*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is

obtained. *See* 39–CFR–3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before September 26, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of

expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 12, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 12, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Malin Moench is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**
*Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| August 26, 2011 ....................................................................... | Filing of Appeal. |
| September 12, 2011 ................................................................ | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| September 12, 2011 ................................................................ | Deadline for the Postal Service to file any responsive pleading. |
| September 26, 2011 ................................................................ | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| September 30, 2011 ................................................................ | Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| October 20, 2011 ..................................................................... | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| November 4, 2011 .................................................................... | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| November 14, 2011 .................................................................. | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| December 16, 2011 .................................................................. | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–22661 Filed 9–2–11; 8:45 am]
**BILLING CODE 7710–FW–P**

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release Nos. 33–9255; 34–65231/August 31, 2011]**

**Order Making Fiscal Year 2012 Annual Adjustments to Registration Fee Rates**

**I. Background**

The Commission collects fees under various provisions of the securities laws. Section 6(b) of the Securities Act of 1933 ("Securities Act") requires the

Commission to collect fees from issuers on the registration of securities.[1] Section 13(e) of the Securities Exchange Act of 1934 ("Exchange Act") requires the Commission to collect fees on specified repurchases of securities.[2] Section 14(g) of the Exchange Act requires the Commission to collect fees on proxy solicitations and statements in corporate control transactions.[3]

The Investor and Capital Markets Fee Relief Act of 2002 ("Fee Relief Act")[4] has required the Commission to make

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[1] 15 U.S.C. 77f(b).
[2] 15 U.S.C. 78m(e).
[3] 15 U.S.C. 78n(g).
[4] Pub. L. 107–123, 115 Stat. 2390 (2002).

annual adjustments to the fee rates applicable under these sections for each of the fiscal years 2003 through 2011 in an attempt to generate collections equal to yearly targets specified in the statute.[5] Under the Fee Relief Act, each year's fee rate has been announced on the preceding April 30, and has taken effect five days after the date of enactment of the Commission's regular appropriation.

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") changes many of the provisions related to these fees. The

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[5] *See* 15 U.S.C. 77f(b)(5), 77f(b)(6), 78m(e)(5), 78m(e)(6), 78n(g)(5), and 78n(g)(6).

Dodd-Frank Act created new annual collection targets for FY 2012 and thereafter. It also changed the date by which the Commission must announce a new fiscal year's fee rate (August 31) and the date on which the new rate takes effect (October 1).

## II. Fiscal Year 2012 Annual Adjustment to the Fee Rate

Section 6(b)(2) of the Securities Act, as amended by the Dodd-Frank Act, requires the Commission to make an annual adjustment to the fee rate applicable under Section 6(b).[6] The annual adjustment to the fee rate under Section 6(b) of the Securities Act also sets the annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act.[7]

Section 6(b)(2) sets forth the method for determining the annual adjustment to the fee rate under Section 6(b) for fiscal year 2012. Specifically, the Commission must adjust the fee rate under Section 6(b) to a "rate that, when applied to the baseline estimate of the aggregate maximum offering prices for [fiscal year 2012], is reasonably likely to produce aggregate fee collections under [Section 6(b)] that are equal to the target fee collection amount for [fiscal year 2012]." That is, the adjusted rate is determined by dividing the "target fee collection amount" for fiscal year 2012 by the "baseline estimate of the aggregate maximum offering prices" for fiscal year 2012.

Section 6(b)(6)(A) specifies that the "target fee collection amount" for fiscal year 2012 is $425,000,000. Section 6(b)(6)(B) defines the "baseline estimate of the aggregate maximum offering price" for fiscal year 2012 as "the baseline estimate of the aggregate maximum offering price at which securities are proposed to be offered pursuant to registration statements filed with the Commission during [fiscal year 2012] as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget * * *."

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[6] The annual adjustments are designed to adjust the fee rate in a given fiscal year so that, when applied to the aggregate maximum offering price at which securities are proposed to be offered for the fiscal year, it is reasonably likely to produce total fee collections under Section 6(b) equal to the "target fee collection amount" specified in Section 6(b)(6)(A) for that fiscal year.

[7] *See* Sections 13(e)(6) and 14(g)(6) of the Exchange Act. On October 1, 2011, Sections 13(e)(4) and 14(g)(6) of the Exchange Act, as amended by the Dodd-Frank Act, will require an annual adjustment to the fee rates under Sections 13(e) and 14(g) of the Exchange Act to the same level as the new fee rate under Section 6(b) of the Securities Act.

To make the baseline estimate of the aggregate maximum offering price for fiscal year 2012, the Commission used a methodology similar to that developed in consultation with the Congressional Budget Office ("CBO") and Office of Management and Budget ("OMB") to project the aggregate offering price for purposes of the fiscal year 2012 annual adjustment.[8] Using this methodology, the Commission determines the "baseline estimate of the aggregate maximum offering price" for fiscal year 2012 to be $3,708,294,634,490.[9] Based on this estimate, the Commission calculates the fee rate for fiscal 2012 to be $114.60 per million. This adjusted fee rate applies to Section 6(b) of the Securities Act, as well as to Sections 13(e) and 14(g) of the Exchange Act.

## III. Effective Dates of the Annual Adjustments

The fiscal year 2012 annual adjustments to the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act will be effective on October 1, 2011, under the changes made by the Dodd-Frank Act.[10]

## IV. Conclusion

Accordingly, pursuant to Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act,[11]

*It Is Hereby Ordered* that the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act shall be $114.60 per million effective on October 1, 2011.

By the Commission.

**Elizabeth M. Murphy,**
*Secretary.*

## Appendix A

With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act,

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[8] For the fiscal year 2011 estimate, the Commission used a ten-year series of monthly observations ending in March 2010. For fiscal year 2012, the Commission used a ten-year series ending in July 2011.

[9] Appendix A explains how we determined the "baseline estimate of the aggregate maximum offering price" for fiscal year 2012 using our methodology, and then shows the purely arithmetical process of calculating the fiscal year 2012 annual adjustment based on that estimate. The appendix includes the data used by the Commission in making its "baseline estimate of the aggregate maximum offering price" for fiscal year 2012.

[10] On October 1, 2011, Section 6(b)(4) of the Securities Act and Sections 13(e)(6) and 14(g)(6) of the Exchange Act, as amended by the Dodd-Frank Act, will require the fiscal year 2012 annual adjustments to the fee rates applicable under Section 6(b) of the Securities Act and Sections 13(e) and 14(g) of the Exchange Act to be effective on October 1, 2011.

[11] 15 U.S.C. 77f(b), 78m(e), and 78n(g).

Congress has, among other things, established a target amount of monies to be collected from fees charged to issuers based on the value of their registrations. This appendix provides the formula for determining such fees, which the Commission adjusts annually. Congress has mandated that the Commission determine these fees based on the "aggregate maximum offering prices," which measures the aggregate dollar amount of securities registered with the Commission over the course of the year. In order to maximize the likelihood that the amount of monies targeted by Congress will be collected, the fee rate must be set to reflect projected aggregate maximum offering prices. As a percentage, the fee rate equals the ratio of the target amounts of monies to the projected aggregate maximum offering prices.

For 2012, the Commission has estimated the aggregate maximum offering prices by projecting forward the trend established in the previous decade. More specifically, an ARIMA model was used to forecast the value of the aggregate maximum offering prices for months subsequent to July 2011, the last month for which the Commission has data on the aggregate maximum offering prices.

The following sections describe this process in detail.

*A. Baseline Estimate of the Aggregate Maximum Offering Prices for Fiscal Year 2012*

First, calculate the aggregate maximum offering prices (AMOP) for each month in the sample (July 2001–July 2011). Next, calculate the percentage change in the AMOP from month to month.

Model the monthly percentage change in AMOP as a first order moving average process. The moving average approach allows one to model the effect that an exceptionally high (or low) observation of AMOP tends to be followed by a more "typical" value of AMOP.

Use the estimated moving average model to forecast the monthly percent change in AMOP. These percent changes can then be applied to obtain forecasts of the total dollar value of registrations. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for AMOP. The sample spans ten years, from July 2001 to July 2011.

2. Divide each month's AMOP (column C) by the number of trading days in that month (column B) to obtain the average daily AMOP (AAMOP, column D).

3. For each month t, the natural logarithm of AAMOP is reported in column E.

4. Calculate the change in log(AAMOP) from the previous month as $\Delta_t = \log(AAMOP_t) - \log(AAMOP_{t-1})$. This approximates the percentage change.

5. Estimate the first order moving average model $\Delta_t = \alpha + \beta e_{t-1} + e_t$, where $e_t$ denotes the forecast error for month t. The forecast error is simply the difference between the one-month ahead forecast and the actual realization of $\Delta_t$. The forecast error is expressed as $e_t = \Delta_t - \alpha - \beta e_{t-1}$. The model can be estimated using standard commercially available software. Using least

squares, the estimated parameter values are $\alpha = 0.0005219$ and $\beta = -0.87539$.

6. For the month of August 2011 forecast $\Delta_{t=8/11} = \alpha + \beta e_{t=8/11}$. For all subsequent months, forecast $\Delta_t = \alpha$.

7. Calculate forecasts of log(AAMOP). For example, the forecast of log(AAMOP) for October 2011 is given by $FLAAMOP_{t=10/11} = \log(AAMOP_{t=7/11}) + \Delta_{t=8/11} + \Delta_{t=9/11} + \Delta_{t=10/11}$.

8. Under the assumption that $e_t$ is normally distributed, the n-step ahead forecast of AAMOP is given by $\exp(FLAAMOP_t + \sigma_n^2/2)$,

where $\sigma_n$ denotes the standard error of the n-step ahead forecast.

9. For October 2011, this gives a forecast AAMOP of $14.6 Billion (Column I), and a forecast AMOP of $307.6 Billion (Column J).

10. Iterate this process through September 2012 to obtain a baseline estimate of the aggregate maximum offering prices for fiscal year 2012 of $3,708,294,634,490.

*B. Using the Forecasts From A To Calculate the New Fee Rate.*

1. Using the data from Table A, estimate the aggregate maximum offering prices

between 10/1/11 and 9/30/12 to be $3,708,294,634,490.

2. The rate necessary to collect the target $425,000,000 in fee revenues set by Congress is then calculated as: $425,000,000 ÷ $3,708,294,634,490 = 0.000114608.

3. Round the result to the seventh decimal point, yielding a rate of 0.0001146 (or $114.60 per million).

**BILLING CODE 8011–01–P**

**Table A. Estimation of baseline of aggregate maximum offering prices.**

**Fee rate calculation.**

| | |
|---|---|
| a. Baseline estimate of the aggregate maximum offering prices, 10/1/11 to 9/30/12 ($Millions) | 3,708,295 |
| b. Implied fee rate ($425 Million / a) | $114.60 |

**Data**

| (A) Month | (B) # of Trading Days in Month | (C) Aggregate Maximum Offering Prices, in $Millions | (D) Average Daily Aggregate Max. Offering Prices (AAMOP) in $Millions | (E) log(AAMOP) | (F) Change in AAMOP | (G) Forecast log(AAMOP) | (H) Standard Error | (I) Forecast AAMOP, in $Millions | (J) Forecast Aggregate Maximum Offering Prices, in $Millions |
|---|---|---|---|---|---|---|---|---|---|
| Jul-01 | 21 | 264,590 | 12,600 | 23.257 | | | | | |
| Aug-01 | 23 | 245,591 | 10,678 | 23.091 | -0.165 | | | | |
| Sep-01 | 15 | 178,524 | 11,902 | 23.200 | 0.108 | | | | |
| Oct-01 | 23 | 260,719 | 11,336 | 23.151 | -0.049 | | | | |
| Nov-01 | 21 | 286,199 | 13,629 | 23.335 | 0.184 | | | | |
| Dec-01 | 20 | 395,230 | 19,762 | 23.707 | 0.372 | | | | |
| Jan-02 | 21 | 401,290 | 19,109 | 23.673 | -0.034 | | | | |
| Feb-02 | 19 | 476,837 | 25,097 | 23.946 | 0.273 | | | | |
| Mar-02 | 20 | 380,160 | 19,008 | 23.668 | -0.278 | | | | |
| Apr-02 | 22 | 282,947 | 12,861 | 23.277 | -0.391 | | | | |
| May-02 | 22 | 215,645 | 9,802 | 23.006 | -0.272 | | | | |
| Jun-02 | 20 | 277,757 | 13,888 | 23.354 | 0.348 | | | | |
| Jul-02 | 22 | 208,638 | 9,484 | 22.973 | -0.381 | | | | |
| Aug-02 | 22 | 265,750 | 12,080 | 23.215 | 0.242 | | | | |
| Sep-02 | 20 | 109,565 | 5,478 | 22.424 | -0.791 | | | | |
| Oct-02 | 23 | 179,374 | 7,799 | 22.777 | 0.353 | | | | |
| Nov-02 | 20 | 243,590 | 12,179 | 23.223 | 0.446 | | | | |
| Dec-02 | 21 | 212,838 | 10,135 | 23.039 | -0.184 | | | | |
| Jan-03 | 21 | 201,839 | 9,611 | 22.986 | -0.053 | | | | |
| Feb-03 | 19 | 144,642 | 7,613 | 22.753 | -0.233 | | | | |
| Mar-03 | 21 | 444,331 | 21,159 | 23.775 | 1.022 | | | | |
| Apr-03 | 21 | 142,373 | 6,780 | 22.637 | -1.138 | | | | |
| May-03 | 21 | 328,792 | 15,657 | 23.474 | 0.837 | | | | |
| Jun-03 | 21 | 281,580 | 13,409 | 23.319 | -0.155 | | | | |
| Jul-03 | 22 | 304,383 | 13,836 | 23.351 | 0.031 | | | | |
| Aug-03 | 21 | 328,351 | 15,636 | 23.473 | 0.122 | | | | |
| Sep-03 | 21 | 459,563 | 21,884 | 23.809 | 0.336 | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Oct-03 | 23 | 285,039 | 12,393 | 23.240 | -0.569 |
| Nov-03 | 19 | 257,779 | 13,567 | 23.331 | 0.091 |
| Dec-03 | 22 | 244,998 | 11,136 | 23.133 | -0.197 |
| Jan-04 | 20 | 369,784 | 18,489 | 23.640 | 0.507 |
| Feb-04 | 19 | 221,517 | 11,659 | 23.179 | -0.461 |
| Mar-04 | 23 | 448,543 | 19,502 | 23.694 | 0.514 |
| Apr-04 | 21 | 260,029 | 12,382 | 23.240 | -0.454 |
| May-04 | 20 | 227,239 | 11,362 | 23.154 | -0.086 |
| Jun-04 | 21 | 370,668 | 17,651 | 23.594 | 0.441 |
| Jul-04 | 21 | 305,519 | 14,549 | 23.401 | -0.193 |
| Aug-04 | 22 | 179,688 | 8,168 | 22.823 | -0.577 |
| Sep-04 | 21 | 357,007 | 17,000 | 23.556 | 0.733 |
| Oct-04 | 21 | 254,489 | 12,119 | 23.218 | -0.338 |
| Nov-04 | 21 | 363,406 | 17,305 | 23.574 | 0.356 |
| Dec-04 | 22 | 570,918 | 25,951 | 23.979 | 0.405 |
| Jan-05 | 20 | 375,484 | 18,774 | 23.656 | -0.324 |
| Feb-05 | 19 | 338,922 | 17,838 | 23.605 | -0.051 |
| Mar-05 | 22 | 590,862 | 26,857 | 24.014 | 0.409 |
| Apr-05 | 21 | 282,018 | 13,429 | 23.321 | -0.693 |
| May-05 | 21 | 323,652 | 15,412 | 23.458 | 0.138 |
| Jun-05 | 22 | 517,022 | 23,501 | 23.880 | 0.422 |
| Jul-05 | 20 | 457,487 | 22,874 | 23.853 | -0.027 |
| Aug-05 | 23 | 605,534 | 26,328 | 23.994 | 0.141 |
| Sep-05 | 21 | 312,281 | 14,871 | 23.423 | -0.571 |
| Oct-05 | 21 | 258,956 | 12,331 | 23.235 | -0.187 |
| Nov-05 | 21 | 192,736 | 9,178 | 22.940 | -0.295 |
| Dec-05 | 21 | 308,134 | 14,673 | 23.409 | 0.469 |
| Jan-06 | 20 | 526,550 | 26,328 | 23.994 | 0.585 |
| Feb-06 | 19 | 301,446 | 15,866 | 23.487 | -0.506 |
| Mar-06 | 23 | 1,211,344 | 52,667 | 24.687 | 1.200 |
| Apr-06 | 19 | 407,345 | 21,439 | 23.788 | -0.899 |
| May-06 | 22 | 260,121 | 11,824 | 23.193 | -0.595 |
| Jun-06 | 22 | 375,296 | 17,059 | 23.560 | 0.367 |
| Jul-06 | 20 | 232,654 | 11,633 | 23.177 | -0.383 |

| | | | | | |
|---|---|---|---|---|---|
| Aug-06 | 23 | 310,050 | 13,480 | 23.325 | 0.147 |
| Sep-06 | 20 | 236,782 | 11,839 | 23.195 | -0.130 |
| Oct-06 | 22 | 213,342 | 9,697 | 22.995 | -0.200 |
| Nov-06 | 21 | 292,456 | 13,926 | 23.357 | 0.362 |
| Dec-06 | 20 | 349,512 | 17,476 | 23.584 | 0.227 |
| Jan-07 | 20 | 372,740 | 18,637 | 23.648 | 0.064 |
| Feb-07 | 19 | 278,753 | 14,671 | 23.409 | -0.239 |
| Mar-07 | 22 | 862,786 | 39,218 | 24.392 | 0.983 |
| Apr-07 | 20 | 562,103 | 28,105 | 24.059 | -0.333 |
| May-07 | 22 | 470,843 | 21,402 | 23.787 | -0.272 |
| Jun-07 | 21 | 586,822 | 27,944 | 24.053 | 0.267 |
| Jul-07 | 21 | 326,612 | 15,553 | 23.468 | -0.586 |
| Aug-07 | 23 | 369,172 | 16,051 | 23.499 | 0.032 |
| Sep-07 | 19 | 241,059 | 12,687 | 23.264 | -0.235 |
| Oct-07 | 23 | 239,652 | 10,420 | 23.067 | -0.197 |
| Nov-07 | 21 | 458,654 | 21,841 | 23.807 | 0.740 |
| Dec-07 | 20 | 410,200 | 20,510 | 23.744 | -0.063 |
| Jan-08 | 21 | 354,433 | 16,878 | 23.549 | -0.195 |
| Feb-08 | 20 | 263,410 | 13,171 | 23.301 | -0.248 |
| Mar-08 | 20 | 596,923 | 29,846 | 24.119 | 0.818 |
| Apr-08 | 22 | 292,534 | 13,297 | 23.311 | -0.809 |
| May-08 | 21 | 456,077 | 21,718 | 23.801 | 0.491 |
| Jun-08 | 21 | 461,087 | 21,957 | 23.812 | 0.011 |
| Jul-08 | 22 | 232,896 | 10,586 | 23.083 | -0.730 |
| Aug-08 | 21 | 395,440 | 18,830 | 23.659 | 0.576 |
| Sep-08 | 21 | 177,636 | 8,459 | 22.858 | -0.800 |
| Oct-08 | 23 | 360,494 | 15,674 | 23.475 | 0.617 |
| Nov-08 | 19 | 288,911 | 15,206 | 23.445 | -0.030 |
| Dec-08 | 22 | 319,584 | 14,527 | 23.399 | -0.046 |
| Jan-09 | 20 | 375,065 | 18,753 | 23.655 | 0.255 |
| Feb-09 | 19 | 249,666 | 13,140 | 23.299 | -0.356 |
| Mar-09 | 22 | 739,931 | 33,633 | 24.239 | 0.940 |
| Apr-09 | 21 | 235,914 | 11,234 | 23.142 | -1.097 |
| May-09 | 20 | 329,522 | 16,476 | 23.525 | 0.383 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Jun-09 | 22 | 357,524 | 16,251 | 23.511 | -0.014 | | | |
| Jul-09 | 22 | 185,187 | 8,418 | 22.854 | -0.658 | | | |
| Aug-09 | 21 | 192,726 | 9,177 | 22.940 | 0.086 | | | |
| Sep-09 | 21 | 189,224 | 9,011 | 22.922 | -0.018 | | | |
| Oct-09 | 22 | 215,720 | 9,805 | 23.006 | 0.085 | | | |
| Nov-09 | 20 | 248,353 | 12,418 | 23.242 | 0.236 | | | |
| Dec-09 | 22 | 340,464 | 15,476 | 23.463 | 0.220 | | | |
| Jan-10 | 19 | 173,235 | 9,118 | 22.933 | -0.529 | | | |
| Feb-10 | 19 | 209,963 | 11,051 | 23.126 | 0.192 | | | |
| Mar-10 | 23 | 432,934 | 18,823 | 23.658 | 0.533 | | | |
| Apr-10 | 21 | 280,188 | 13,342 | 23.314 | -0.344 | | | |
| May-10 | 20 | 278,611 | 13,931 | 23.357 | 0.043 | | | |
| Jun-10 | 22 | 364,251 | 16,557 | 23.530 | 0.173 | | | |
| Jul-10 | 21 | 171,191 | 8,152 | 22.822 | -0.709 | | | |
| Aug-10 | 22 | 240,793 | 10,945 | 23.116 | 0.295 | | | |
| Sep-10 | 21 | 260,783 | 12,418 | 23.242 | 0.126 | | | |
| Oct-10 | 21 | 214,988 | 10,238 | 23.049 | -0.193 | | | |
| Nov-10 | 21 | 340,112 | 16,196 | 23.508 | 0.459 | | | |
| Dec-10 | 22 | 297,992 | 13,545 | 23.329 | -0.179 | | | |
| Jan-11 | 20 | 233,668 | 11,683 | 23.181 | -0.148 | | | |
| Feb-11 | 19 | 252,785 | 13,304 | 23.311 | 0.130 | | | |
| Mar-11 | 23 | 595,198 | 25,878 | 23.977 | 0.665 | | | |
| Apr-11 | 20 | 236,355 | 11,818 | 23.193 | -0.784 | | | |
| May-11 | 21 | 319,053 | 15,193 | 23.444 | 0.251 | | | |
| Jun-11 | 22 | 359,727 | 16,351 | 23.518 | 0.073 | | | |
| Jul-11 | 20 | 215,391 | 10,770 | 23.100 | -0.418 | | | |
| Aug-11 | 23 | | | | | 23.338 | 0.364 | 14,603 | 335,859 |
| Sep-11 | 21 | | | | | 23.339 | 0.367 | 14,625 | 307,130 |
| Oct-11 | 21 | | | | | 23.339 | 0.370 | 14,648 | 307,608 |
| Nov-11 | 21 | | | | | 23.340 | 0.373 | 14,671 | 308,086 |
| Dec-11 | 21 | | | | | 23.340 | 0.376 | 14,694 | 308,565 |
| Jan-12 | 20 | | | | | 23.341 | 0.378 | 14,716 | 294,328 |
| Feb-12 | 20 | | | | | 23.341 | 0.381 | 14,739 | 294,785 |
| Mar-12 | 22 | | | | | 23.342 | 0.384 | 14,762 | 324,768 |

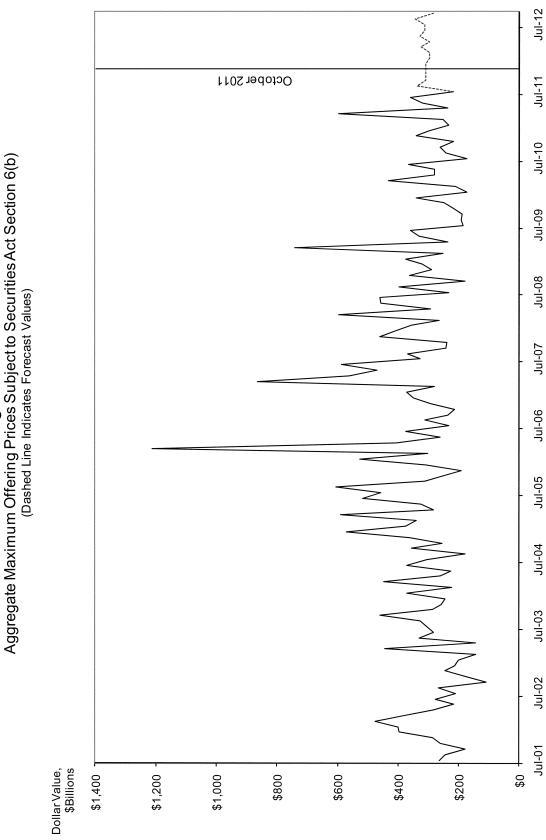| | | | | | |
|---|---|---|---|---|---|
| Apr-12 | 20 | 23.342 | 0.386 | 14,785 | 295,702 |
| May-12 | 22 | 23.343 | 0.389 | 14,808 | 325,778 |
| Jun-12 | 21 | 23.343 | 0.392 | 14,831 | 311,453 |
| Jul-12 | 21 | 23.344 | 0.394 | 14,854 | 311,938 |
| Aug-12 | 23 | 23.344 | 0.397 | 14,877 | 342,177 |
| Sep-12 | 19 | 23.345 | 0.400 | 14,900 | 283,107 |

**Figure A**
Aggregate Maximum Offering Prices Subject to Securities Act Section 6(b)
(Dashed Line Indicates Forecast Values)

[FR Doc. 2011–22652 Filed 9–2–11; 8:45 am]
**BILLING CODE 8011–01–C**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–65225; File No. SR–BATS–2011–018]

**Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change To Adopt Rules for the Qualification, Listing and Delisting of Companies on the Exchange**

August 30, 2011.

**I. Introduction**

On May 12, 2011, BATS Exchange, Inc. (‘‘BATS’’ or ‘‘Exchange’’) filed with the Securities and Exchange Commission (‘‘Commission’’), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (‘‘Act’’),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules for the qualification, listing, and delisting of companies on the Exchange. The proposed rule change was published for comment in the **Federal Register** on June 1, 2011.[3] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

The Exchange proposes rules to adopt a program for the qualification, listing, and delisting of companies on the Exchange (‘‘Listing Rules’’).[4] The Exchange proposes to eliminate its current rules related to securities traded on the Exchange pursuant to unlisted trading privileges, and to replace such rules with the Listing Rules, which the Exchange notes are primarily based on and substantially similar to the rules of The NASDAQ Stock Market LLC (‘‘NASDAQ’’).[5] The Exchange proposes to adopt two distinct tiers of securities

to be listed on the Exchange: Tier I and Tier II. The Exchange represents that the proposed standards for a security’s initial and continued listing on Tier I are nearly identical to the existing standards applicable to listing on The Nasdaq Global Market (‘‘NGM’’), and that the proposed standards for a security’s initial and continued listing on Tier II are nearly identical to the existing standards applicable to listing on The Nasdaq Capital Market (‘‘NCM’’).[6] While the quantitative standards for Tier I and II differ, the Exchange notes that the qualitative standards for both tiers are the same and are nearly identical to NGM’s existing qualitative standards.[7]

*A. General Regulatory Authority of the Exchange*

The Exchange proposes to have general, broad discretionary authority over the initial and continued listing of securities on the Exchange in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange notes that it may use such discretion to deny initial listing, to apply additional or more stringent standards for the initial or continued listing of particular securities, or to suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated standards for initial or continued listing.[8]

The Exchange also proposes guidance regarding the circumstances in which it would invoke discretionary authority and the types of factors it would consider when making determinations pursuant to such authority. In addition, the Exchange proposes guidance on its use of discretionary authority as it relates to a Company[9] whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified Companies within a

specific period of time. The Exchange would permit the listing of such a Company if the Company were to meet all applicable initial listing standards, as well as the factors considered pursuant to its discretionary authority. The Exchange further proposes guidance on the use of its discretionary authority when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws.

*B. General Procedures and Prerequisites for Listing*

The Exchange proposes an application process that a Company must complete in order to be listed on the Exchange. To apply for listing on the Exchange, a Company would have to execute a Listing Agreement and a Listing Application on forms made available by the Exchange in order to provide the information required by Section 12(b) of the Act.[10] A Company’s qualifications would be determined on the basis of financial statements that are either: (1) Prepared in accordance with U.S. generally accepted accounting principles; (2) reconciled to U.S. generally accepted accounting principles as required by the Commission’s rules; or (3) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the Commission’s rules.

The Exchange also proposes prerequisites for an applicant Company to become listed on the Exchange: (1) The security would have to be registered pursuant to Section 12(b) of the Act[11] or subject to an applicable exemption; (2) the Company would have to be audited by a registered independent public accountant; (3) the securities would have to be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act,[12] subject to certain exceptions; (4) the Company would have to pay the Exchange’s listing fees; (5) the securities would have to be in good standing with the Commission or Other Regulatory Authority;[13] (6) the Exchange would have to certify to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64546 (May 25, 2011), 76 FR 31660 (June 1, 2011) (‘‘Notice’’).

[4] The Listing Rules are comprised of definitions, the Exchange’s general regulatory authority, the procedures and prerequisites for gaining a listing on the Exchange, the listing standards for units, the disclosure obligations of listed companies, Direct Registration Program requirements, the quantitative listing requirements and standards for listing on the Exchange in Tiers I and II, the corporate governance standards applicable to all listed companies; special listing standards for securities other than common or preferred stock and warrants; the consequences of a failure to meet the Exchange’s listing standards; and the Exchange’s listing fees.

[5] *See* Notice, *supra* note 3, 76 FR at 31661. The Exchange is not proposing any changes to the rules of the Exchange’s options market. *Id.*

[6] The Notice identifies to which market’s quantitative standards (either NGM or NCM) and the NASDAQ rules the proposed BATS standards are comparable. *Id.* The Exchange is not proposing to adopt a tier equivalent to the NASDAQ Global Select Market. *Id.*

[7] *Id.*

[8] *Id.*

[9] For purposes of the Listing Rules, a ‘‘Company’’ would be any issuer of a security listed or applying to list on the Exchange, including an issuer that is not incorporated (*e.g.,* a limited partnership).

[10] 15 U.S.C. 78l(b).

[11] *Id.*

[12] 15 U.S.C. 78q–1. ‘‘ ‘Direct Registration Program’ means any program by a Company, directly or through its transfer agent, whereby a shareholder may have securities registered in the shareholder’s name on the books of the Company or its transfer agent without the need for a physical certificate to evidence ownership.’’ Proposed BATS Rule 14.1(a)(6).

[13] *See* proposed BATS Rule 14.1(t).