January 26, 2012

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: SR-BATS-2011-053

Ms. Murphy:

BATS Exchange, Inc. ("BATS" or "the Exchange") is responding to a comment letter[1] submitted by TD Ameritrade, Inc. ("the Firm") in response to the above-referenced rule filing[2] ("the Rule Filing") to amend the fee schedule of BATS' options market ("BATS Options"). The Rule Filing introduces the "Grow with Us" pricing program, modifies the fees charged and rebates paid by the Exchange, updates the Exchange's NBBO Setter and Quoting Incentive Programs ("QIP"), and adopts fees for logical ports used to access BATS Options.

Collectively the modifications to the Exchange's options pricing can be summarized in the following ways: BATS significantly raised the rebate paid to Customer capacity orders that contribute liquidity to the book ("make rate"). BATS also raised take fees, although Customer capacity orders are still able to achieve substantially discounted take fees by achieving volume tiers. In addition, BATS updated the NBBO Setter and Quoting Incentive Programs to account for the heightened Customer capacity rebates. To encourage the efficient use of infrastructure and technology resources, BATS more broadly adopted port fees. (The Exchange already charged for ports with bulk order entry capabilities.) Moreover, while introducing some port fees, the Exchange moved to waive some port fees for those members using them effectively and efficiently – measured by participation of those members in the Exchange's Quoting Incentive Program. Finally, and most substantively, BATS implemented the "Grow with Us" pricing program to allow members to attain a portion of the benefits of the Exchange's tiered pricing structure when their options activity on BATS increases by at least a de minimis level each month.

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1 See Letter from Christopher Nagy, Managing Director Order Strategy, TD Ameritrade to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, January 13, 2012 (the "Letter").

2 Securities Exchange Act Release No. 66120 (January 9, 2012), 77 FR 2108 (January 13, 2012) (SR-BATS-2011-053).

For clarity, the Exchange's fee schedule is summarized in the following table

		Make (rebate)	Take (fee)
Customer	Base Rate	$0.30	$0.44
	5bps TCV growth (< 0.3% TCV)[†]	$0.35	$0.40
	0.3% TCV[†]	$0.40	$0.36
	5bps TCV growth (< 1.0% TCV)[†]	$0.41	$0.32
	1.0% TCV[†]	$0.42	$0.28
	QIP (Additive Rebates)	+$0.03	-
Pro Customer/ Firm/ Market Maker	Base Rate	$0.32 / $0.22 (vs. PC/F/MM)/(vs. Cust.)	$0.44
	5bps TCV growth (< 0.3% TCV)*[†]	$0.35/$0.25	-
	0.3% TCV*[†]	$0.38/$0.28	
	5bps TCV growth (< 1.0% TCV)*[†]	$0.40/$0.30	
	1.0% TCV*[†]	$0.42/$0.32	
	QIP (Additive Rebates)	+$0.05	

*Increased rebate will only be applied on NBBO setting contracts. The NBBO Setter Rebate will be paid to the first order on the BATS Options book that creates a new price level in the market – sets a new NBBO.

[†] "TCV" means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month in which the fees are calculated.

In its comments, the Firm presented two criticisms of the Rule Filing. The first criticism relates to the level of fees charged for Customers to access the Exchange's protected quotation; the second relates to the Exchange's waiver of some logical port fees for members that achieve defined QIP metrics. BATS appreciates the Firm's concern for the quality of the options markets as well as the Firm's desire to protect the investing public. However, in its comment letter and in support of its criticisms, the Firm makes a number of misstatements and provides a general lack of context that the Exchange wishes to rectify.

In particular, the Firm contends that by increasing the take fee for Customer capacity orders from $.30 to $.44, BATS is charging an unreasonable fee to access its protected quotation. The Firm also states that this fee is increasing "without any justification or explanation as to why." The Firm goes on to compare the BATS fee change to a recent BOX rule filing,[3] stating "Fundamentally there is no difference between the BOX fee or the access fee charged by BATS…."

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3 See Letter.

The Firm is correct that the base take fee charged to Customer capacity orders has increased from $.30 to $.44. What the Firm fails to note is that this $.44 fee is not only comparable to; it is ***lower than*** the take fee charged at other markets with similar fee structures.[4] The Firm also fails to note the ability of Customers to achieve ***substantially lower*** take fees by increasing their activity or achieving certain volume tiers.

Moreover, the Firm's assertion that the Exchange has provided no justification or explanation for its fee change is simply false. In the Rule Filing, the Exchange offered a lengthy discussion of the rationale for all of its proposed fee changes under the heading "Statutory Basis." Note the following paragraph from that section of the Rule Filing which specifically addresses the issue of higher Customer take fees:

> Despite the increases in fees for all orders that remove liquidity (Customer, Professional, Firm and Market Maker orders), the Exchange believes that its proposed fee structure is fair and equitable as the Exchange's standard fees generally still remain equivalent to or slightly lower than standard fees charged by other markets with similar fee structures, such as NYSE Arca and Nasdaq. Further, the Exchange believes that the various programs offered by the Exchange to receive reduced fees and enhanced rebates provide all Members with several different ways to offset the increase in fees or receive a reduction in fees. Further, with respect to the increase to Customer fees to remove liquidity, the Exchange has expanded its rebate structure to provide Customer orders with enhanced rebates, subject to the volume tier structure and the Grow with Us pricing program. As noted above, the Exchange believes that such volume-based tiers are fair and equitable and not unreasonably discriminatory because they are consistent with the overall goals of enhancing market quality.[5]

The Exchange would like to point out that its Rule Filing and the referenced BOX rule filing are not similar, as the Firm suggests, and in fact are fundamentally different. The BOX rule filing in question relates to BOX's Price Improvement Period ("PIP"). The PIP structure is a separate auction process taking place in which Customer orders are exposed/internalized and that provides certain execution allocation guarantees. Noting that BATS Options offers no auction mechanism, nor any sort of allocation guarantee, the nature of the fee filings is unrelated.

BATS would like to offer one last word on options fees. In its conclusion, the Firm recommends that the Commission adopt the options fee caps originally proposed in April of 2010. That summer, BATS commented in support of the adoption of that proposal, contingent on and coincident with the elimination of step-up auctions.[6] If and when the Commission

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4 See NASDAQ Options Market Fee Schedule available at http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing and NYSE Arca Options Fee Schedule available at http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_arca_options_fee_schedule-_eff_12_15_11.pdf.

5 See Rule Filing.

6 See Letter.

undertakes a broader review of fees and payment in the options markets, we encourage them, again, to not forget the important and related mechanisms of step-ups and payment for order flow (PFOF).

The Firm also criticized BATS' waiver of some logical port fees for members that achieve defined QIP metrics. In particular, the Firm argued that the BATS Bulk Quoting Interface allows users of BATS the "unfettered" ability to provide a bid and an offer in one message as well as the ability to bundle several quote updates into a single message. The Firm further noted the rise in options message traffic and the burden that this places on OPRA and the investing public.

The Exchange would like to clarify that contrary to the Firm's assertion, its Rule Filing does not result in the provision of "unfettered" order sending ability. All ports – whether they are bulk quoting ports or single order entry ports – are indeed available to all members, including the Firm, regardless of order capacity. All ports are also configured with a capacity limit beyond which activity is rejected. No member has "unfettered" access.

Moreover, BATS' waiver of certain port fees under the Rule Filing is designed to encourage efficient use of these ports. For a client to have their bulk quoting port fees waived they must achieve QIP thresholds in at least 25 underlying securities. To qualify for the QIP a BATS Options Market Maker must be at the NBB or NBO 60% 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 Options Market Maker can also qualify for the QIP by quoting at the NBB or NBO 70% of the time in the same series. In other words – for a member of BATS Options to have their bulk quoting port fees waived, they must contribute to overall market quality by being on the NBBO a significant amount of the time. Through its QIP, BATS is not only directly rewarding quality orders by offering higher rebates and the waiver of bulk quoting port fees, it is incenting activity that directly contributes to the efficient functioning of our markets.

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BATS appreciates the opportunity to provide this response to the comments received on its Rule Filing. Please feel free to contact me if you have any questions in connection with this matter.

Sincerely,

Jeromee Johnson