

Proposed Rule Change by **BATS Exchange**  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial</b> <input checked="" type="checkbox"/>	<b>Amendment</b> <input type="checkbox"/>	<b>Withdrawal</b> <input type="checkbox"/>	<b>Section 19(b)(2)</b> <input type="checkbox"/>	<b>Section 19(b)(3)(A)</b> <input checked="" type="checkbox"/>	<b>Section 19(b)(3)(B)</b> <input type="checkbox"/>
			<b>Rule</b>		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Eric"/>	Last Name	<input type="text" value="Swanson"/>
Title	<input type="text" value="SVP &amp; General Counsel"/>		
E-mail	<input type="text" value="eswanson@batstrading.com"/>		
Telephone	<input type="text" value="(212) 378-8523"/>	Fax	<input type="text" value="(212) 378-8550"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By

(Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or the “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) proposes to amend BATS Rule 11.5, entitled “Orders and Modifiers,” to provide for a new order type, a Modified Destination Specific Order. BATS has designated this proposal as non-controversial and requests that the Commission waive the requirement that the Exchange provide five business days notice under Exchange Act Rule 19b-4(f)(6)(iii).<sup>3</sup>

(a) The text of the proposed rule change is below. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

\* \* \* \* \*

Rule 11.5. Orders and Modifiers

(a) – (b) (No changes.)

(c) *Other Types of Orders and Order Modifiers.*

(1 – 10) (No changes.)

(11) *Modified Destination Specific Order.* A market or limit order that instructs the System to route the order to a specified away trading center or centers, as approved by the Exchange from time to time, without first exposing the order to the BATS Book. Modified Destination Specific Orders that are not executed in full after routing away receive a new timestamp upon return to the Exchange and are processed by the Exchange as described below in Rule 11.9(a)(2).

(d) – (e) (No changes.)

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6)(iii).

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on August 28, 2008. This action constitutes requisite approval under the Exchange's By-Laws.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (212) 378-8523.

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

(a) Purpose

The purpose of the proposed rule change is to provide an additional order type to Users of the Exchange. The proposed new order type is a "Modified Destination Specific Order," which is a market or limit order that instructs the System to route the order to a specified away trading center or centers as approved by the Exchange from time to time. Such trading centers may include execution venues know as "dark books." The order would not be exposed to the BATS Book before being routed to a specified destination or destinations. An order that is not executed in full after routing away would return to the Exchange, receive a new timestamp, and be processed in the manner described in Rule 11.9(a)(2). The routing performed in connection with this new order type will be conducted by an affiliate of the Exchange, BATS Trading, Inc. (the "Outbound Router"), which is regulated as a facility of the Exchange (as defined in Section 3(a)(2) of the

Act),<sup>4</sup> subject to Section 6 of the Act.<sup>5</sup> The role and functions of the Outbound Router are set forth in BATS Rule 2.11, which has previously been approved by the Commission. Routing of Modified Destination Specific Orders will be subject to the same requirements as other orders routed by the Outbound Router, which are contained in Rule 2.11. Accordingly, the Exchange believes that routing of Modified Destination Specific Orders is consistent with the previously approved functions of the Outbound Router, and the Exchange does not believe that such functions are expanded through the addition of this order type.

The Exchange believes that a Modified Destination Specific Order will enhance order execution opportunities for market participants by allowing such participants to access, at a potentially reduced fee, pools of liquidity in addition to orders resting on the Exchange. Accordingly, the addition of a Modified Destination Specific Order type to BATS Rule 11.5 promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system.

(b) Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>6</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</sup>

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<sup>4</sup> 15 U.S.C. 78c(a)(2).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

4. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange believes that the addition of the new order type, a Modified Destination Specific Order, is consistent with other rules of the Exchange previously approved by the Commission, including (1) its Destination Specific Order, which operates similarly to the proposed order type, except that a Destination Specific Order does not bypass the BATS Book when first received by the Exchange,<sup>8</sup> and (2) Rule 2.11, which governs the Outbound Router of the Exchange. Furthermore, the Exchange believes that a Modified Destination Specific Order will enhance order execution opportunities for market participants by allowing such participants to access, at a

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<sup>8</sup> See BATS Rule 11.5(c)(10).

potentially reduced fee, pools of liquidity in addition to orders resting on the Exchange. Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>9</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup> The Exchange believes that the proposed rule change should take effect immediately upon filing because it will effect a change that: (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative for 30 days after the date of this filing. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, and requests that the Commission waive the five day requirement set forth in Rule 19b-4(f)(6)(iii).<sup>11</sup>

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 5: Not applicable.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2008-003)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.5, entitled “Orders and Modifiers,” to Provide for a New Order Type – Modified Destination Specific Order.

Pursuant to Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 12, 2008, BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal 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 is proposing to amend BATS Rule 11.5, entitled “Orders and Modifiers,” to provide for a new order type, a Modified Destination Specific Order.

The text of the proposed rule change is available at the Exchange’s website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission’s Public Reference room.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).



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

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

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

#### 1. Purpose

The purpose of the proposed rule change is to provide an additional order type to Users of the Exchange. The proposed new order type is a "Modified Destination Specific Order," which is a market or limit order that instructs the System to route the order to a specified away trading center or centers as approved by the Exchange from time to time. Such trading centers may include execution venues know as "dark books." The order would not be exposed to the BATS Book before being routed to a specified destination or destinations. An order that is not executed in full after routing away would return to the Exchange, receive a new timestamp, and be processed in the manner described in Rule 11.9(a)(2). The routing performed in connection with this new order type will be conducted by an affiliate of the Exchange, BATS Trading, Inc. (the "Outbound Router"), which is regulated as a facility of the Exchange (as defined in Section 3(a)(2) of the Act),<sup>4</sup> subject to Section 6 of the Act.<sup>5</sup> The role and functions of the Outbound Router

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<sup>4</sup> 15 U.S.C. 78c(a)(2).

<sup>5</sup> 15 U.S.C. 78f.

are set forth in BATS Rule 2.11, which has previously been approved by the Commission. Routing of Modified Destination Specific Orders will be subject to the same requirements as other orders routed by the Outbound Router, which are contained in Rule 2.11. Accordingly, the Exchange believes that routing of Modified Destination Specific Orders is consistent with the previously approved functions of the Outbound Router, and the Exchange does not believe that such functions are expanded through the addition of this order type.

The Exchange believes that a Modified Destination Specific Order will enhance order execution opportunities for market participants by allowing such participants to access, at a potentially reduced fee, pools of liquidity in addition to orders resting on the Exchange. Accordingly, the addition of a Modified Destination Specific Order type to BATS Rule 11.5 promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system.

## 2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>6</sup> In particular, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

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<sup>6</sup> 15 U.S.C. 78(f)(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

(B) Self-Regulatory Organization's Statement of 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 Regarding the Proposed Rule Changes Received from Members, Participants or Others

No written comments were solicited or received.

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

Because the foregoing proposed rule change is non-controversial and does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> The Exchange believes that the addition of the new order type, a Modified Destination Specific Order, is consistent with other rules of the Exchange previously approved by the Commission, including: (1) its Destination Specific Order, which operates similarly to the proposed order type, except that a Destination Specific Order does not bypass the BATS Book when first received by the Exchange,<sup>10</sup> and (2) Rule 2.11, which governs the Outbound Router of the Exchange. Furthermore, the Exchange believes that a Modified

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). Upon request from BATS, the Commission has waived the requirement that the Exchange provide written notice of its intent to file the proposed rule change at least five business days prior to the date of filing. 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> See BATS Rule 11.5(c)(10).

Destination Specific Order will enhance order execution opportunities for market participants by allowing such participants to access, at a potentially reduced fee, pools of liquidity in addition to orders resting on the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 proposal 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](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2008-003 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2008-003. 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 changes 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing will also 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 No. SR-BATS-2008-003 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Acting Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).