Contract 1 is an agreement between the Postal Service and StartSampling, Inc. (StartSampling) to license and distribute the "Sample Showcase" box.[2] The Sample Showcase box is a Postal Service-branded parcel box designed to contain product samples and other advertising material from companies who wish to advertise their goods and services. *Id.* Attachment B at 1.

On March 3, 2011, the Postal Service filed notice of a change in prices to Parcel Select Contract 1, which amends the terms of the agreement.[3] The Notice includes four attachments:

- Attachment A—a redacted version of Governors' Decision No. 11–3, certification of the Governors' vote, and an analysis of the amendment;[4]
- Attachment B—a redacted version of the Addendum to Licensing and Shipping Services Agreement Between the United States Postal Service and StartSampling Regarding Sample Showcase (Addendum);
- Attachment C—a certified statement of compliance with 39 U.S.C. 3633(a); and
- Attachment D—an application for non-public treatment of materials filed under seal.

The Postal Service included a redacted version of the supporting financial documentation as separate Excel files. The Postal Service filed the unredacted Governors' Decision No. 11–3, Addendum, and supporting financial documentation under seal. *Id.* at 1–2.

Substantively, the Notice seeks approval of the Addendum, which establishes an alternative per-piece charge for Sample Showcase boxes that comply with certain weight and revenue restrictions. The alternative per-piece charge equals the applicable published postage rate and the costs to the Postal Service of procuring the Sample Showcase box. *Id.* Attachment B at 1. StartSampling will pay the Postal Service based on the revenue it derives from companies for placing product samples or other advertising material in the box. For each box mailed at the alternative per-piece charge, the Postal Service will receive a portion of that revenue exceeding StartSampling's costs in mailing the box. *Id.* Attachment B at 2.

The Addendum also enables StartSampling to mail certain Sample Showcase boxes previously prohibited under the agreement as long as those boxes meet specific content restrictions. The Postal Service states that the Addendum will become effective the day the Commission completes its review of the Notice. *Id.* at 1.

II. Notice of Filings

The Commission reopens Docket Nos. MC2011–16 and CP2011–53 to consider the issues raised by the Notice. Interested persons may submit comments on whether the Notice is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, as well as 39 CFR part 3015. Comments are due no later than March 11, 2011. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints John P. Klingenberg to serve as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket Nos. MC2011–16 and CP2011–53 to consider the matters raised by the Notice.
2. Pursuant to 39 U.S.C. 505, John P. Klingenberg is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public for this aspect of these dockets.
3. Comments by interested persons in these proceedings are due no later than March 11, 2011.
4. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–5409 Filed 3–9–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64033; File No. SR–BATS–2011–008]

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.

March 4, 2011.

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 March 1, 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 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 [sic] amend the fee schedule applicable to Members[5] 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 March 1, 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.

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[2] Request of the United States Postal Service to Add Parcel Select Contract 1 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 23, 2010, at 1.

[3] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Parcel Select Contract 1, March 3, 2011 (Notice).

[4] Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Parcel Select Service (Governors' Decision No. 11–3), February 28, 2011.

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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.

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 a definition for average daily volume, or "ADV"; (ii) introduce a tiered pricing structure applicable to the fees for removing liquidity from the BATS options market ("BATS Options"); (iii) expand and modify the program that provides a rebate specifically for orders that set either the national best bid (the "NBB") or the national best offer (the "NBO") subject to average daily volume requirements; and (iv) make clarifying changes to the standard routing section of the fee schedule.

(a) Definition of ADV

In order to accommodate certain changes described below, the Exchange proposes to adopt a definition of average daily volume, or ADV, for purposes of the fee schedule. The Exchange is not proposing any substantive change to its calculation of ADV, which is currently applicable only to the NBBO Setter Rebate, as described below. Instead, the Exchange is proposing the definition to provide more clarity and for ease of reference throughout the fee schedule. As proposed, ADV will mean average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis. The Exchange proposes to make clear in the definition of ADV that routed contracts are not included in the Exchange's calculation of ADV, but rather, only volume executed on the Exchange counts towards a Member's ADV.

(b) Tiered Pricing To Access Liquidity

The Exchange currently charges $0.25 per contract for customer orders and $0.35 per contract for Firm and Market Maker orders that remove liquidity from BATS Options. The Exchange proposes to increase the standard fee for removing liquidity to $0.28 per contract for customer orders and $0.38 per contract for Firm and Market Maker orders. The Exchange also proposes to adopt two tiers through which Members can realize lower liquidity removal fees, as further described below.

First, the Exchange proposes to charge $0.25 per contract for a Customer order and $0.35 per contract for a Firm or Market Maker order that removes liquidity from the BATS Options order book where the Member has an ADV of 50,000 or more contracts. Accordingly, the Exchange is not proposing to change the charge to remove liquidity from BATS Options for Members with an ADV of 50,000 or more.

Second, the Exchange proposes to charge $0.27 per contract for a Customer order and $0.37 per contract for a Firm or Market Maker order that removes liquidity from the BATS Options order book where the Member has an ADV of 15,000 or more, but fewer than 50,000 contracts. Thus, for Members with ADV of between 15,000 and 49,999 contracts, Members will be charged $0.02 more per contract for their orders than such Members are charged today.

(c) Expansion and Modification of NBBO Setter Rebate Program

The Exchange currently offers a rebate upon execution for all orders that add liquidity that sets either the NBB or NBO (the "NBBO Setter Rebate") [6] so long as the Member submitting the order achieves an ADV of 20,000 contracts executed during the calendar month. The NBBO Setter Rebate currently offered by the Exchange is $0.50 per contract. The Exchange proposes to increase the ADV requirement for this $0.50 rebate to 50,000 contracts and to create a second tier eligible for a NBBO Setter Rebate. The new NBBO Setter Rebate for Members with a lower ADV will be a $0.40 rebate and will apply where the Member has an ADV of 15,000 or more, but fewer than, 50,000 contracts. The Exchange also proposes to make clear on the fee schedule that the NBBO Setter Rebate, whether based on the lower or the higher ADV level, supersedes any other applicable liquidity rebates.

(d) Clarifications to Routing Pricing

Currently, the BATS Options fees for Standard Best Execution Routing or Destination Specific Order routing fees are dependent on the venues at which such orders are executed. Certain venues offer pricing that the Exchange has defined as "Make/Take" in certain issues and then pricing under a more traditional pricing structure (hereafter, "Classic" pricing). 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. The Exchange proposes certain changes to its routing schedule in order to further delineate between executions in Make/Take issues and Classic issues at the options exchanges that maintain both types of pricing, specifically, NYSE Arca, the International Stock Exchange, and NASDAQ OMX PHLX. The Exchange is not proposing any changes to the pricing of its standard routing or destination specific routing strategies. In addition to these changes, the Exchange is proposing to add an additional page break to its fee schedule and to indicate that the options pricing section continues onto page three of the version of the fee schedule maintained on its Web site.

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.[7] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] 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 changes to Exchange execution fees and rebates 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. As a general matter, the Exchange believes that the NBBO Setter Program benefits all Members with the potential of increased and aggressively priced liquidity at the Exchange. The expansion of the NBBO Setter Program to Members with a lower ADV threshold (albeit with a lower rebate) will result in increased payments that will benefit some Members due to the increased revenue those Members will receive. With the increase to the current threshold of 20,000 contracts ADV to 50,000 contracts ADV, some Members will no longer qualify for the highest potential rebate, though they will still receive a higher rebate than otherwise offered by the Exchange. The Exchange believes that the NBBO Setter Rebate is

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[6] 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.

[7] 15 U.S.C. 78f.

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

analogous to similar proposals designed to encourage market participants to submit aggressively priced orders previously implemented at other options exchanges.[9] Additionally, the Exchange believes that the proposed NBBO Setter Rebate, now in place on BATS Options for two months, has and will continue to incentivize the entry of more aggressive orders that will create tighter spreads, benefitting both Members and public investors.

The Exchange also believes that its proposed use of a volume threshold to qualify for the NBBO Setter Rebate and to qualify for lower liquidity removal fees is analogous to tiered pricing structures that are in place at other exchanges.[10] While the establishment of tiered pricing for removing liquidity from the BATS Options order book will result in a small increase for some Members, this fee still remains lower than other markets with similar fee structures, such as the NASDAQ Options Market and NYSE Arca in Make/Take Issues. Currently, for many of the transactions occurring on the Exchange, the Exchange either does not earn a fee because it charges the same fee to the liquidity remover as it rebates the liquidity maker.[11] The increase in liquidity removal fees so that the Exchange is earning a small fee will provide the Exchange with additional revenue to both fund the NBBO Setter Rebate and to fund its operations generally. Volume-based discounts such as the liquidity removal fee tiers proposed in this filing have been widely adopted in the cash equities markets, and are equitable and not unreasonably discriminatory 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 introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is not unreasonably discriminatory because it is consistent with the overall goals of enhancing market quality. Finally, the Exchange believes that the adoption of a definition for ADV and the proposed clarifications to the standard routing pricing section of the fee schedule will help to avoid potential confusion regarding the Exchange's fee schedule.

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 [12] and Rule 19b–4(f)(2) thereunder,[13] 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–2011–008 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–2011–008. 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–2011–008 and should be submitted on or before March 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–5441 Filed 3–9–11; 8:45 am]

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[9] *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).

[10] *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).

[11] *See* E-mail from Anders Franzon, VP, Associate General Counsel, BATS, to Johnna B. Dumler, Special Counsel, Commission, dated March 2, 2011.

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

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).