SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68028; File No. SR-BATS-2012-041)

October 10, 2012

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 October 1, 2012, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[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 amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

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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.

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

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

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

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

1. Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule effective immediately, in order to modify pricing related to executions that occur on the NASDAQ Options Market ("NOM"). NOM implemented certain pricing changes effective October 1, 2012,[6] including a modification of the fee charged to participants to remove liquidity in non-Penny Pilot Securities.[7] In order to maintain routing fees that approximate the routing costs to NOM, the Exchange proposes to adopt pricing for orders routed to NOM in non-Penny Pilot Securities that is identical to pricing for orders routed by the Exchange to NOM in Specified Symbols, as described below.

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6 See Options Trader Alert #2012-56, NOM and PHLX Pricing, Effective October 1, 2012 (September 28, 2012) (the "NOM Notice").

7 As defined on the Exchange's fee schedule, "Penny Pilot Securities" are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01. The options designated by the Exchange as Penny Pilot Securities are the same options as those designated by NOM as penny pilot issues.

The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (i.e., clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, "Routing Costs"). Based on recent changes to NOM pricing, the Exchange adopted two categories for NOM under which it charges: (i) a fee of $0.50 per contract for Customer[8] orders and $0.57 per contract for Professional,[9] Firm, or Market Maker[10] orders routed to and executed at NOM in all options other than Specified Symbols; and (ii) separate fees for orders routed to and executed at NOM in Specified Symbols, which are described in further detail below. In order to establish new pricing for non-Penny Pilot Securities, as described below, the Exchange proposes to explicitly state that current pricing for orders routed to and executed at NOM in non-Specified Symbols also applies to Penny Pilot Securities and that pricing for orders routed to and executed at NOM in Specified Symbols also applies to non-Penny Pilot Securities, as described below.

As noted above, NOM currently imposes specific fees for options on specified securities that the Exchange identifies on its fee schedule as "NOM Specified Symbols." Such NOM Specified Symbols currently include options on Facebook ("FB"), Google ("GOOG") and

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8 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 Options Clearing Corporation ("OCC"), excluding any transaction for a "Professional" as defined in Exchange Rule 16.1.

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

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

Groupon ("GRPN"). The fee charged by NOM to remove liquidity in NOM Specified Symbols is $0.79 per contract for NOM customer and NOM market maker orders and $0.85 per contract for all other participant capacities. NOM recently announced adoption of identical pricing for non-Penny Pilot Securities.[11] As noted above, the Exchange generally imposes routing fees that approximate the fee to remove liquidity from other options exchanges as well as associated Routing Costs. Accordingly, the Exchange proposes to charge the same fee for orders routed to and executed in non-Penny Pilot Securities as it charges for orders routed to and executed at NOM in Specified Symbols. Specifically, the Exchange proposes to charge $0.90 for Customer orders and $0.95 for Professional, Firm, or Market Maker orders routed to and executed at NOM in non-Penny Pilot Securities.

In addition, the Exchange currently charges a flat fee of $0.95 per contract for Directed ISOs to NOM in NOM Specified Symbols and $0.60 per contract for any other Directed ISO. In order to cover the cost of removing liquidity in non-Penny Pilot Securities at NOM, including Routing Costs, the Exchange proposes to charge the same fee as it does for Directed ISOs to NOM in NOM Specified Symbols, $0.95 per contract, for Directed ISOs to NOM in non-Penny Pilot Securities.

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.[12] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[13]

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11 See NOM Notice, supra note 6.

12 15 U.S.C. 78f.

13 15 U.S.C. 78f(b)(4).

in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the proposed modifications to routing fees applicable for orders routed to and executed at NOM is fair, equitable and reasonable because the fees are an approximation of the cost to the Exchange for routing orders to NOM. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for orders routed to and executed at NOM. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to NOM. Specifically, the Exchange believes that the proposed routing fees will enable the Exchange to recover the remove fees assessed for the Exchange's routing of orders in non-Penny Pilot Securities to NOM, plus other Routing Costs associated with the execution of such orders that have been routed to NOM. The Exchange also believes that its increase to fees for Directed ISO's to NOM in non-Penny Pilot Securities to $0.95 per contract (from the current charge of $0.60 per contract for all Directed ISO's other than in NOM Specified Symbols) is fair, equitable and reasonable because the fees are also an approximation of the cost to the Exchange for routing orders to NOM in non-Penny Pilot Securities. The Exchange also believes that the proposed fee structure for orders routed to and executed at NOM, including Directed ISOs in non-Penny Pilot Securities, is not unreasonably discriminatory, again, because it is based on and intended to approximate the cost of routing to NOM.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the change to routing fees will assist the Exchange in recouping costs for routing orders to NOM on behalf of its participants, and absent such change, the Exchange would be subsidizing routing to NOM by Exchange participants. The Exchange also notes that Users may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[14]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act[15] and Rule 19b-4(f)(2) thereunder,[16] 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.

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

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

16 17 CFR 240.19b-4(f)(2).

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2012-041 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 Number SR-BATS-2012-041. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will 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 Number SR-BATS-2012-041 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill
Deputy Secretary

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