

change. Regarding the provision added by Amendment No. 2 to exclude advisers that provide certain types of services from the independence assessment, as discussed above, the Commission has already determined to exclude such advisers from the disclosure requirement regarding compensation advisers in Regulation S-K because these types of services do not raise conflict of interest concerns.

The change made by Amendment No. 1 to require companies currently listed on BATS to comply with certain of the new rules by July 1, 2013 brings BATS's effective date in line with that of other exchanges.<sup>79</sup> The addition of exemptions that were not originally proposed for specific types of entities, including limited partnerships, cooperatives, foreign private issuers, management investment companies registered under the Investment Company Act of 1940 continue exemptions available under the current rules and are appropriate exercises of BATS's exemptive authority under Rule 10C-1. The revision in Amendment No. 2 to adopt a cure period for companies to comply with the rule's requirements in the event a director ceases to be independent for reasons outside his or her control is suggested by Rule 10C-1 itself, and the additional proviso to allow companies at least 180 days has been approved by the Commission in other contexts.

The change made by Amendment No. 3 regarding the exemption for Smaller Reporting Companies merely clarifies that for Smaller Reporting Companies the current standards for independent oversight of executive compensation are not changing, as BATS is only exempting Smaller Reporting Companies from the newly proposed enhanced independence standards, not all the independence standards. Thus, Smaller reporting Companies will continue to be required to comply with existing oversight of executive compensation rules.

For all the reasons discussed above, the Commission finds good cause to accelerate approval of the proposed changes as made by Amendment Nos. 2 and 3.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing and whether Amendment Nos. 2 and 3 are 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-BATS-2012-039 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-2012-039. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2012-039, and should be submitted on or before February 12, 2013.

## VI. Conclusion

In summary, and for the reasons discussed in more detail above, the Commission believes that the rules being adopted by BATS, taken as whole, should benefit investors by helping listed companies make informed decisions regarding the amount and form of executive compensation. BATS' new rules will help to meet Congress's intent that compensation committees that are responsible for setting compensation policy for executives of

listed companies consist only of independent directors.

BATS' rules also, consistent with Rule 10C-1, require compensation committees of listed companies to assess the independence of compensation advisers, taking into consideration six specified factors. This should help to assure that compensation committees of BATS-listed companies are better informed about potential conflicts when selecting and receiving advice from advisers. Similarly, the provisions of BATS' standards that require compensation committees to be given the authority to engage and oversee compensation advisers, and require the listed company to provide for appropriate funding to compensate such advisers, should help to support the compensation committee's role to oversee executive compensation and help provide compensation committees with the resources necessary to make better informed compensation decisions.

For the foregoing reasons, the Commission finds that the proposed rule change, SR-BATS-2012-039, as modified by Amendment Nos. 1, 2 and 3, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.<sup>80</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>81</sup> that the proposed rule change, SR-BATS-2012-039, as amended, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>82</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-01110 Filed 1-18-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68659; File No. SR-BATS-2013-002]

### 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 15, 2013.

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

<sup>80</sup> 15 U.S.C. 78f(b)(5).

<sup>81</sup> 15 U.S.C. 78s(b)(2).

<sup>82</sup> 17 CFR 200.30-3(a)(12).

<sup>79</sup> See NYSE Approval Order and Nasdaq Approval Order, *supra* note 6.

“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 7, 2013, 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 to 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). Changes to the fee schedule pursuant to this proposal are 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.

### **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 adopt pricing for orders routed by the Exchange to a new options market, the

MIAX Options Exchange (“MIAX”), and to modify pricing for orders routed by the Exchange to NASDAQ OMX PHLX LLC (“PHLX”) and NASDAQ OMX BX, Inc. (“BX Options”), as further described below.

The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.*, clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, “Routing Costs”).

Based on applicable Routing Costs, the Exchange currently charges \$0.11 per contract for Customer orders executed at NYSE MKT LLC (“AMEX”), BOX Options Exchange LLC (“BOX”), Chicago Board Options Exchange, Inc. (“CBOE”), BX Options, International Securities Exchange, LLC (“ISE”) (Classic issues), and PHLX (Classic issues). The Exchange currently charges \$0.57 per contract for Professional, Firm, and Market Maker orders executed at AMEX, BOX, CBOE, BX Options, ISE (Classic issues), and PHLX (Classic issues).

Based on fees at MIAX, the Exchange believes that MIAX would be appropriately grouped with the Exchanges listed above, as MIAX now has fees that are approximately the same as these markets. Accordingly, the Exchange proposes to charge \$0.11 per contract for Customer orders executed at MIAX and \$0.57 per contract for Professional, Firm, and Market Maker orders executed at MIAX.

As noted above, the Exchange currently charges \$0.11 per contract for Customer orders and \$0.57 per contract for Professional, Firm, and Market Maker orders executed at BX Options. Based on changes to pricing at BX Options that differentiates between options classes subject to the penny pilot program (“Penny Pilot Securities”) and those that are not (“Non-Penny Pilot Securities”), the Exchange proposes to add additional pricing for executions of Non-Penny Pilot Securities resulting from orders routed to BX Options. The Exchange will maintain the current pricing structure for Penny Pilot Securities. The Exchange proposes to provide executions of Customer orders in Non-Penny Pilot Securities without imposing a fee and to charge \$0.95 per contract for Professional, Firm and Market Maker orders.

As noted above, the Exchange currently charges \$0.11 per contract for Customer orders executed at PHLX in Classic issues and \$0.52 per contract for Customer orders executed at PHLX in Make/Take issues.<sup>6</sup> The differentiation between Classic and Make/Take issues was based on divergent pricing at PHLX for Customer orders between such types of options. Specifically, PHLX has previously charged increased rates to remove liquidity in specified symbols identified by the Exchange as Make/Take issues (identified as “Select Symbols” at PHLX). With changes to Select Symbol pricing that became effective on January 2, 2013, PHLX no longer assesses a higher fee for executions of Customer orders in Select Symbols. Accordingly, the Exchange believes that the pricing applicable to Make/Take issues at PHLX is no longer necessary, and that all Customer executions resulting from orders routed to PHLX should be charged \$0.11 per contract. Despite identical fees, the Exchange is maintaining separate references to Make/Take and Classic pricing for orders routed to and executed [sic] PHLX because it believes that participants that are accustomed to this distinction will be less confused if it continues to separately list each category.

##### **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.<sup>7</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> 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 or providers of routing services if they deem fee levels to be excessive.

As explained above, the Exchange generally attempts to approximate the

<sup>6</sup> 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. “Classic” issues includes all executions not subject to Make/Take pricing at the identified exchange.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<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.

cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to adopt routing fees to MIAAX and modify fees to PHLX and BX Options is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for orders routed to and executed at MIAAX, PHLX and BX Options. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange also believes that the proposed fee structure for orders routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange notes that under its new pricing model, BX Options will provide rebates for Customer orders in Non-Penny Pilot Securities that the Exchange is not proposing to pass on to the entering Member; instead, the Exchange proposes to provide such executions free of charge. The Exchange specifically believes that its pricing structure for Customer orders in Non-Penny Pilot Securities routed to BX Options is reasonable because, although not an approximation of the cost of routing per se, Customer orders will still receive executions free of charge, whereas all other routed orders are charged a fee that includes applicable Routing Costs. The Exchange believes that pricing for Customer orders in Non-Penny Pilot Securities is fair and equitable and non-discriminatory because it will apply equally to all Members, and because Members can and will likely route directly to BX Options to the extent they are specifically seeking the rebate provided for such orders. The Exchange reiterates 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 to be excessive or providers of routing services if they deem fee levels to be

excessive. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit from routing to another options exchange.

#### *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. The proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.<sup>9</sup> As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem fee levels to be excessive.

#### *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<sup>10</sup> and Rule 19b-4(f)(2) thereunder,<sup>11</sup> 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.

<sup>9</sup> See BATS Rule 21.1(d)(8) (describing "BATS Only" orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

### **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-BATS-2013-002 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-2013-002. 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 10:00 a.m. and 3:00 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-2013-002 and should be submitted on or before February 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-01114 Filed 1-18-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68655; File No. SR-OPRA-2012-07]

### Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Amend Section 3.5 of the OPRA Plan

January 15, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on December 21, 2012, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").<sup>3</sup> The proposed amendment revises a provision that describes certain circumstances in which a national securities exchange must cease to be a Member of OPRA. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

#### I. Description and Purpose of the Plan Amendment

The purpose of this amendment is to revise language in Section 3.5 of the OPRA Plan that currently states that "The membership status [in OPRA] of a Member shall terminate effective as of

\* \* \* the last day of the calendar quarter in which the Member has ceased maintaining a market for the trading of securities option contracts."<sup>4</sup> Under this language, a Member that ceases to maintain a market for the trading of securities option contracts late in a calendar quarter would have little or no time in which to resume maintaining such a market if it wants to remain a Member of OPRA.

OPRA is proposing to amend Section 3.5 so that a national securities exchange that ceases to maintain a market for the trading of options may remain a Member of OPRA for an additional calendar quarter. The amendment would provide an exchange that ceases to maintain a market for the trading of options but wants to remain a Member of OPRA with additional flexibility with respect to the date by which it must resume maintaining a market for the trading of options.

The text of the proposed amendment to the OPRA Plan is available at OPRA, the Commission's Public Reference Room, <http://opradata.com>, and on the Commission's Web site at [www.sec.gov](http://www.sec.gov).

#### II. Implementation of the OPRA Plan Amendment

OPRA will implement the proposed amendment to the OPRA Plan after this filing has been approved by the Commission in accordance with paragraph (b)(1) of Rule 608 of Regulation NMS under the Act.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment 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 No. SR-OPRA-2012-07 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-OPRA-2012-07. 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 plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment 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 such filing also will be available for inspection and copying at the principal office of OPRA. 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-OPRA-2012-07 and should be submitted on or before February 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-01077 Filed 1-18-13; 8:45 am]

**BILLING CODE 8011-01-P**

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

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3-2). See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.opradata.com>.

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The eleven participants to the OPRA Plan are BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, Miami International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, NASDAQ Stock Market LLC, NYSE MKT LLC, and NYSE Arca, Inc.

<sup>4</sup> OPRA is organized as a limited liability company, and the OPRA Plan is the Limited Liability Company Agreement of OPRA. The OPRA Plan therefore uses the vocabulary typically used in Limited Liability Company Agreements, and therefore refers to the national security exchanges that are participants in OPRA as "Members," and to their participation in OPRA as "membership."

<sup>5</sup> 17 CFR 200.30-3(a)(29).