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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [14] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective on the same date that FINRA implements the changes to FINRA Rules 7440, 7450, and 5320.[15] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, designates the proposal operative upon filing.[16] Waiving the 30-day operative delay will enable the Exchange to implement the proposed rule change on the same day that FINRA implements the changes to its rules on which the proposed rule change is based, thereby eliminating the potential for different regulatory requirements for members of both FINRA and the Exchange.

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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–09 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–NYSE–2012–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSE–2012–09, and should be submitted on or before May 9, 2012.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–9288 Filed 4–17–12; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] FINRA has announced that it will implement the changes on April 16, 2012. *See supra* note 9.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66794; File No. SR–BATS–2012–015]

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.

April 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 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.

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.

[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.

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) Delineate fees and rebates applicable to executions of options classes subject to the penny pilot program as described below (''Penny Pilot Securities'') from the fees and rebates for all other options classes; (ii) modify the fees charged by the Exchange to remove liquidity from Exchange's options platform (''BATS Options'') in Penny Pilot Securities; (iii) modify the rebates provided by the Exchange for Customer [6] orders that add liquidity to BATS Options; (iv) adopt fees and rebates for executions in non-Penny Pilot Securities; and (v) modify the Quoting Incentive Program (''QIP''), which is a program intended to incentivize sustained, aggressive quoting on BATS Options. The Exchange also proposes minor structural changes to the Options Pricing section of the Exchange's fee schedule, including movement and re-numbering of certain footnotes.

(i) Penny Pilot/Non-Penny Pilot Pricing

The Exchange proposes to adopt different fees for those options classes that qualify as Penny Pilot Securities pursuant to Exchange Rule 21.5, Interpretation and Policy .01 and all other options classes. Delineating between classes in Penny Pilot Securities and all other options classes is consistent with pricing structures at most other options exchanges, and recognizes the fundamental difference in liquidity and quoted spreads between options that are quoted in penny increments and those that are not. In addition to the specific fees outlined below, the Exchange proposes to adopt a definition for Penny Pilot Securities, defining such options as those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01, which is the Exchange Rule that codifies the penny pilot program for BATS Options.

(ii) Fees To Remove Liquidity

The Exchange currently charges $0.44 per contract for Professional,[7] Firm and Market Maker [8] orders that remove liquidity from the BATS Options order book. The Exchange proposes to raise the fee to $0.45 per contract for Professional, Firm and Market Maker orders that remove liquidity from the BATS Options order book and to apply this fee to all Penny Pilot Securities. At the same time, however, the Exchange proposes to apply the ''Grow with Us'' pricing program to Professional, Firm and Market Maker orders that remove liquidity from the BATS Options order book in Penny Pilot Securities. Accordingly, if a Member shows a minimum of 5 basis points total consolidated volume (''TCV'') [9] improvement over the Member's previous highest monthly TCV on BATS Options, or ''High Water Mark,'' then the Exchange will continue to charge such Member $0.44 per contract, rather than the increased fee of $0.45 per contract, for Professional, Firm and Market Maker orders in Penny Pilot Securities. 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.[10]

With respect to Customer orders, the Exchange currently charges standard fees of $0.44 per contract for Customer orders that remove liquidity from BATS Options, subject to potential reduction for any Member with an average daily volume (''ADV'') [11] of 0.30% or more of average TCV or ADV equal to or greater than 1% average TCV on BATS Options, respectively. The Exchange does not propose to modify its standard fee of $0.44 per contract for Customer orders that remove liquidity from BATS Options. The Exchange is proposing, however, to increase the fees for Customer orders that remove liquidity from BATS Options for Members that meet the qualifications for a discounted fee pursuant to the tiered pricing structure, to modify the pricing for Members that qualify for Grow with Us pricing, and to apply this pricing to Penny Pilot Securities only, as described below.

Pursuant to the Exchange's tiered pricing structure Members can realize lower liquidity removal fees if such Members have an ADV equal to or greater than 0.30% of average TCV. For Members reaching this volume threshold, the Exchange currently charges a fee of $0.36 per contract for Customer orders that remove liquidity from BATS Options. The Exchange proposes to increase the fee for Members that have an ADV equal to or greater than 0.30% of average TCV to $0.40 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities. Similarly, Members can realize lower liquidity removal fees if such Members have an ADV equal to or greater than 1% of average TCV. For Members reaching this volume threshold, the Exchange currently charges a fee of $0.28 per contract for Customer orders that remove liquidity from BATS Options. The Exchange proposes to increase the fee for Members that have an ADV equal to or greater than 1% of average TCV to $0.36 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities.

In addition, pursuant to the Grow with Us pricing program, the Exchange provides a Member with one-half of the economic benefit such Member would achieve if such Member were in the next highest volume tier to the extent such Member shows a minimum of 5 basis points TCV improvement over the Member's High Water Mark. The Grow with Us pricing program, as described above, currently applies to various fees and rebates, including Customer orders

[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] As defined in Rule 16.1, the term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] As set forth on the Exchange's fee schedule, and consistent with the definition of a Customer order, classification as a ''Firm'' or ''Market Maker'' order depends on the identification by a Member of the applicable clearing range at the OCC.

[9] 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.

[10] For example, assume that for the fourth quarter of 2011, a Member has an ADV of 0.10% of average TCV. Such Member would not qualify for volume tier pricing applicable to Members with an ADV of 0.30% of average TCV. However, if, in April of 2012, such Member achieves an average TCV of 0.15% on BATS Options, such Member will receive one-half of the economic benefit such Member would receive if the Member had reached the 0.30% TCV volume tier and the Member's new High Water Mark will now be 0.15%.

[11] 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.

that remove liquidity. The Exchange proposes to modify the Grow with Us fees to account for the changes proposed above. Specifically, 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 currently assessed a fee of $0.40 per contract for Customer orders that remove liquidity from BATS Options (i.e., halfway between the standard fee of $0.44 per contract and the fee of $0.36 charged to Members that reach the 0.30% TCV tier). Due to the proposed changes described above, the Exchange proposes to modify this fee to $.042 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities (i.e., halfway between the standard fee of $0.44 per contract and the fee of $0.40 charged to Members that reach the 0.30% TCV tier). Similarly, 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 will be assessed a fee of $0.38 per contract for Customer orders that remove liquidity from BATS Options in Penny Pilot Securities (i.e., halfway between the $0.40 per contract charged to Members that reach the 0.30% TCV tier and the $0.36 per contract charged to Members that reach the 1% TCV tier).

(iii) Customer Rebates for Adding Liquidity

The Exchange currently provides a rebate of $0.30 per contract for Customer orders that add liquidity to the BATS Options order book. The Exchange proposes to maintain this standard rebate but to further increase rebates to Members pursuant to volume thresholds analogous to those applied to fees for removing liquidity. First, the Exchange proposes to increase the rebate applicable to Members with an ADV equal to or greater than 0.30% of average TCV from a rebate of $0.40 per contract to a rebate of $0.42 per contract for Customer orders that add liquidity to the BATS Options order book. Second, Exchange proposes to adopt a volume tier applicable to Members with an ADV equal to or greater than 1% of average TCV from a rebate of $0.42 per contract to a rebate of $0.44 per contract for Customer orders that add liquidity to the BATS Options order book. Finally, the Exchange proposes to modify its Grow with Us pricing program to Customer orders that add liquidity in order to ensure that all Grow with Us rebates are one-half of the applicable economic benefit received by the next tier. Accordingly, 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 will be provided a rebate of $0.36 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities (i.e., halfway between the standard rebate of $0.30 per contract and the rebate of $0.42 per contract provided to Members that reach the 0.30% TCV tier), which is an increase from the current rebate of $0.35 per contract. Similarly, 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 will be provided a rebate of $0.43 per contract for Customer orders that add liquidity to BATS Options in Penny Pilot Securities (i.e., halfway between the $0.42 per contract provided to Members that reach the 0.30% TCV tier and the $0.44 per contract provided to Members that reach the 1% TCV tier).

The Exchange is not proposing to modify the rebates provided for Professional, Firm and Market Maker orders, other than to make clear that such rebates on the fee schedule differ between those provided with respect to Penny Pilot Securities and all other securities.

(iv) Pricing for Non-Penny Pilot Securities

As noted above, the Exchange proposes to adopt separate pricing for Non-Penny Pilot Securities. Specifically, the Exchange proposes to adopt a fee of $0.75 per contract for Customer orders that remove liquidity from the BATS Options order book in non-Penny Pilot Securities and a rebate of $0.75 per contract for Customer orders that add liquidity to the BATS Options order book in non-Penny Pilot Securities. The Exchange proposes to adopt a fee of $0.80 per contract for Professional, Firm and Market Maker orders that remove liquidity from the BATS Options order book in non-Penny Pilot Securities and a rebate of $0.70 per contract for Professional, Firm and Market Maker orders that add liquidity to the BATS Options order book in non-Penny Pilot Securities. The Exchange will apply additive rebates that are earned through the QIP (as described below) and/or the Exchange's NBBO Setter Program [12] to executions in non-Penny Pilot Securities. However the Exchange is not currently proposing to adopt other tiered pricing for non-Penny Pilot Securities.

As described in further detail below, the Exchange's proposal to implement the above-described fees is intended to attract better priced liquidity to the Exchange by incenting liquidity providers to post aggressively priced liquidity on the Exchange with an enhanced rebate structure. The Exchange believes that the differences that can be achieved by narrowing spreads in non-Penny Pilot Securities will justify the increased fees to remove liquidity.

(v) Modification to Quoting Incentive Program

BATS Options offers a Quoting Incentive Program (''QIP''), through which Professional, Firm and Market Maker orders receive a rebate of $0.05 per contract, in addition to any other applicable liquidity rebate, for executions subject to the QIP. Qualifying Customer order executions in products subject to the QIP currently receive an additional rebate of $0.03 per contract. The Exchange proposes to reduce the rebate for Customer orders receiving executions in products subject to the QIP from an additional rebate of $0.03 per contract to an additional rebate of $0.01 per contract. This modification in pricing will allow the Exchange to increase the tiered rebate structure for Customer orders as described above, which will result in increases of either $0.01 or $0.02 per contract on all executions in Penny Pilot Securities for Members reaching any volume tier or qualifying for Grow with Us pricing.

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. The Exchange proposes to add additional clarity regarding the QIP qualification by making clear that $0.03 and $5.00 price range qualification is determined by the last trade in an option series each day. Option series which do not have an execution are removed from the following day's Quoting Incentive Program calculations.

[12] The NBBO Setter Program is a program that provides additional rebates for executions resulting from orders that add liquidity that set either the NBB or NBO.

All other aspects of the QIP currently in place will remain the same. As is true under the current operation of the QIP, the Exchange will determine whether a Member 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 60% criteria or a Member that is not registered as a Market Maker meets the 70% criteria, the Exchange will provide the additional rebate for all executions subject to the QIP executed by that 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. The Exchange is not proposing to impose any ADV requirements in order to qualify for the QIP 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.[13] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[14] 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 a 5 basis point 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 thereby 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 in that it is available to all Members and will expand the applicability of the Exchange's tiered pricing structure, even for Members that do not meet the Exchange's volume based tiers. The increase to fees for Professional, Firm and Market Maker orders that remove liquidity in Penny Pilot Securities is fair and equitable because it will allow the Exchange to offer a financial incentive to those Members who qualify for the Grow with Us program based on increased liquidity on BATS Options and such Members will not realize any increase to fees. The fee increase is reasonable in that it is a small increase and the fee to remove liquidity from BATS Options for Professional, Firm and Market Maker orders is still equivalent to the standard fee charged by other markets with similar fee structures, such as NYSE Arca Options and the Nasdaq Options Market (''NOM'').

Volume-based rebates such as the ones maintained by the Exchange have been widely adopted in the cash equities markets and are increasingly in use by the options exchanges, and are equitable because they are open to all Members on an equal basis and provide 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 continued offering of volume-based rebates for Customer orders in Penny Pilot Securities is not unfairly discriminatory because it is 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.

Despite the increases in fees for Customer orders in Penny Pilot Securities that remove liquidity applicable to Members that meet one of the Exchange's tier levels or qualify for Grow with Us pricing, the Exchange believes that its proposed fee structure is reasonable 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 Options and NOM. Further, 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. The increase in fees is also reasonable because the Exchange has also proposed to increase the rebates available for Customer orders from Members that qualify for volume-based tier or the Grow with Us program. The increase to rebates for Customer orders in Penny Pilot Securities is reasonable as it will permit certain Customer orders to qualify for higher rebates, and is fair and equitable because the volume-based tiers are available to all Members on an equal basis. 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. Also due to the increased levels of rebates for Customer orders in Penny Pilot Securities, the Exchange believes that the proposed modification to the Quoting Incentive Program is fair and equitable and not unreasonably discriminatory. Although the proposed QIP rebate for qualifying Customer orders is slightly lower than is currently offered and will continue to be lower than the QIP rebate provided to Professional, Firm and Market Maker orders, the Exchange believes that this distinction is reasonable and not unreasonably discriminatory because of the offsetting increase to rebates on Customer orders. The Exchange also believes that continuing to maintain a slightly lower threshold for meeting the QIP for 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 is 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.

The Exchange believes that its proposed fees for non-Penny Pilot

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

Securities are reasonable in light of the benefits to Members to the extent the corresponding rebates, which are significantly higher than rebates available from the Exchange's competitors, 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. Finally, the Exchange notes that in non-Penny Pilot Securities it is charging slightly more for, and rebating slightly less to, non-Customer orders than Customer 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 $0.80, is receiving economic benefit of $4.20 ($0.05 improved tick = $5.00 in proceeds − $0.80 access fee = $4.20). The Exchange believes that encouraging liquidity providers to quote more aggressively and narrow the spread in non-Penny Pilot Securities will 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.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

No written comments were solicited or received.

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

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.

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 email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2012–015 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–2012–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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–2012–015 and should be submitted on or before May 9, 2012.

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

Kevin M. O'Neill,

Deputy Secretary.

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

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).