

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 Exchange 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2011-33 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-CHX-2011-33. 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-CHX-2011-33 and should be submitted on or before February 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66121; File No. SR-NASDAQ-2012-001]

#### Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

January 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 3, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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 NASDAQ. 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 NASDAQ Stock Market LLC proposes to modify Rule 7050, governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

The text of the proposed rule change is set forth below. Proposed new text is italicized and deleted text is in brackets.

\* \* \* \* \*

##### *7050. NASDAQ Options Market*

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

\* \* \* \* \*

(4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the *NasdaqTrader.com* Web site.

Exchange	Customer	Firm	MM	Professional
BATS .....	\$0.[36]50	\$0.55	\$0.55	\$0.[48]50
BOX .....	0.06	0.55	0.55	0.06
CBOE .....	0.06	0.55	0.55	0.26
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDERS .....	0.24	0.55	0.55	0.26
C2 .....	0.50	0.55	0.55	0.51
ISE .....	0.06	0.55	0.55	0.24
ISE Select Symbols* .....	0.18	0.55	0.55	0.34
NYSE Arca Penny Pilot .....	0.50	0.55	0.55	0.50
NYSE Arca Non Penny Pilot .....	0.06	0.55	0.55	0.06
NYSE AMEX .....	0.06	0.55	0.55	0.26
PHLX (for all options other than PHLX Select Symbols) .....	0.06	0.55	0.55	0.26
PHLX Select Symbols** .....	0.30	0.55	0.55	0.46

\* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

\*\* These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

\* \* \* \* \*

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.cchwallstreet.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 aspects of such statements.

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

#### 1. Purpose

NASDAQ proposes to modify Rule 7050 governing fees assessed for option orders entered into NOM but routed to and executed on away markets ("Routing Fees"). Specifically, NASDAQ is proposing to amend its Customer and Professional Routing Fees for orders routed to the BATS Exchange, Inc. ("BATS").

The Exchange currently assesses the following Routing Fees to route orders to BATS: a Customer is assessed \$0.36 per contract; a Firm is assessed \$0.55 per contract; a Market Maker is assessed \$0.55 per contract; and a Professional is assessed \$0.48 per contract. The Exchange proposes to amend the Customer and Professional Routing Fees to BATS to \$0.50 per contract. The other BATS Routing Fees for Firms and Market Makers would remain the same. Recently, BATS announced that it would amend its customer and professional fees to remove liquidity to \$0.44 per contract on January 3, 2012.<sup>3</sup> The Exchange is proposing to amend its Customer and Professional Routing Fees to BATS to \$0.50 per contract to recoup this fee.

In addition, NASDAQ Options Services LLC ("NOS"), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to

away markets NOS is charged a \$0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange is proposing this amendment in order to recoup clearing and transaction charges incurred by the Exchange when Customer and Professional orders are routed to BATS. The Exchange proposes to recoup the \$0.44 per contract customer and professional taker fee for option orders that are routed to BATS along with the \$0.06 clearing fee which is incurred by the Exchange, as explained herein.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

#### 2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that this fee is reasonable because it seeks to recoup costs that are incurred by the Exchange when routing Customer and Professional orders to BATS on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the proposed Routing Fee would enable the Exchange to recover the customer and professional taker fees assessed by BATS, plus clearing fees for the execution of Customer and Professional orders. The Exchange also believes that the proposed Routing Fee is equitable and not unfairly discriminatory because it would be uniformly applied to all Customers and Professionals.

### 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.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>6</sup> 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2012-001 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-NASDAQ-2012-001. 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

<sup>3</sup> See BATS (BZX) Exchange Fee Schedule. See also BATS Options Exchange Pricing Update Effective January 3, 2012 (dated December 15, 2011).

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-NASDAQ-2012-001 and should be submitted on or before February 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66120; File No. SR-BATS-2011-053]

### 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 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 30, 2011, 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<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 [sic] amend the fee schedule applicable to Members<sup>5</sup> and non-members 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, 2012.

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 aspects 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) Adopt the "Grow with Us" pricing program, which will provide Members with some of the benefits of the Exchange's tiered pricing structure to the extent such Members are increasing their activity on the Exchange's options platform ("BATS Options") month over month; (ii) modify the fees charged by the Exchange to remove liquidity from BATS Options; (iii) modify the rebates provided by the Exchange for Customer<sup>6</sup> orders that add liquidity to BATS Options; (iv) modify the NBBO Setter Program, which is a program

intended to incentivize aggressive quoting on BATS Options; (v) modify the Quoting Incentive Program, which is a program intended to incentivize sustained, aggressive quoting on BATS Options; and (vi) adopt fees for logical ports used to access BATS Options for order entry and receipt of market data. The Exchange also proposes minor grammatical changes to conform various sections of the Exchange's Options Pricing section.

###### (i) Grow With Us Pricing Program

The Exchange currently has volume tiers in place that provide Members that satisfy certain volume thresholds with additional rebates on executions for which they have added liquidity to the BATS Options order book and reduced fees for executions that remove liquidity from the BATS Options order book. Further, as described below, the Exchange is proposing to add certain additional tiers to its fee schedule. The Exchange's tiered pricing structure includes and will continue to include a lower tier applicable to Members with an average daily volume ("ADV")<sup>7</sup> equal to or greater than 0.30% of average total consolidated volume ("TCV")<sup>8</sup> and a second tier applicable to Members with an ADV equal to or greater than 1% of average TCV. Pursuant to the "Grow with Us" pricing program, the Exchange proposes to provide 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 previous highest monthly TCV on BATS Options, or "High Water Mark." The Exchange proposes to define 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. 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 January 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

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

<sup>6</sup> 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").