necessary or appropriate in furtherance of purposes of the Act.

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 with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4 [10] thereunder, because it establishes a due, fee, or other charge imposed by CBOE on any person in that the subsidy arrangement relates to fees charged by certain order routing system providers for use of their routing systems.

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–CBOE–2010–117 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–CBOE–2010–117. 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 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–CBOE–2010–117 and should be submitted on or before January 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–92 Filed 1–6–11; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63632; File No. SR–BATS–2010–038]

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.

January 3, 2011

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 December 21, 2010, 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 modify its fee schedule applicable to Members [5] of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on January 3, 2011.

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

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

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

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

1. Purpose

The Exchange proposes to modify the "Options Pricing" section of its fee schedule to: (i) Modify its pricing for Customer [6] orders by decreasing the fee for removing liquidity from the Exchange and increasing the rebate for adding liquidity to the Exchange; (ii) add a rebate specifically for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO") where the Member meets certain

[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.

[6] 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 OCC.

average daily volume requirements; (iii) modify its pricing for Firm [7] and Market Maker [8] orders by increasing the fee for all orders that remove liquidity while also increasing the rebate for orders that add liquidity by either $0.05 or $0.15 per contract depending on the capacity of the remover of the liquidity; (iv) modify its pricing for Customer Directed ISO [9] orders; and (v) establish fees that will apply to all best execution routing strategies offered by the Exchange [10] and to Destination Specific Order [11] routing strategies in order to eliminate the disparate pricing between the two types of routing.

(i) Customer Pricing

The Exchange currently charges $0.30 per contract for all orders that remove liquidity from the BATS Exchange options market ("BATS Options") and pays $0.20 per contract for all orders that add liquidity to BATS Options. The Exchange proposes to both lower the fee for removing liquidity to $0.25 per contract and raise the rebate for adding liquidity to $0.25 for Customer orders. The Exchange believes that this change will generate an increase in Customer order flow and will provide more liquidity on the Exchange.

(ii) NBBO Setter Rebate

The Exchange proposes to adopt for its options platform a $0.50 per contract rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the "NBBO Setter Rebate") [12] so long as the Member submitting the order achieves an average daily volume of 20,000 contracts executed on the BATS Options book for the calendar month. Average daily volume will be calculated by taking the total number of contracts traded on the Exchange (which excludes routed orders) during the calendar month by the Member divided by the number of trading days in the month. For example, in January of 2011, a month with twenty (20) trading days, a Member must trade at least 400,000 contracts (20 trading days multiplied by 20,000 contracts per day) in the month to be eligible for the NBBO Setter Rebate. If a Member meets this volume requirement, all of the Member's orders that set the NBB or NBO that were executed in January would be eligible for the NBBO Setter Rebate. The NBBO Setter Rebate supersedes any other applicable liquidity rebates.

The Exchange believes that the proposed NBBO Setter Rebate is analogous to similar proposals designed to encourage market participants to submit aggressively priced orders previously implemented at other options exchanges.[13] The Exchange also believes that its proposed use of a volume threshold to qualify for the rebate is substantively identical to tiered pricing structures that are in place at other exchanges.[14] Additionally, the Exchange believes that the proposed NBBO Setter Rebate will incentivize the entry of more aggressive orders which will create tighter spreads, benefitting both Members and public investors.

(iii) Firm and Market Maker Pricing

As mentioned above, the Exchange currently charges $0.30 per contract for orders that remove liquidity and pays $0.20 per contract for orders that add liquidity. The Exchange proposes to raise the fee for removing liquidity to $0.35 for Firm and Market Maker orders. The Exchange also proposes to increase the rebate for Firm and Market Maker orders that are removed by Customer orders to $0.25 per contract and to increase the rebate for orders that are removed by Firm or Market Maker orders to $0.35 per contract. The removing Member's fee will be determined without regard to the capacity of the adding party.

The Exchange believes that the proposed change to the Firm and Market Maker pricing will encourage Firms and Market Makers to add more liquidity to the Exchange. The Exchange also believes that, because Members can neither see the capacity of orders in the Exchange's order book nor determine the capacity of the Member that removes an order,[15] the proposal will not disadvantage public investors or Members. Lastly, the Exchange believes that the proposed change to the fee schedule is substantively similar to a pricing plan in place at NASDAQ OMX PHLX.[16]

(iv) Directed ISO Pricing

The Exchange currently charges $0.50 per contract for a Customer Directed ISO transaction and $0.60 per contract for Firm and Market Maker Directed ISO transactions. The Exchange proposes to further simplify its pricing for Directed ISOs by setting flat rates for Directed ISOs that bypass the Exchange's order book and execute at away venues, regardless of capacity. As proposed, the charge for all Directed ISO transactions will be $0.60 per contract.

(v) Routing Pricing

The Exchange proposes to adjust its fees for options order routing and simplify its routing pricing by eliminating the different pricing between Destination Specific Orders and Standard Best Execution Routing. Currently, the Exchange charges a flat fee per contract for standard routing and a fee based on the pricing model of the destination exchange for Destination Specific Orders. In most instances, the pricing for Destination Specific Orders results in Members being charged lower execution fees than if the orders were routed directly by the Member to an away venue. Rather than continuing to subsidize its Members' routing strategies, the Exchange proposes to adjust routing fees to more closely reflect the Exchange's cost of executing those orders at the away markets. Specifically, the Exchange proposes to assess a routing fee of $0.54 per contract for all Firm and Market Maker orders that are routed to any away exchange pursuant to Standard Best Execution Routing or Destination Specific Order

[7] As defined on the Exchange's fee schedule, the term "Firm" applies to any transaction identified by a member for clearing in the Firm range at the OCC.

[8] As defined on the Exchange's fee schedule, the term "Market Maker" applies to any transaction identified by a member for clearing in the Market Maker range at the OCC.

[9] As defined in BATS Rule 21.1(d)(12).

[10] The Exchange's routing strategies are defined in BATS Rule 21.9(a)(2).

[11] As defined in BATS Rule 21.1(d)(7).

[12] 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.

[13] *See* Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25)(notice of filing and immediate effectiveness to amend fees applicable to the International Securities Exchange, including providing increased rebates to market makers for being on the NBB or NBO for at least 80% during a given month); Securities Exchange Act Release No. 61987 (April 27, 2010), 75 FR 24771 (May 5, 2010) (SR–C2–2010–001)(notice of filing and immediate effectiveness to establish fees applicable to C2 Options Exchange, including providing Preferred Market Makers with participation entitlements when they are at the NBBO, regardless of time priority). The Commission notes that Securities Exchange Act Release No. 61987 did not establish any new fees.

[14] *See* Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR–Phlx–2008–08)(notice of filing and immediate effectiveness to amend fees applicable to the Philadelphia Stock Exchange, including adopting a tiered floor broker options subsidy based on meeting specified trading volume requirements).

[15] The Exchange notes that its proposed amendment to Rule 21.1 from Securities Exchange Act Release No. 63403 (December 1, 2010) (SR–BATS–2010–34) to add directed orders will not be subject to the proposed Firm and Market Maker Pricing. The Exchange intends to file a separate fee filing upon approval of the proposed amendment to implement directed order pricing.

[16] *See* Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR–Phlx–2008–08)(notice of filing and immediate effectiveness to amend fees applicable to the Philadelphia Stock Exchange, including adopting a tiered subsidy that does not apply to Customer-to-Customer transactions).

routing. The Exchange proposes to assess the following per contract fees for Customer orders that are routed to the named away exchange: $0.05 for all orders in non-"Make/Take" issues,[17] if applicable, routed to NYSE Amex, NYSE Arca, the Boston Options Exchange, the Chicago Board Options Exchange, the International Stock Exchange, or NASDAQ OMX PHLX; $0.20 for all orders routed to the Chicago Board Options Exchange 2; $0.25 for all orders routed to the International Stock Exchange in Make/Take issues; $0.29 for all orders routed to NASDAQ OMX PHLX in Make/Take issues; $0.48 for all orders routed to NASDAQ Options Market; and $0.49 for all orders routed to NYSE Arca in Make/Take issues.

The Exchange believes that the proposed routing fees are competitive, fair and reasonable, and non-discriminatory in that they approximate the cost to the Exchange of executing routed orders at an away market and are similar to those fees charged by other exchanges. The Exchange also believes that Members will benefit from the simplicity of the pricing structure.

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(b) of the Act.[18] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4)[19] of the Act, 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. As described below, the Exchange believes that its fees and credits are competitive with those charged by other venues.

The various changes to Exchange execution fees, execution rebates and routing fees proposed by this filing are intended to attract order flow to BATS Options by offering competitive pricing, especially for those who add liquidity that sets the NBB or NBO. Most of the changes the Exchange has proposed to its execution fees and rebates will result in reduced fees or increased payments that will benefit Members due to the obvious economic savings and increased revenue those Members will receive and the potential of increased available liquidity at the Exchange. The Exchange notes that it does not currently operate any auctions through which orders are held and broadcast to its membership, nor does the Exchange engage in any payment for order flow practices. Rather, the Exchange is proposing to enhance its transparent market structure with an easy to understand and transparent pricing structure by adding incentives for aggressive quoting. The Exchange believes that its proposed routing rates are, on average, better than or equal to the fees a market participant would pay if routing through another market center. 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. 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 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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[20] and Rule 19b–4(f)(2) thereunder,[21] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

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–2010–038 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–2010–038. 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 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–2010–038 and should be submitted on or before January 28, 2011.

[17] As defined on the fee schedule, Make/Take pricing refers to executions at the identified Exchange under which "Post Liquidity" or "Maker" rebates ("Make") are credited by that exchange and "Take Liquidity" or "Taker" fees ("Take") are charged by that exchange.

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

[19] 15 U.S.C. 78f(b)(4).

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

[21] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–93 Filed 1–6–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63630; File No. SR–BATS–2010–039]

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.

January 3, 2011.

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 December 22, 2010, 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 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 modify its fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Pursuant to the proposed rule change, the Exchange will commence charging fees to Members and non-members for 10G direct circuit connections, change pricing for certain other physical ports, and begin passing through in full certain hardware expenses incurred by the Exchange that are directly related to completing a cross-connect. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on January 3, 2011.

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to establish fees for direct 10G circuit connections, to raise the monthly fees for "physical" ports into the Exchange at the data centers where the Exchange's servers are located, and to pass through in full any hardware costs or connectivity fees incurred by the Exchange that are directly related to completing a cross-connect where the cost or fee exceeds $1,000. The Exchange already provides Members and non-Members four pairs[6] of 1G physical ports free of charge and charges $2,000 per month for each additional single physical port.

The Exchange proposes to provide the option to connect directly with the Exchange via 10G physical ports to any Member or non-member that has been approved to connect to the Exchange. Due to the infrastructure costs associated with providing the additional bandwidth for 10G physical ports, the Exchange proposes to charge $2,500 per month for each single physical 10G port provided by the Exchange to any Member or non-member in any data center. The Exchange's proposal is intended to permit those Members and non-members that require additional bandwidth and wish to establish 10G physical ports to do so if such constituent is willing to pay for such ports. The Exchange notes that other market centers provide similar services to their Members and non-members.[7]

The Exchange also proposes to increase the fee for each 1G physical port used by Members and non-members in excess of the four ports provided free of charge from $2,000 per port each month to $2,500 per port each month. The proposal is intended to account for increasing infrastructure costs associated with providing physical ports while at the same time permitting those Members and non-members that wish to establish additional physical ports do so if such constituents are willing to pay for such ports. Based on the proposal, the change applies to all Exchange constituents with 1G physical connections, including Members that obtain ports for direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, Sponsored Participants, and market data recipients. There are zero non-members and very few Members that currently require more than four physical ports for their operations related to the Exchange and thus, the proposal should not affect many of the Exchange's constituents.

Lastly, the Exchange proposes to pass through in full any hardware costs or connectivity fees incurred that are directly related to completing a cross-connect where the expense to the Exchange billed by a third party exceeds $1,000. The Exchange proposes to pass through the expense as an alternative to the flat installation fees charged by the Exchange's primary competitors. The Exchange does not anticipate that passing through these expenses will affect many of the Exchange's constituents, because the majority of cross-connect completions cost less than $1,000. For this reason, the Exchange proposes to pass-through the charges associated with cross-connect completions that cost more than $1,000 rather than to subsidize these expensive completions by charging an installation fee for all completions regardless of their cost.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it

[22] 17 CFR 200.30–3(a)(12).

[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.

[6] Each pair of ports consists of one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

[7] *See* Securities Exchange Act Release Nos. 62663 (August 9, 2010), 75 FR 49543 (August 13, 2010) (SR–NASDAQ–2010–077) (order approving fees for both 1G and 10G non-co-located port connections); Securities Exchange Act Release No. 62681 (August 10, 2010), 75 FR 50020 (August 16, 2010) (SR–EDGA–2010–06) (order approving fees for both 1G and 10G port connections).

[8] 15 U.S.C. 78f(b)(4).