



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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BATS Rule 8.15.01, entitled “List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15” to expand the list of violations eligible for disposition under the Exchange’s Minor Rule Violation Plan (“MRVP”) by adding Rule 11.8(a)(1). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>3</sup> The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>4</sup> If such waiver is granted by the Commission, the Exchange shall implement this rule proposal immediately upon filing.

(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 8.15. Imposition of Fines for Minor Rule Violation(s) of Rules

(a) – (e) (No changes.)

.01 List of Exchange Rule violations and Recommended Fine Schedule Pursuant to Rule 8.15:

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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).

<sup>4</sup> Id.

(a) – (c) (No changes.)

Recommended Fine Amount for 8.15.01(d)-(e): \$100 per violation

(d) (No changes.)

(e) Rule 11.8(a)(1) requirement for Market Makers to maintain continuous two-sided limit orders.

\* \* \* \* \*

(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 November 12, 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 amend Rule 8.15, entitled "Imposition of Fines for Minor Violation(s) of Rules" to add Rule 11.8(a)(1) to the list of rules which would be appropriate for disposition under the Exchange's MRVP. The proposed addition of Rule 11.8(a)(1), which provides that a Market Maker must maintain continuous limit orders to buy and sell for round lots in those securities in which the Market Maker is registered to trade, would allow the Exchange to impose a \$100 per violation fine for each violation of this rule. By promptly imposing a meaningful

financial penalty for such violations, the MRVP focuses on correcting conduct before it gives rise to more serious enforcement action. The MRVP provides a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal disciplinary proceedings, while also providing a greater flexibility in handling certain violations. Adopting a provision that would allow the Exchange to sanction violators under the MRVP by no means minimizes the importance of compliance with Exchange Rule 11.8. The Exchange believes that the violation of any of its rules is a serious matter. The addition of a sanction under the MRVP simply serves to add an additional method for disciplining violators of Exchange Rule 11.8. The Exchange will continue to conduct surveillance with due diligence and make its determination, on a case by case basis, whether a violation of Exchange Rule 11.8 should be subject to formal disciplinary proceedings.

(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>5</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>6</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, by giving the Exchange the ability to

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

promptly impose a meaningful financial penalty for such violations before there is a need for more serious enforcement action.

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)

As described below, the proposed rule change is substantially similar to the rule of other self-regulatory organizations that have previously been approved by the Commission.<sup>7</sup> Accordingly, the Exchange has designated this rule filing as non-

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<sup>7</sup> See, e.g., Rule 8.15, Interpretation and Policy .01, of the National Stock Exchange, Inc. ("NSX"), entitled "Imposition of Fines for Minor Violation(s) of Rules, which includes violations of NSX Rule 11.8(a)(1) (relating to a market maker's duty to comply with quotation policies); see also Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144, 40149 (July 11, 2008) (where the Commission stated that a proposed change relating to an SRO's addition of rules to its MRVP may be designated as immediately effective if "each policy issue raised (i) has been considered previously by the Commission when the Commission approved another exchange's MRVP rule change, and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.")

controversial under Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>9</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 from the date on which it was filed, or such shorter time as the Commission may designate. 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, at least five business days prior to the date of filing.<sup>10</sup>

Because the proposed rule change is non-controversial and will provide the Exchange with a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal disciplinary proceedings, the Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>11</sup> Waiver of this requirement is consistent with the protection of investors and the public interest.

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

The proposed rule change is similar to, among others, NSX Rule 8.15, Interpretations and Policy .01, which includes the similar NSX Rule 11.8(a)(1), relating to a market maker's duty to comply with quotation policies. The proposed rule change is

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

<sup>9</sup> 17 CFR 240.19b-4.

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

also similar to NYSE Arca's Rule 10.12(g), entitled "Minor Rule Plan: Minor Trading Rule Violations" which includes in its list of rules eligible for disposition under NYSE Arca's Minor Rule Plan NYSE Arca Rule 7.23(a)(1), relating to a market maker's duty to maintain continuous two-sided Q Orders in those securities in which the market maker is registered to trade.

9. Exhibits

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

Exhibit 2 – 5: Not applicable.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BATS-2008-011)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 8.15.01, entitled “List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15.”

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 November \_\_, 2008, BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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. BATS has also requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>4</sup> 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 8.15.01, entitled “List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15” to

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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).

<sup>4</sup> Id.

expand the list of violations eligible for disposition under the Exchange's Minor Rule Violation Plan ("MRVP") by adding Rule 11.8(a)(1).

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.

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 amend Rule 8.15, entitled "Imposition of Fines for Minor Violation(s) of Rules" to add Rule 11.8(a)(1) to the list of rules which would be appropriate for disposition under the Exchange's MRVP. The proposed addition of Rule 11.8(a)(1), which provides that a Market Maker must maintain continuous limit orders to buy and sell for round lots in those securities in which the Market Maker is registered to trade, would allow the Exchange to impose a \$100 per violation fine for each violation of this rule. By promptly imposing a meaningful financial penalty for such violations, the MRVP focuses on correcting conduct before it gives rise to more serious enforcement action. The MRVP provides a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal

disciplinary proceedings, while also providing a greater flexibility in handling certain violations. Adopting a provision that would allow the Exchange to sanction violators under the MRVP by no means minimizes the importance of compliance with Exchange Rule 11.8. The Exchange believes that the violation of any of its rules is a serious matter. The addition of a sanction under the MRVP simply serves to add an additional method for disciplining violators of Exchange Rule 11.8. The Exchange will continue to conduct surveillance with due diligence and make its determination, on a case by case basis, whether a violation of Exchange Rule 11.8 should be subject to formal disciplinary proceedings.

## 2. Statutory Basis

The 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>5</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>6</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, by giving the Exchange the ability to promptly impose a meaningful financial penalty for such violations before there is a need for more serious enforcement action.

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

<sup>6</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; and (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>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange believes that the proposed rule change will provide the Exchange with a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal disciplinary proceedings. The Exchange represents that waiver of this requirement is consistent with the protection of investors and the public interest.

In light of the foregoing, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission has determined to waive the operative delay, and the

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>9</sup> and Rule 19b-4(f)(6) thereunder,<sup>10</sup> with no operative delay.

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-2008-011 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-2008-011. 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

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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-2008-011 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).