

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 29	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2011 - * 024	Amendment No. (req. for Amendments *)
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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"/>
			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 <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**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 07/29/2011  
By Anders Franzon (Name \*) VP, Associate General Counsel (Title \*)

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

Anders Franzon,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information (required)**

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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 amend the fee schedule applicable to Members<sup>3</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 1, 2011.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on November 10, 2009. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

<sup>3</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

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

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

(a) Purpose

The Exchange proposes to modify the “Options Pricing” section of its fee schedule to: (i) increase the fees applicable to removing liquidity from the BATS options market (“BATS Options”); (ii) decrease the rebates applicable to adding liquidity to BATS Options; (iii) decrease the rebates paid, subject to average daily volume requirements, for orders that set either the national best bid (the “NBB”) or the national best offer (the “NBO”); (iv) adopt a program to incentivize sustained, aggressive quoting in certain specified options series (the “Quoting Incentive Program” or “QIP”); and (v) adopt a change to the standard routing fee for the CYCLE, RECYCLE, Parallel D, Parallel 2D, and Destination Specific routing strategies<sup>4</sup> charged for routing Customer<sup>5</sup> orders to certain markets.

(i) Increase to Liquidity Removal Fees

The Exchange currently charges standard fees of \$0.30 per contract for Customer orders and \$0.40 per contract for Firm and Market Maker<sup>6</sup> orders that remove liquidity from BATS Options. The Exchange proposes to increase this fee to \$0.32 per contract

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<sup>4</sup> As defined in BATS Rules 21.1(d)(7) and 21.9(a)(2).

<sup>5</sup> As defined on the Exchange’s fee schedule, a “Customer” order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (“OCC”).

<sup>6</sup> As set forth on the Exchange’s fee schedule, and consistent with the definition of a Customer order, classification as Firm and Market Maker orders depends on the identification by a Member of the applicable clearing range at the OCC.

for Customer orders and \$0.42 per contract for Firm and Market Maker orders that remove liquidity from BATS Options, subject to potential reduction for any Member with an ADV of 0.30% or more of average TCV on BATS Options, as described below.

The Exchange currently maintains a tiered pricing structure through which Members can realize lower liquidity removal fees if such Members have an average daily volume (“ADV”)<sup>7</sup> equal to or greater than 0.30% of average total consolidated volume (“TCV”).<sup>8</sup> For Members reaching this volume threshold, the Exchange currently charges a fee of \$0.27 per contract for Customer orders and \$0.37 per contract for Firm and Market Maker orders. Thus, such Members currently save \$0.03 per contract as compared to the standard fee to remove liquidity. While the Exchange proposes maintain this \$0.03 savings per contract for those reaching the volume tier, due to the proposed increase described above for standard liquidity removal the Exchange proposes to increase liquidity removal fees for Members that reach the volume tier by \$0.02 per contract. Accordingly, for Members reaching the volume threshold, the Exchange will charge a fee of \$0.29 per contract for Customer orders and \$0.39 per contract for Firm and Market Maker orders.

(ii) Decrease to Liquidity Adding Rebate

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

<sup>8</sup> As defined on the Exchange’s fee schedule, TCV is total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

The Exchange currently provides a rebate of \$0.25 per contract for all Customer orders that add liquidity to BATS Options. The Exchange proposes to reduce the rebate for adding liquidity to \$0.22 for Customer orders.

The Exchange currently provides a rebate of \$0.25 per contract for Firm and Market Maker orders that are removed by Customer orders and \$0.35 per contract for orders that are removed by Firm or Market Maker orders. The removing Member's fee is determined without regard to the capacity of the adding party. Consistent with the reduction of Customer rebates described above, the Exchange proposes to reduce each of these liquidity adding rebates by \$0.03. Accordingly, the Exchange proposes to provide a rebate of \$0.22 per contract for Firm and Market Maker orders that are removed by Customer orders and \$0.32 per contract for orders that are removed by Firm or Market Maker orders. As is the case under the current pricing structure, the removing Member's fee will be determined without regard to the capacity of the adding party.

The Exchange 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, 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.<sup>9</sup>

(iii) Decrease to Rebates for NBBO Setter Rebate Program

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<sup>9</sup> 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).

The Exchange currently offers a rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the “NBBO Setter Rebate”),<sup>10</sup> subject to certain volume requirements. The NBBO Setter Rebate currently offered by the Exchange to such Members is \$0.40 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and \$0.50 per contract for Members with an ADV equal to or greater than 1% of TCV. The Exchange proposes to reduce the rebates paid to Members under the NBBO Setter Program by \$0.05 per contract. Accordingly, the Exchange will provide an NBBO Setter Rebate of \$0.35 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and \$0.45 per contract for Members with an ADV equal to or greater than 1% of TCV.

(iv) Adoption of Quoting Incentive Program (QIP)

BATS Options proposes to introduce a Quoting Incentive Program (QIP), through which BATS Options will provide a rebate of \$0.03 per contract, in addition to any other liquidity rebate other than an NBBO Setter Program liquidity rebate, for executions subject to the QIP. The QIP will only apply to executions in options overlying XLF, CSCO, PFE, ORCL, and XRT. To qualify for the QIP a BATS Options Market Maker must be at the NBB or NBO 70% of the time for series trading between \$0.03 and \$5.00 for the front three (3) expiration months in that underlying during the current trading

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<sup>10</sup> 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.

month. A Member not registered as a BATS Market Maker can also qualify for the QIP by quoting at the NBB or NBO 80% of the time in the same series.

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

(v) Change to Standard Routing Fee

The Exchange currently charges a flat fee per contract of \$0.06 for all executions of Customer orders routed through the CYCLE, RECYCLE, Parallel D, Parallel 2D and Destination Specific routing strategies in non-"Make/Take" issues,<sup>11</sup> if applicable, routed to NYSE Amex, NYSE Arca, the Boston Options Exchange, the Chicago Board Options Exchange, the International Securities Exchange, or NASDAQ OMX PHLX. The Exchange's current fee of \$0.06 per contract is the same amount per contract as the direct

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<sup>11</sup> 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.

clearing costs paid by the Exchange in connection with the routing of Customer orders. However, there are additional infrastructure costs, including membership fees and connectivity costs, that are not captured by this fee. In order to recover additional fees to account for infrastructure costs related to routing, the Exchange proposes to increase this routing fee to \$0.10 per contract. In contrast to Customer orders, the Exchange's fees for Firm and Market Maker orders already provide the Exchange with some additional revenue to cover infrastructure costs. Accordingly, the Exchange is not proposing to adjust its fees for routed Firm or Market Maker orders at this time.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.<sup>12</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>13</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing

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<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

while also creating incentives to providing aggressively priced displayed liquidity. While Members that remove liquidity from the Exchange and/or route Customer orders through the Exchange's standard routing strategies will pay higher fees and Members that add liquidity to the Exchange will receive lower rebates due to the proposal, the increased revenue received by the Exchange will be used to fund programs that the Exchange believes will attract additional liquidity and thus improve the depth of liquidity available on the Exchange. Accordingly, the Exchange believes that the higher access and routing fees and lower rebates will benefit Members' results in trading on the Exchange to the extent the tiered rebate structure offered by the Exchange for adding liquidity, the continued operation of the NBBO Setter Program, and the adoption of the Quoting Incentive Program (QIP) incentivize liquidity providers to provide more aggressively priced liquidity.

Despite the increase in fees and decrease in rebates for all Members, the Exchange also believes that its proposed fee structure is fair and equitable as the Exchange's standard fees generally still remain lower, and standard rebates generally still remain higher, than standard fees charged and rebates paid by other markets with similar fee structures, such as NYSE Arca and Nasdaq. The Exchange further believes that the proposed change to the Exchange's standard routing fee for Customer orders to certain venues is competitive, fair and reasonable, and non-discriminatory in that the increase will allow the Exchange to cover additional infrastructure costs attendant with offering routing services. The Exchange also notes that 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. Additional revenue generated through the increased liquidity removal and routing fees as well as reduction of certain rebates, as described above, will allow the Exchange to offer competitive pricing and incentives, such as the NBBO Setter Program and QIP.

The Exchange believes that continuing to base its tiered fee structure and NBBO Setter Program based on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing. Volume-based tiers such as the tiers in place on the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Additionally, the Exchange believes that the proposed Quoting Incentive Program, similar to a fee structure in place on at least one of the Exchange's competitors,<sup>14</sup> will incentivize the provision of competitively priced, sustained liquidity that will create tighter spreads, benefitting both Members and public investors. The Exchange further believes that conditioning a Member's ability to receive the QIP's

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

additional rebate on reaching one of the Exchange's quoting tiers is consistent with the Act for the reasons described above with respect to volume-based tiers. The Exchange also believes that providing a slightly lower threshold for meeting the QIP to registered BATS Options Market Makers appropriately incentivizes Members of BATS Options to register with the Exchange as Options Market Makers. While the Exchange does wish to allow participation in the QIP by all Members, the Exchange believes that registration by additional Members as Market Makers will help to continue to increase the breadth and depth of quotations available on the Exchange. The Exchange notes that in addition to the fact that the QIP will be available to all Members, the proposal is not unfairly discriminatory despite a slightly higher quotation requirement for non-Market Makers due to the fact that registration as a BATS Options Market Maker is equally available to all Members.

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>15</sup> and Rule 19b-4(f)(2)

thereunder,<sup>16</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

The Exchange notes that the QIP is analogous to the Market Maker Plus pricing model implemented by the International Securities Exchange ("ISE").<sup>17</sup> The Exchange notes that the proposed QIP differs from the ISE's Market Maker Plus pricing model in several aspects, including that the QIP will initially include a smaller list of underlying securities than Market Maker Plus pricing currently includes. Additionally, while Market Maker Plus pricing is only available to market makers registered with ISE, the Exchange has proposed to permit all Options Members to qualify for QIP pricing, albeit with different quoting thresholds depending on whether a Member is registered as an Options Market Maker. Finally, the Exchange has chosen not to differentiate between options

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> See supra note 14.

whose underlying stock's previous trading day's last sale price was less than \$100 or greater than \$100, as the ISE Market Maker Plus program does.

9. Exhibits

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

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2011-024)

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 July 29, 2011, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<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 amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the

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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).

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

fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 1, 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) increase the fees applicable to removing liquidity from the BATS options market ("BATS Options"); (ii) decrease the rebates applicable to adding liquidity to BATS Options; (iii) decrease the rebates paid, subject to average daily volume requirements, for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO"); (iv) adopt a program to incentivize sustained, aggressive quoting in certain specified options series (the "Quoting Incentive Program" or "QIP"); and (v) adopt a change to the standard routing fee for the CYCLE, RECYCLE, Parallel D,

Parallel 2D, and Destination Specific routing strategies<sup>6</sup> charged for routing Customer<sup>7</sup> orders to certain markets.

(i) Increase to Liquidity Removal Fees

The Exchange currently charges standard fees of \$0.30 per contract for Customer orders and \$0.40 per contract for Firm and Market Maker<sup>8</sup> orders that remove liquidity from BATS Options. The Exchange proposes to increase this fee to \$0.32 per contract for Customer orders and \$0.42 per contract for Firm and Market Maker orders that remove liquidity from BATS Options, subject to potential reduction for any Member with an ADV of 0.30% or more of average TCV on BATS Options, as described below.

The Exchange currently maintains a tiered pricing structure through which Members can realize lower liquidity removal fees if such Members have an average daily volume (“ADV”)<sup>9</sup> equal to or greater than 0.30% of average total consolidated volume (“TCV”).<sup>10</sup> For Members reaching this volume threshold, the Exchange currently charges a fee of \$0.27 per contract for Customer orders and \$0.37 per contract for Firm and Market Maker orders. Thus, such Members currently save \$0.03 per contract as

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<sup>6</sup> As defined in BATS Rules 21.1(d)(7) and 21.9(a)(2).

<sup>7</sup> As defined on the Exchange’s fee schedule, a “Customer” order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (“OCC”).

<sup>8</sup> As set forth on the Exchange’s fee schedule, and consistent with the definition of a Customer order, classification as Firm and Market Maker orders depends on the identification by a Member of the applicable clearing range at the OCC.

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

<sup>10</sup> As defined on the Exchange’s fee schedule, TCV is total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

compared to the standard fee to remove liquidity. While the Exchange proposes maintain this \$0.03 savings per contract for those reaching the volume tier, due to the proposed increase described above for standard liquidity removal the Exchange proposes to increase liquidity removal fees for Members that reach the volume tier by \$0.02 per contract. Accordingly, for Members reaching the volume threshold, the Exchange will charge a fee of \$0.29 per contract for Customer orders and \$0.39 per contract for Firm and Market Maker orders.

(ii) Decrease to Liquidity Adding Rebate

The Exchange currently provides a rebate of \$0.25 per contract for all Customer orders that add liquidity to BATS Options. The Exchange proposes to reduce the rebate for adding liquidity to \$0.22 for Customer orders.

The Exchange currently provides a rebate of \$0.25 per contract for Firm and Market Maker orders that are removed by Customer orders and \$0.35 per contract for orders that are removed by Firm or Market Maker orders. The removing Member's fee is determined without regard to the capacity of the adding party. Consistent with the reduction of Customer rebates described above, the Exchange proposes to reduce each of these liquidity adding rebates by \$0.03. Accordingly, the Exchange proposes to provide a rebate of \$0.22 per contract for Firm and Market Maker orders that are removed by Customer orders and \$0.32 per contract for orders that are removed by Firm or Market Maker orders. As is the case under the current pricing structure, the removing Member's fee will be determined without regard to the capacity of the adding party.

The Exchange 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, 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.<sup>11</sup>

(iii) Decrease to Rebates for NBBO Setter Rebate Program

The Exchange currently offers a rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the “NBBO Setter Rebate”),<sup>12</sup> subject to certain volume requirements. The NBBO Setter Rebate currently offered by the Exchange to such Members is \$0.40 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and \$0.50 per contract for Members with an ADV equal to or greater than 1% of TCV. The Exchange proposes to reduce the rebates paid to Members under the NBBO Setter Program by \$0.05 per contract. Accordingly, the Exchange will provide an NBBO Setter Rebate of \$0.35 per contract for Members with an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV and \$0.45 per contract for Members with an ADV equal to or greater than 1% of TCV.

(iv) Adoption of Quoting Incentive Program (QIP)

BATS Options proposes to introduce a Quoting Incentive Program (QIP), through which BATS Options will provide a rebate of \$0.03 per contract, in addition to any other liquidity rebate other than an NBBO Setter Program liquidity rebate, for executions

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<sup>11</sup> 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).

<sup>12</sup> 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.

subject to the QIP. The QIP will only apply to executions in options overlying XLF, CSCO, PFE, ORCL, and XRT. To qualify for the QIP a BATS Options Market Maker must be at the NBB or NBO 70% of the time for series trading between \$0.03 and \$5.00 for the front three (3) expiration months in that underlying during the current trading month. A Member not registered as a BATS Market Maker can also qualify for the QIP by quoting at the NBB or NBO 80% of the time in the same series.

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

(v) Change to Standard Routing Fee

The Exchange currently charges a flat fee per contract of \$0.06 for all executions of Customer orders routed through the CYCLE, RECYCLE, Parallel D, Parallel 2D and Destination Specific routing strategies in non-"Make/Take" issues,<sup>13</sup> if applicable, routed

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<sup>13</sup> As defined on the fee schedule, Make/Take pricing refers to executions at the identified Exchange under which "Post Liquidity" or "Maker" rebates ("Make")

to NYSE Amex, NYSE Arca, the Boston Options Exchange, the Chicago Board Options Exchange, the International Securities Exchange, or NASDAQ OMX PHLX. The Exchange's current fee of \$0.06 per contract is the same amount per contract as the direct clearing costs paid by the Exchange in connection with the routing of Customer orders. However, there are additional infrastructure costs, including membership fees and connectivity costs, that are not captured by this fee. In order to recover additional fees to account for infrastructure costs related to routing, the Exchange proposes to increase this routing fee to \$0.10 per contract. In contrast to Customer orders, the Exchange's fees for Firm and Market Maker orders already provide the Exchange with some additional revenue to cover infrastructure costs. Accordingly, the Exchange is not proposing to adjust its fees for routed Firm or Market Maker orders at this time.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.<sup>14</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>15</sup> 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

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are credited by that exchange and "Take Liquidity" or "Taker" fees ("Take") are charged by that exchange.

<sup>14</sup> 15 U.S.C. 78f.

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

order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also creating incentives to providing aggressively priced displayed liquidity. While Members that remove liquidity from the Exchange and/or route Customer orders through the Exchange's standard routing strategies will pay higher fees and Members that add liquidity to the Exchange will receive lower rebates due to the proposal, the increased revenue received by the Exchange will be used to fund programs that the Exchange believes will attract additional liquidity and thus improve the depth of liquidity available on the Exchange. Accordingly, the Exchange believes that the higher access and routing fees and lower rebates will benefit Members' results in trading on the Exchange to the extent the tiered rebate structure offered by the Exchange for adding liquidity, the continued operation of the NBBO Setter Program, and the adoption of the Quoting Incentive Program (QIP) incentivize liquidity providers to provide more aggressively priced liquidity.

Despite the increase in fees and decrease in rebates for all Members, the Exchange also believes that its proposed fee structure is fair and equitable as the Exchange's standard fees generally still remain lower, and standard rebates generally still remain higher, than standard fees charged and rebates paid by other markets with similar fee structures, such as NYSE Arca and Nasdaq. The Exchange further believes that the proposed change to the Exchange's standard routing fee for Customer orders to certain venues is competitive, fair and reasonable, and non-discriminatory in that the increase will allow the Exchange to cover additional infrastructure costs attendant with offering

routing services. The Exchange also notes that 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. Additional revenue generated through the increased liquidity removal and routing fees as well as reduction of certain rebates, as described above, will allow the Exchange to offer competitive pricing and incentives, such as the NBBO Setter Program and QIP.

The Exchange believes that continuing to base its tiered fee structure and NBBO Setter Program based on overall TCV, rather than a static number of contracts irrespective of overall volume in the options industry, is a fair and equitable approach to pricing. Volume-based tiers such as the tiers in place on the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Additionally, the Exchange believes that the proposed Quoting Incentive Program, similar to a fee structure in place on at least one of the Exchange's competitors,<sup>16</sup> will incentivize the provision of competitively priced, sustained liquidity

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<sup>16</sup> 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

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

(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.

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of changes to fees and rebates including adoption of specific rebates for market makers qualifying for the Market Maker Plus program).

### 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>17</sup> and Rule 19b-4(f)(2) thereunder,<sup>18</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

#### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2011-024 on the subject line.

#### Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2011-024. This file number should be included on the subject line if e-mail is used. To help the Commission process and

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2011-024 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>19</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

**BATS BZX Exchange Fee Schedule**  
**Effective [July 1]August 1, 2011**

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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.

**Equities Pricing:**

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**Options Pricing:**

All references to “per contract” mean “per contract executed”

“ADV” means average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis; routed contracts are not included in ADV calculation; with prior notice to the Exchange, a Member may aggregate ADV with other Members that control, are controlled by, or are under common control with such Member

“Customer” applies to any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (“OCC”)

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

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

“TCV” means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply

**Fees for Accessing Liquidity for All Securities**

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

[\$0.30]0.32 charge per contract for a Customer order that removes liquidity from the BATS Options order book and such Member does not qualify for a lower charge based on their ADV

[\$0.37]0.39 charge per contract for a Firm or Market Maker order that removes liquidity from the BATS Options order book where the Member has an ADV equal to or greater than 0.30% of average TCV

~~0.40~~0.42 charge per contract for a Firm or Market Maker order that removes liquidity from the BATS Options order book and such Member does not qualify for a lower charge based on their ADV

**Liquidity Rebates for All Securities**

~~0.25~~0.22 rebate per contract for a Customer order that adds liquidity to the BATS Options order book

~~0.25~~0.22 rebate per contract for a Firm or Market Maker order that adds liquidity to the BATS Options order book that is removed by a Customer order

~~0.35~~0.32 rebate per contract for a Firm or Market Maker order that adds liquidity to the BATS Options order book that is removed by a Firm or Market Maker order

**NBBO Setter Liquidity Rebates for All Securities** *(superseding any other applicable liquidity rebates)*

~~0.40~~0.35 rebate per contract for any order that adds liquidity to the BATS Options order book that sets a new national best bid or offer where the adding Member has an ADV equal to or greater than 0.30% of average TCV but less than 1% of average TCV

~~0.50~~0.45 rebate per contract for any order that adds liquidity to the BATS Options order book that sets a new national best bid or offer where the adding Member has an ADV equal to or greater than 1% of average TCV

**Quoting Incentive Program (“QIP”) Liquidity Rebates** *(in addition to any other applicable liquidity rebates other than NBBO Setter Liquidity Rebates)*

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

- (1) BATS Options Market Makers that quote at the national best bid or offer 70% of the time for series trading between \$0.03 and \$5.00 for the front three (3) expiration months in that underlying for the month for which fees apply; or
- (2) All other BATS Options Members that quote at the national best bid or offer 80% of the time for series trading between \$0.03 and \$5.00 for the front three (3) expiration months in that underlying for the month for which fees apply.

**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:

	<b>Customer</b>	<b>Firm/Market Maker</b>
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AMEX BOX CBOE	ARCA (Classic issues) <sup>4</sup> ISE (Classic issues) <sup>4</sup> PHLX (Classic issues) <sup>4</sup>	\$[0.06]0.10	\$0.55
C2 ISE (Make/Take issues) <sup>4</sup> PHLX (Make/Take issues) <sup>4</sup>		\$0.30	\$0.55
NOM ARCA (Make/Take issues) <sup>4</sup>		\$0.50	\$0.55

**Directed ISO Fee**

\$0.60 charge per contract for orders executed at member directed destinations when bypassing the BATS Options order book

**Physical Connection Charges<sup>5</sup>:**

\* \* \* \* \*

<sup>4</sup> Pricing in Make/Take 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. Pricing in Classic issues applies to all other executions at such exchanges.

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