ISO Pricing

The Exchange currently charges $0.50 per contract for a Customer Directed ISO transaction and $0.60 per contract for Firm and Market Maker Directed ISO transactions. The Exchange proposes to further simplify its pricing for Directed ISOs by setting flat rates for Directed ISOs that bypass the Exchange's order book and execute at away venues, regardless of capacity. As proposed, the charge for all Directed ISO transactions will be $0.60 per contract.

(v) Routing Pricing

The Exchange proposes to adjust its fees for options order routing and simplify its routing pricing by eliminating the different pricing between Destination Specific Orders and Standard Best Execution Routing. Currently, the Exchange charges a flat fee per contract for standard routing and a fee based on the pricing model of the destination exchange for Destination Specific Orders. In most instances, the pricing for Destination Specific Orders results in Members being charged lower execution fees than if the orders were routed directly by the Member to an away venue. Rather than continuing to subsidize its Members' routing strategies, the Exchange proposes to adjust routing fees to more closely reflect the Exchange's cost of executing those orders at the away markets. Specifically, the Exchange proposes to assess a routing fee of $0.54 per contract for all

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16 See Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR-Phlx-2008-08)(notice of filing and immediate effectiveness to amend fees applicable to the Philadelphia Stock Exchange, including adopting a tiered subsidy that does not apply to Customer-to-Customer transactions).

Firm and Market Maker orders that are routed to any away exchange pursuant to Standard Best Execution Routing or Destination Specific Order routing. The Exchange proposes to assess the following per contract fees for Customer orders that are routed to the named away exchange: $0.05 for all orders in non-“Make/Take” issues[17], if applicable, routed to NYSE Amex, NYSE Arca, the Boston Options Exchange, the Chicago Board Options Exchange, the International Stock Exchange, or NASDAQ OMX PHLX; $0.20 for all orders routed to the Chicago Board Options Exchange 2; $0.25 for all orders routed to the International Stock Exchange in Make/Take issues; $0.29 for all orders routed to NASDAQ OMX PHLX in Make/Take issues; $0.48 for all orders routed to NASDAQ Options Market; and $0.49 for all orders routed to NYSE Arca in Make/Take issues.

The Exchange believes that the proposed routing fees are competitive, fair and reasonable, and non-discriminatory in that they approximate the cost to the Exchange of executing routed orders at an away market and are similar to those fees charged by other exchanges. The Exchange also believes that Members will benefit from the simplicity of the pricing structure.

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. Specifically, the Exchange believes that the proposed rule change is consistent with

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[17] As defined on the fee schedule, Make/Take pricing refers to executions at the identified Exchange under which “Post Liquidity” or “Maker” rebates (“Make”) are credited by that exchange and “Take Liquidity” or “Taker” fees (“Take”) are charged by that exchange.

Section 6(b)(4) of the Act, 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. As described below, the Exchange believes that its fees and credits are competitive with those charged by other venues.

The various changes to Exchange execution fees, execution rebates and routing fees proposed by this filing are intended to attract order flow to BATS Options by offering competitive pricing, especially for those who add liquidity that sets the NBB or NBO. Most of the changes the Exchange has proposed to its execution fees and rebates will result in reduced fees or increased payments that will benefit Members due to the obvious economic savings and increased revenue those Members will receive and the potential of increased available liquidity at the Exchange. The Exchange notes that it does not currently operate any auctions through which orders are held and broadcast to its membership, nor does the Exchange engage in any payment for order flow practices. Rather, the Exchange is proposing to enhance its transparent market structure with an easy to understand and transparent pricing structure by adding incentives for aggressive quoting. The Exchange believes that its proposed routing rates are, on average, better than or equal to the fees a market participant would pay if routing through another market center. 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. Also, although routing options are available to all Members, Members are not required to use the Exchange's routing services, but instead, the Exchange's routing services are completely optional. Members can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants.

(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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[18] and Rule 19b-4(f)(2) thereunder,[19] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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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18 15 U.S.C. 78s(b)(3)(A)(ii).

19 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2010-038 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-2010-038. 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. 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-2010-038 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.[20]

Florence E. Harmon
Deputy Secretary

[20] 17 CFR 200.30-3(a)(12).