SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68204; File No. SR-BATS-2012-043)

November 9, 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 November 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 the 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: (i) increase the TCV improvement requirements for the Grow with Us pricing plan; (ii) modify the rebates provided by the Exchange for Customer[6] orders that add liquidity to the Exchange's options platform ("BATS Options") in options classes subject to the penny pilot program as described below ("Penny Pilot Securities");[7] (iii) modify the fees charged by the Exchange for Customer orders that remove liquidity from BATS Options in

6 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"), except for those designated as "Professional".

7 The Exchange currently charges different fees and provides different rebates depending on whether an options class is an options class that qualifies as a Penny Pilot Security pursuant to Exchange Rule 21.5, Interpretation and Policy .01 or is a non-penny options class.

Penny Pilot Securities; (iv) modify the rebates paid by the Exchange for Professional,[8] Firm, and Market Maker[9] orders that add liquidity to BATS Options in Penny Pilot Securities; (v) modify the fees charged by the Exchange for Professional, Firm, and Market Maker orders that remove liquidity from BATS Options in Penny Pilot Securities; (vi) modify the rebates paid by the Exchange under the BATS Options NBBO Setter Program;[10] (vii) modify the fees charged by the Exchange for Professional, Firm, and Market Maker orders that remove liquidity from BATS Options in non-Penny Pilot Securities; (viii) modify the rebates paid by the Exchange for orders that add liquidity to BATS Options in non-Penny Pilot Securities; (ix) eliminate the Enhanced NBBO Setter Rebate; and (x) modify pricing with respect to orders that are executed on away options exchanges. In addition to these changes, the Exchange proposes to re-number certain footnotes contained within the fee schedule.

(i) Grow with Us Pricing Program

The Exchange currently offers its Grow with Us pricing program to certain orders that add or remove liquidity, as further explained below, by providing a Member with enhanced rebates (and lower execution fees) to the extent such Member shows a minimum of 5 basis points

[8] 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).

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

[10] The NBBO Setter Program is a program that provides additional rebates for executions resulting from orders that add liquidity that set either the national best bid (“NBB”) or national best offer (“NBO”).

of total consolidated volume ("TCV")[11] improvement over the Member's previous highest monthly TCV on BATS Options, or "High Water Mark." The Exchange has defined High Water Mark as the greater of a Member's fourth quarter 2011 TCV or a Member's best monthly TCV on BATS Options thereafter.

The Exchange has found that normal variance in trading behavior can cause an improvement of greater than 5 basis points from its Members. As such, the Exchange proposes to increase the requirement for the minimum improvement from 5 basis points of TCV to a more significant improvement of 10 basis points of TCV.

(ii) <u>Customer Rebates for Adding Liquidity in Penny Pilot Securities</u>

The Exchange currently provides rebates for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities pursuant to a tiered pricing structure, as described below. In order to make a broader based and more inclusive rebate structure, the Exchange proposes to modify this tiered pricing structure and the rebates associated therewith as well as modify the rebates associated with the Grow with Us pricing program.

The Exchange currently provides a rebate of $0.30 per contract for Customer orders that add liquidity to the BATS Options order book to the extent a Member of BATS Options does not qualify for a higher rebate based on their average daily volume ("ADV").[12] The Exchange also currently provides Members with an ADV equal to or greater than 0.30% of TCV with a rebate of $0.42 per contract for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities and a rebate of $0.44 per contract for Customer orders that add liquidity to

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11 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.

12 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.

the BATS Options order book in Penny Pilot Securities for Members with an ADV equal to or greater than 1% of average TCV. Finally, the Exchange currently offers its Grow with Us pricing program to Customer orders that add liquidity by providing a Member with enhanced rebates to the extent such Member shows a minimum of 5 basis points TCV improvement over the Member's previous High Water Mark. Under the current pricing structure, a Member that does not qualify for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but achieves at least a 5 basis point increase over its previous High Water Mark is provided a rebate of $0.38 per contract for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities. A Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but not the 1% of average TCV tier that achieves at least a 5 basis point increase over its previous High Water Mark is provided a rebate of $0.45 per contract for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities. A Member that qualifies for the highest tier applicable to Members with an ADV equal to or greater than 1% of average TCV that achieves at least a 5 basis point increase over its previous High Water Mark is provided a rebate of $0.46 per contract for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities.

The Exchange proposes to adjust the existing volume tiers, to add an additional volume tier, and to modify the rebates paid for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities.

The Exchange proposes to decrease the lower volume tier level from an ADV equal to or greater than 0.30% of average TCV to an ADV equal to or greater than 0.25% of average TCV. The Exchange also proposes to lower the upper volume tier level from an ADV equal to or greater than 1% of average TCV to an ADV equal to or greater than 0.75% of average TCV. Lastly, the Exchange proposes to add an additional volume tier level at an ADV equal to or greater than 1.25% of average TCV. This proposal would result in three distinct discounted volume tiers for Customer orders that add liquidity to BATS Options in Penny Pilot Securities, as follows: greater than or equal to 0.25%, but less than 0.75%; greater than or equal to 0.75%, but less than 1.25%; and equal to or greater than 1.25%.

The Exchange proposes to increase its rebate for any Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.25% of average TCV but not the 0.75% of average TCV tier from a rebate of $0.42 per contract to a rebate of $0.43 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities. The Exchange proposes to increase its rebate for any Member that qualifies for the middle tier applicable to Members with an ADV equal to or greater than 0.75% of average TCV but not the 1.25% of average TCV tier from a rebate of $0.44 per contract to a rebate of $0.46 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities. The Exchange proposes to add a rebate for Members that qualify for the proposed upper tier applicable to Members with an ADV equal to or greater than 1.25% of average TCV of $0.47 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities.

As part of the Grow with Us pricing program, the Exchange also proposes to reduce its rebate for any Member that does not qualify for the lower tier applicable to Members with an ADV equal to or greater than 0.25% of average TCV but achieves a 10 basis point increase over its previous High Water Mark from a rebate of $0.38 per contract to a rebate of $0.31 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities. The Exchange proposes to reduce the rebate for any Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.25% of average TCV but not the 0.75% of average TCV tier that achieves at least a 10 basis point increase over its previous High Water Mark from a rebate of $0.45 per contract to a rebate of $0.44 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities. The Exchange proposes to increase its rebate for any Member that qualifies for the middle tier applicable to Members with an ADV equal to or greater than 0.75% of average TCV but not the 1.25% of average TCV tier that achieves at least a 10 basis point increase over its previous High Water Mark from a rebate of $0.46 per contract to a rebate of $0.47 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities.

(iii) Customer Fees for Removing Liquidity in Penny Pilot Securities

The Exchange currently charges fees for Customer orders that remove liquidity from the BATS Options order book in Penny Pilot Securities pursuant to a tiered pricing structure, as described below. The Exchange proposes to modify this tiered pricing structure and the fees associated therewith as well as modify the fees associated with the Grow with Us pricing program.

The Exchange currently charges Members with an ADV less than 0.30% of TCV with a fee of $0.44 per contract for Customer orders that remove liquidity from the BATS Options order book in Penny Pilot Securities. The Exchange currently charges Members with an ADV greater than 0.30% of TCV but less than 1.0% of TCV with a fee of $0.40 per contract for Customer orders that remove liquidity from the BATS Options order book in Penny Pilot Securities. The Exchange currently charges Members with an ADV greater than than 1.0% of TCV with a fee of $0.36 per contract for Customer orders that remove liquidity from the BATS Options order book in Penny Pilot Securities. Finally, the Exchange currently offers its Grow with Us pricing program to Customer orders that remove liquidity by reducing the fees charged to a Member to the extent such Member shows a minimum of 5 basis points TCV improvement over the Member's previous High Water Mark. Under the current pricing structure, any Member that does not qualify for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but achieves at least a 5 basis point increase over its previous High Water Mark is charged a fee of $0.42 per contract for Customer orders that remove liquidity from the BATS Options order book in Penny Pilot Securities. A Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but not the 1% of average TCV tier that achieves at least a 5 basis point increase over its previous High Water Mark is charged a fee of $0.38 per contract for Customer orders that remove liquidity from the BATS Options order book in Penny Pilot Securities. A Member that qualifies for the highest tier applicable to Members with an ADV equal to or greater than 1% of average TCV that achieves at least a 5 basis point increase over its previous High Water Mark is charged a fee of $0.36 per contract for Customer orders that remove liquidity from the BATS Options order book in Penny Pilot Securities.

The Exchange proposes to adjust the existing volume tiers, to add an additional volume tier, and to modify the fees charged for Customer orders that remove liquidity from the BATS Options order book in Penny Pilot Securities.

The Exchange proposes to decrease the lower volume tier level from an ADV equal to or greater than 0.30% of average TCV to an ADV equal to or greater than 0.25% of average TCV. The Exchange also proposes to lower the upper volume tier level from an ADV equal to or greater than 1% of average TCV to an ADV equal to or greater than 0.75% of average TCV. Lastly, the Exchange proposes to add an additional volume tier level at an ADV equal to or greater than 1.25% of average TCV. This proposal would result in three distinct discounted volume tiers for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities, as follows: greater than or equal to 0.25%, but less than 0.75%; greater than or equal to 0.75%, but less than 1.25%; and equal to or greater than 1.25%.

The Exchange proposes to increase its fee for any Member that does not qualify for the lower tier applicable to Members with an ADV equal to or greater than 0.25% of average TCV from a fee of $0.44 per contract to $0.45 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities. The Exchange proposes to increase its fee for any Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.25% of average TCV but not the 0.75% of average TCV tier from a fee of $0.40 per contract to $0.44 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities. The Exchange proposes to add a fee for any Member that qualifies for the middle tier applicable to Members with an ADV equal to or greater than 0.75% of average TCV but not the 1.25% of average TCV tier from a fee of $0.43 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities. The Exchange proposes to increase the fee for any Member that qualifies for the proposed upper tier applicable to Members with an ADV equal to or greater than 1.25% of average TCV from $0.36 per contract to $0.42 for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities.

As part of the Grow with Us pricing program, the Exchange also proposes to increase its fee for any Member that does not qualify for the lower tier applicable to Members with an ADV equal to or greater than 0.25% of average TCV but achieves a 10 basis point increase over its previous High Water Mark from a fee of $0.42 per contract to a fee of $0.44 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities. The

Exchange proposes to increase the fee for any Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.25% of average TCV but not the 0.75% of average TCV tier that achieves at least a 10 basis point increase over its previous High Water Mark from a fee of $0.38 per contract to a rebate [sic] of $0.43 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities. The Exchange proposes to add a fee for any Member that qualifies for the middle tier applicable to Members with an ADV equal to or greater than 0.75% of average TCV but not the 1.25% of average TCV tier that achieves at least a 10 basis point increase over its previous High Water Mark of $0.42 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities.

(iv) Non-Customer Rebates for Adding Liquidity in Penny Pilot Securities

The Exchange currently provides a rebate of $0.22 per contract for Professional, Firm, and Market Maker orders that add liquidity to the BATS Options order book in Penny Pilot Securities and are removed by a Customer order. The Exchange currently provides a rebate of $0.32 per contract for Professional, Firm, and Market Maker orders that add liquidity to the BATS Options order book in Penny Pilot Securities and are removed by a Professional, Firm, or Market Maker order.

In order to further incentivize liquidity on BATS Options, the Exchange proposes to increase its rebate for Professional, Firm, and Market Maker orders that add liquidity to the BATS Options order book in Penny Pilot Securities and are removed by a Customer order from $0.22 per contract to $0.25 per contract. The Exchange also proposes to increase its rebate for Professional, Firm, and Market Maker orders that add liquidity to the BATS Options order book in Penny Pilot Securities and are removed by a Professional, Firm, or Market Maker order from $0.32 per contract to $0.35 per contract.

(v) Non-Customer Fees for Removing Liquidity in Penny Pilot Securities

The Exchange currently charges a fee of $0.45 per contract for Professional, Firm, and Market Maker orders that remove liquidity from BATS Options in Penny Pilot Securities, where the Member does not qualify for a lower charge based on TCV improvement. The Exchange currently charges a fee of $0.44 per contract for Professional, Firm, and Market Maker orders that remove liquidity from BATS Options in Penny Pilot Securities where the Member shows a minimum of 5 basis points of TCV improvement over their previous High Water Mark.

The Exchange proposes to increase its fees for Professional, Firm, and Market Maker orders that remove liquidity from BATS Options in Penny Pilot Securities where the Member does not qualify for a lower charge based on TCV improvement from $0.45 per contract to $0.47 per contract. The Exchange also proposes to increase its fees for Professional, Firm, and Market Maker orders that remove liquidity from BATS Options in Penny Pilot Securities where the Member shows a minimum of 10 basis points of TCV improvement, as proposed above, over their previous High Water Mark from $0.44 per contract to $0.46 per contract.

(vi) NBBO Setter Liquidity Rebates for Orders

The Exchange's NBBO Setter Program is a program intended to incentivize aggressive quoting on BATS Options by providing an additional rebate upon execution for all orders that add liquidity that set either the NBB or NBO (the "NBBO Setter Rebate"),[13] subject to certain volume requirements. The Exchange currently provides an additional $0.06 per contract rebate for executions of Professional, Firm and Market Maker orders that qualify for the NBBO Setter Rebate by Members with an ADV equal to or greater than 0.30% of average TCV but less than

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[13] 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.

1% of average TCV and an additional $0.10 per contract for qualifying executions of Professional, Firm and Market Maker orders by Members with an ADV equal to or greater than 1% of TCV.

The Exchange also applies its Grow with Us pricing program to the NBBO Setter Rebate. Accordingly, any Member that does not qualify for NBBO Setter Rebates applicable to Members with an ADV equal to or greater than 0.30% of average TCV but achieves at least a 5 basis point increase over its previous High Water Mark receives NBBO Setter Rebates of $0.03 per contract for qualifying executions. Similarly, any Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.30% of average TCV but not the 1% of average TCV tier that achieves at least a 5 basis point increase over its previous High Water Mark is provided a NBBO Setter Rebate of $0.08 per contract for qualifying executions.

The Exchange proposes to adjust the existing volume tiers, to add an additional volume tier, and to modify the rebates paid as part of the NBBO Setter Rebate program.

The Exchange proposes to decrease the lower volume tier level from an ADV equal to or greater than 0.30% of average TCV to an ADV equal to or greater than 0.25% of average TCV. The Exchange also proposes to lower the upper volume tier level from an ADV equal to or greater than 1% of average TCV to an ADV equal to or greater than 0.75% of average TCV. Lastly, the Exchange proposes to add an additional volume tier level at an ADV equal to or greater than 1.25% of average TCV. This proposal would result in three distinct discounted volume tiers for the NBBO Setter Rebate, as follows: greater than or equal to 0.25%, but less than 0.75%; greater than or equal to 0.75%, but less than 1.25%; and equal to or greater than 1.25%.

The Exchange proposes to decrease its NBBO Setter Rebate for executions of Professional, Firm, and Market Maker orders that qualify for the NBBO Setter Rebate by any Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.25% of average TCV but not the 0.75% of average TCV from $0.06 per contract to $0.03 per contract. The Exchange also proposes to decrease its NBBO Setter Rebate for executions of Professional, Firm, and Market Maker orders that qualify for the NBBO Setter Rebate by any Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.75% of average TCV but not the 1.25% of average TCV from $0.10 per contract to $0.06 per contract. The Exchange proposes to add an NBBO Setter Rebate for executions of Professional, Firm, and Market Maker orders that qualify for the NBBO Setter Rebate by any Member that qualifies for the highest tier applicable to Members with an ADV equal to or greater than 1.25% of average TCV of $0.10 per contract.

The Exchange proposes to eliminate its current NBBO Setter Rebate of $0.03 for a Member that does not qualify for the lower tier but does achieve an increase over its previous High Water Mark and under current pricing receives a Grow with Us benefit. The Exchange proposes to decrease its rebate for executions of Professional, Firm, and Market Maker orders that qualify for the NBBO Setter Rebate by a Member that qualifies for the lower tier applicable to Members with an ADV equal to or greater than 0.25% of average TCV but not the 0.75% of average TCV that also show a minimum of 10 basis points TCV improvement over their previous high water mark, as proposed above, from $0.08 per contract to $0.05 per contract. The Exchange also proposes to add a rebate for executions of Professional, Firm, and Market Maker orders that qualify for the NBBO Setter Rebate by a Member that qualifies for the middle tier applicable to Members with an ADV equal to or greater than 0.75% of average TCV but not the

1.25% of average TCV that also show a minimum of 10 basis points TCV improvement over their previous high water mark, as proposed above, of $0.08 per contract.

(vii) Non-Customer Fees for Removing Liquidity in non-Penny Pilot Securities

The Exchange currently charges a fee of $0.80 per contract for Professional, Firm, and Market Maker orders that remove liquidity from BATS Options in non-Penny Pilot Securities. The Exchange proposes to increase the fee for Professional, Firm, and Market Maker orders that remove liquidity from BATS Options in non-Penny Pilot Securities from $0.80 per contract to $0.84 per contract.

(viii) Rebates for Adding Liquidity in non-Penny Pilot Securities

The Exchange currently provides a rebate of $0.75 per contract for Customer orders that add liquidity to BATS Options in non-Penny Pilot Securities. The Exchange also currently provides a rebate of $0.70 per contract for Professional, Firm, and Market Maker orders that remove liquidity from BATS Options in non-Penny Pilot Securities.

The Exchange proposes to increase the rebate for Customer orders that add liquidity to BATS Options in non-Penny Pilot Securities from $0.75 per contract to $0.80 per contract. The Exchange also proposes to decrease the rebate for Professional, Firm, and Market Maker orders that add liquidity to BATS Options in non-Penny Pilot Securities from $0.70 per contract to $0.60 per contract.

(ix) Eliminating the Enhanced NBBO Setter Rebate

In order to further incentivize aggressive liquidity by incenting displayed size of contracts, the Exchange implemented the Enhanced NBBO Setter Rebate on June 1, 2012. The Enhanced NBBO Setter Rebate provides twice the rebate for executions that qualify for an NBBO Setter Rebate and result from an order with a displayed size that equals or exceeds 25 contracts. Due to limited customer participation, however, the Exchange proposes to eliminate the Enhanced NBBO Setter Rebate altogether. Over the implementation period, participation has been low, and eliminating the Enhanced NBBO Setter Rebate will act to simplify the Exchange's fee schedule while eliminating an underutilized pricing program.

(x) Executions on Away Options Exchanges

The Exchange proposes to change pricing with respect to orders routed to away options exchanges. 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").

The Exchange currently has two categories for the Nasdaq Options Market ("NOM") under which it charges: (i) a fee of $0.50 per contract for Customer orders and $0.57 per contract for Professional, Firm, or Market Maker orders routed to and executed at NOM in all options other than Specified Symbols; [14] and (ii) a fee of $0.90 per contract for Customer orders and $0.95 per contract for Professional, Firm, or Market Maker orders routed to and executed at NOM in Specified Symbols.

Based on recent changes to NOM pricing,[15] including the elimination of the above described unique pricing for Specified Symbols, the Exchange proposes to eliminate the distinction between Specified Symbols and non-Specified Symbols in its fee schedule. In

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14 As defined on the Exchange's fee schedule, the term "Specified Symbols" refers to FB, GOOG, and GRPN.

15 Securities Exchange Act Release No. 68029 (October 10, 2012), 75 FR 63384 (October 16, 2012) (SR-NASDAQ-2012-114).

addition to this change, the Exchange is proposing to move NOM Penny Pilot Securities into the grouping with C2 Options Exchange, Inc. ("C2"), NYSE Arca, Inc. ("ARCA") in Make/Take Issues, and NASDAQ OMX PHLX LLC ("PHLX") in Make/Take Issues and to eliminate the grouping that currently includes only NOM in Penny Pilot Securities.

As of November 1, ARCA is also adjusting its pricing structure to more closely resemble that of NOM in non-Penny Pilot Securities.[16] Specifically, ARCA is proposing to charge $0.79 for Customer orders that remove liquidity in non-Penny Pilot Securities and $0.85 for Professional, Firm, and Market Maker orders that remove liquidity in non-Penny Pilot Securities. As such, the Exchange proposes to move ARCA into a grouping with NOM in non-Penny Pilot Securities and to charge fees for Customer orders executed at ARCA in Classic Issues of $0.90 per contract and to charge fees for Professional, Firm, and Market Maker orders executed at ARCA in Classic Issues of $0.95 per contract. In order to more accurately describe ARCA's pricing structure, the Exchange also proposes to change references to ARCA (Classic Issues) to ARCA (non-Penny Pilot Securities) and references to ARCA (Make/Take Issues) to ARCA (Penny Pilot Securities).

The Exchange generally imposes routing fees that approximate the Exchange's Routing Costs, however, in order to maintain some level of consistency in its fee schedule, the Exchange does not always adjust its routing fees when an away options exchange adjusts its pricing. Because the Exchange doesn't always adjust its routing fees to be perfectly in line with away options exchanges, over time, the Exchange can end up charging less for executions at the away options exchanges than are required to cover its Routing Costs. Currently, this is the case for

[16] SR-NYSEArca-2012-121 (October 25, 2012).

several of the away options exchange groupings. As such, the Exchange is proposing the following:

- To increase the fees for Customer orders executed at NYSE MKT LLC ("AMEX"), BOX Options Exchange LLC ("BOX"), Chicago Board Options Exchange, Inc. ("CBOE"), NASDAQ OMX BX, Inc. ("BX Options"), International Securities Exchange, LLC ("ISE") (Classic issues), and PHLX (Classic issues) from $0.10 per contract to $0.11 per contract.
- To increase the fees for Professional, Firm, and Market Maker orders executed at AMEX, BOX, CBOE, BX Options, ISE (Classic issues), and PHLX (Classic issues) from $0.55 per contract to $0.57 per contract.
- To increase the fees for Professional, Firm, and Market Maker orders executed at ISE in Make/Take issues from $0.55 per contract to $0.57 per contract.
- To increase the fees for Customer orders executed at C2, ARCA in Make/Take issues, PHLX in Make/Take issues, and NOM in Penny Pilot Securities from $0.50 per contract to $0.52 per contract.
- To increase the fees for Professional, Firm, and Market Maker orders executed at C2, ARCA in Make/Take issues, PHLX in Make/Take issues, and NOM in Penny Pilot Securities from $0.55 per contract to $0.57 per contract.

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.[17] Specifically, the

[17] 15 U.S.C. 78f.

Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] 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 continuing to provide additional financial incentives to Members that demonstrate an increase over their previous High Water Mark offers an additional, flexible way to achieve financial incentives from the Exchange and encourages Members to add increasing amounts of liquidity to BATS Options each month. The Grow with Us pricing program, therefore, is reasonable in that it rewards a Member's growth patterns. Such increased volume increases potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. The increased liquidity also benefits all investors by deepening the BATS Options liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Grow with Us program is also fair and equitable and not unreasonably discriminatory in that it is available to all Members, even for Members that do not meet the Exchange's volume based tiers. More specifically, the heightened requirement to achieve a 10 basis point, rather than 5 basis point, improvement over a Member's previous High Water Mark is reasonable because this higher level will incentivize growth by Members of BATS Options with a more meaningful threshold. The proposed increase to the basis point requirement is fair and equitable and not unreasonably

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[18] 15 U.S.C. 78f(b)(4).

discriminatory due to the fact that Grow with Us pricing is available to all Members. As noted above, the Exchange believes that this pricing structure is reasonable and not unreasonably discriminatory because the Exchange is incentivizing Members to increase their activity on BATS Options, to the benefit of other BATS Options participants.

Volume-based rebates and fees such as the ones maintained by BATS Options, and as amended by this proposal, have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts 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/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. Accordingly, the Exchange believes that the proposed changes to the tiered pricing structure are not unfairly discriminatory because they are consistent with the overall goals of enhancing market quality. Similarly, the Exchange believes that continuing to base its tiered fee structure 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.

Specifically, the proposals to adjust the thresholds of existing volume tiers, add additional volume tiers, and to modify the rebates paid for Customer orders that add liquidity to the BATS Options order book in Penny Pilot Securities are reasonable in that they are consistent with the aforementioned goal of promoting market quality because they reward Members for contributing to the growth of and liquidity available on BATS Options, thereby furthering the price discovery process. The Exchange believes that the proposed adjustment to the tiered pricing structure is reasonable, fair and equitable because the threshold has been lowered to permit additional Members to qualify for the lowest tier. With respect to the proposed reduction of the rebate for

Members that do not qualify for tiered pricing on Customer orders in Penny Pilot Securities, but that do qualify for Grow with Us pricing, the Exchange believes this adjustment is reasonable because the threshold to achieve the enhanced rebate at the lowest tier is relatively low and, as proposed, has become lower. Further, in order to incentivize Members to achieve the rebates applicable to the lowest tier, the Exchange has increased this rebate. In sum, the Exchange believes that the proposed changes to tiered Customer rebates in Penny Pilot Securities are reasonable, fair and equitable because, as a general matter, they are geared at improving incentives for Members that are truly enhancing the market quality of BATS Options. Further, the Exchange does not believe that the proposed changes are unreasonably discriminatory because tiered rebates for Customer orders are available to all Members on an equal basis.

The Exchange also believes that the proposed increase to rebates paid for Professional, Firm or Market Maker orders in Penny Pilot Securities is reasonable in that it will further incentivize Members to add liquidity to BATS Options and will help to offset proposed increases in fees. The Exchange further believes that the proposed increase to rebates for such orders is fair and equitable and not unreasonably discriminatory because such rebates are available to all Members that submit Professional, Firm or Market Maker orders to the Exchange.

Despite the increases in fees for all orders that remove liquidity (Customer, Professional, Firm and Market Maker orders) in Penny Pilot Securities, the Exchange believes that its proposed fee structure is reasonable as the Exchange's standard fees in Penny Pilot Securities remain generally equivalent to standard fees charged by other markets with similar fee structures, such as NYSE Arca and NOM. The increase in fees is also reasonable because the Exchange has also proposed to increase the majority of the rebates available for orders that qualify for volume-based tier or the Grow with Us program. Similarly, the Exchange believes that the increases are fair and equitable because 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. 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. While Professional, Firm and Market Maker orders will be assessed comparably higher transaction fees than those assessed to other Customer orders, as proposed, the Exchange does not believe that this pricing is unreasonably discriminatory because the securities markets generally, and the Exchange in particular, have historically aimed to improve markets for investors and develop various features within the market structure for customer benefit. The Exchange also notes that Professional, Firm and Market Maker orders qualify for additional rebates under the Exchange's NBBO Setter Program, which is not applicable to Customer orders.

The Exchange's proposals to modify the NBBO Setter Program's rebates are necessary because such modifications align with the other modifications to the Exchange's tier structure (i.e., by creating a third tier). Although some rebates provided under the NBBO Setter Program, as amended, will be less than under the previous structure, this change is reasonable due to the increased rebate provided to all Professional, Firm and Market Maker orders. In particular, the elimination of the $0.03 rebate for orders eligible for the NBBO Setter Program submitted by Members that do not qualify for the lowest tier but that do qualify for Grow with Us pricing is reasonable because such members will receive an additional $0.03 rebate on all of their Professional, Firm and Market Maker orders. Despite the fact that Customer orders are not eligible for NBBO Setter Rebates, the proposed modifications to NBBO Setter Rebates are fair and equitable and not unreasonably discriminatory because in many cases, Customer orders that do not set the NBBO are eligible for even higher rebates than certain Professional, Firm, and Market Maker orders that did set the NBBO and receive a NBBO Setter Rebate.

As explained above, the Exchange believes that elimination of the Enhanced NBBO Setter Rebate is reasonable, fair and equitable and not unreasonably discriminatory because this enhanced rebate program has not been widely utilized and eliminating the Enhanced NBBO Setter Rebate will act to simplify the Exchange's fee schedule while also allowing the Exchange to allocate resources devoted to the program to other pricing programs.

The Exchange believes that its proposed modifications to fees and rebates for non-Penny Pilot Securities are reasonable in light of the benefits to Members to the extent the corresponding rebates, which are still significantly higher than typical rebates available for adding liquidity, incentivize aggressive quoting that will result in better execution prices, as described in further detail below. The Exchange also believes that providing financial incentives to achieve aggressive quoting and incentivize liquidity providers to narrow the spread while charging more to those who realize the economic benefit of that narrower spread is a fair and equitable approach to pricing. The Exchange's proposal to increase fees and to reduce rebates for Professional, Firm and Market Maker orders in non-Penny Pilot Securities is reasonable, fair and equitable for several reasons, including that the proposed fee is only a slight increase to existing fees and that the Exchange has proposed other changes to the fee schedule in which Professional, Firm, and Market Maker orders will receive additional rebates. The proposal to increase the rebate for Customer orders in non-Penny Pilot Securities, in turn, is reasonable because it is intended to encourage Members to submit Customer orders in non-Penny Pilot Securities to the Exchange. Finally, the Exchange notes that in non-Penny Pilot Securities it is continuing to charge more for, and rebating less to, non-Customer orders than Customer orders, and the proposed changes will increase the gap between such orders. The Exchange believes that this proposed pricing structure for non-Penny Pilot Securities is not unreasonably discriminatory because it accounts for the difference of assumed information and sophistication level between the different trading capacities. Since Professional, Firm and Market Maker capacity members are assumed to have more informed (and hence less desirable to counterparties) orders, those orders have a slightly higher transaction cost associated with them. The Exchange further notes that the charges and rebates to all non-Customer orders is equivalent regardless of capacity and therefore non-discriminatory.

In the current U.S. options market, many of the contracts are quoted in pennies. Under this pricing structure, the minimum penny tick increment equates to a $1.00 economic value difference per contract, given that a single standardized U.S. option contract covers 100 shares of the underlying stock. Where contracts are quoted in $0.05 increments, the value per tick is $5.00 in proceeds to the investor transacting in these contracts. Liquidity rebate and access fee structures on the make-take exchanges, including BATS, for securities quoted in penny increments are commonly in the $0.30 to $0.45 range. A $0.30 rebate in a penny quoted security is a rebate equivalent to 30% of the value of the minimum tick. A $0.45 charge in a penny quoted security is a charge equivalent to 45% of the value of that minimum tick. In other words, in penny quoted securities, where the price is improved by one tick with an access fee of $0.45, an investor paying to access that quote is still $0.55 better off than trading at the wider spread, even without the access fee ($1.00 of price improvement - $0.45 access fee = $0.55 better economics). This math is equally true for securities quoted in wider increments. Rebates and access fees near the $0.80 level equate to only 20% of the value of the minimum tick. An investor transacting a single contract in a non-penny quoted security quoted a single tick tighter than the rest of the market, and paying an access fee of $0.75, is receiving economic benefit of $4.25 ($0.05 improved tick = $5.00 in proceeds - $0.75 access fee = $4.25). The Exchange believes that encouraging liquidity providers to quote more aggressively and narrow the spread in non-Penny Pilot Securities will continue to benefit investors by improving the overall economics of the resulting transactions that occur on the Exchange, even if the access fee paid in connection with such transactions is higher. Accordingly, the Exchange believes that the proposed fees and rebates for non-Penny Pilot Securities are reasonable.

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that this pricing model, based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. As noted above, in order to maintain some level of consistency in its fee schedule, the Exchange does not always adjust its routing fees when an away options exchange adjusts its pricing, and thus, over time, the Exchange can end up charging less for executions at the away options exchanges than are required to cover its Routing Costs. The proposed increases to fees, therefore, are reasonable, fair and equitable because they will generally allow the Exchange to provide routing services at levels that allow the Exchange to cover applicable Routing Costs rather than subsidizing routing by Exchange Members. The Exchange believes that its routing fees are not unreasonably discriminatory because they apply equally to all Members and are intended to provide a service to Members that is generally at the same cost that the Exchange incurs for routing. 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 will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Particularly with respect to routing fees, the proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants, and absent such change, the Exchange would be subsidizing routing to other options exchanges by Exchange participants. The Exchange also notes that Users may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[19] With respect to the changes to fees and rebates for executions on the Exchange that are set forth in this proposal, the Exchange does not believe that any such changes burden competition, but instead, enhance competition, as they are intended to increase the competitiveness of, and draw additional volume to, the Exchange's platform. As stated above, 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 set by the Exchange to be excessive.

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19 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).

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[20] and Rule 19b-4(f)(2) thereunder,[21] 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 proposed rule change 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-2012-043 on the subject line.

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[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 240.19b-4(f)(2).

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-2012-043. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of BATS. 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-2012-043, 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.[22]

Kevin M. O'Neill
Deputy Secretary

[22] 17 CFR 200.30-3(a)(12).