

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

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires <input type="text"/>			<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).

Proposed rule change to amend BATS Rule 11.9 ("Orders and Modifiers") to provide Exchange functionality that will cancel any portion of a BATS market order submitted to the Exchange that would execute at a price that is more than 50 cents or 5 percent worse than the NBBO at the time the order initially reaches the Exchange, whichever is greater.

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 Last Name
 Title
 E-mail
 Telephone Fax

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”),¹ and Rule 19b-4 thereunder,² BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BATS Rule 11.9, entitled “Orders and Modifiers,” to provide Exchange system functionality that will cancel any portion of a market order submitted to the Exchange (a “BATS market order”) that would execute at a price that is more than 50 cents or 5 percent worse than the NBBO at the time the order initially reaches the Exchange (the “Initial NBBO”), whichever is greater. 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.³ 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.⁴ If such waiver is granted by the Commission, the Exchange shall implement this rule proposal on January 16, 2009.

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

* * * * *

Rule 11.9. Orders and Modifiers

No changes.

(a) No changes.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

⁴ Id.

(1) No changes.

(2) BATS Market Order. An order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange. BATS market[Market] orders shall not trade through Protected Quotations. A BATS market order that is designated as “BATS Only” will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.13(a)(1). BATS market[Market] orders that are not designated as “BATS Only” and that cannot be executed in accordance with Rule 11.13(a)(1) on the System when reaching the Exchange will be eligible for routing away pursuant to Rule 11.13(a)(2). Any portion of a BATS market order that would execute at a price more than \$0.50 or 5 percent worse than the NBBO at the time the order initially reaches the Exchange, whichever is greater, will be cancelled.

(b) – (e) No changes.

* * * * *

(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 January 9, 2009. 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 protect market participants from executions at prices that are significantly worse than the NBBO at the time of order entry by providing Exchange system functionality that will cancel any portion of a BATS market order that would execute at a price that is 50 cents or 5 percentage points worse than the Initial NBBO, whichever is greater. Any portion of a BATS market order that

would otherwise execute outside of these thresholds will be immediately cancelled back to the User.⁵ The Exchange believes that Users who submit market orders to the Exchange generally intend to receive executions for the full size of their orders at or near the Initial NBBO and are not always aware that there may not be enough liquidity at that price to fill the entire size of their orders. The Exchange believes that the market order thresholds proposed in this rule filing will help avoid executions of BATS market orders at prices that are significantly worse than the Initial NBBO, particularly in thinly-traded securities. The following example demonstrates how the BATS market order thresholds would operate:

- A User submits a routable BATS market order⁶ (i.e., not designated as a “BATS Only” order) to buy 1,000 shares of ABC;
- The Initial NBBO in security ABC is \$8.00 (bid) by \$8.05 (offer), 100 shares each, both published by “Market Center A”;
- The Exchange has 100 shares of liquidity at the \$8.05 offer price and also has resting orders on its book to sell 100 shares at \$8.15, 100 shares at \$8.20 and 1,000 shares at \$8.60; and
- Other than the \$8.05 offer published by Market Center A there are no offers to sell the security at or between \$8.05 and \$8.60 at other market centers.

⁵ As defined in Exchange Rule 1.5(bb).

⁶ If the order is not routable then it would be executed on the Exchange only if such executions would not trade through the protected quotations of other market centers. If the order is a routable order, then such order will be executed in accordance with BATS Rule 11.13(a), however, orders will not be routed away for execution at prices outside of the market order thresholds proposed in this rule filing, which applies both to market orders executed on the Exchange and to market orders that are to be routed away.

Under the circumstances described above, with the Initial NBBO of \$8.00 (bid) by \$8.05 (offer), the BATS market order would be executed as follows:

- 100 shares executed at the \$8.05 price on the Exchange;
- 900 shares routed to Market Center A as an immediate or cancel order with a price of \$8.05;
- 100 shares executed at Market Center A (presuming this offer was still available and there was no additional non-displayed liquidity at that price);
- 800 shares returned to the Exchange;
- 100 shares executed at the Exchange at the \$8.15 price level;
- 100 shares executed at the Exchange at the \$8.20 price level.

Under this example, 400 shares of the BATS market order would be executed. The remaining 600 shares of the BATS market order would be cancelled back to the User because the liquidity on the Exchange at the \$8.60 price level exceeds the BATS market order thresholds set forth in proposed Rule 11.9(a)(2), and such order is not eligible for routing outside of such thresholds. Such BATS market order could only be executed or routed by the Exchange up to and including a price of \$8.55 (\$0.50 worse than the Initial NBBO).

For those Users who intend to trade against liquidity at multiple price points from the Initial NBBO beyond the BATS market order thresholds proposed in this rule filing, those Users can clearly and unambiguously specify that intent by submitting a marketable limit order to the Exchange. For example, using the scenario described above, if the User submitted a limit order to buy 1,000 shares of security ABC with a limit price of \$9.00, such order would be executed up to its full size, either on the Exchange (provided that the Exchange would not trade through protected quotations) or at away market centers if the order was routable.

(b) Statutory Basis

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.⁷ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,⁸ 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 helping to avoid executions of market orders on the Exchange at prices that are significantly worse than the NBBO at the time an order is initially received by the Exchange. The Exchange believes that the Initial NBBO is a fair representation of then-available prices and accordingly provides for an appropriate pricing mechanism such that BATS market orders should not be executed at a significantly worse price. Also, this proposal is consistent with existing exchange rules that allow for the breaking of trades deemed clearly erroneous by reference to objective thresholds worse than the NBBO.⁹ Accordingly, the modifications to BATS Rule 11.9 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.

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

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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See, e.g., NASDAQ Rule 11890.

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 has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁰ and paragraph (f)(6) of Rule 19b-4 thereunder.¹¹ 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) and 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.¹²

The Exchange and other market centers have witnessed excessive volatility in recent months, both in terms of volume and in price, and significant price movements can

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4.

¹² 17 CFR 240.19b-4(f)(6)(iii).

occur very quickly in the current market. The Exchange believes that investors and market participants will benefit from additional protection from certain executions under such market conditions, particularly of market orders on the Exchange at prices that are significantly worse than the NBBO at the time the Exchange receives such orders. Accordingly, because the Exchange believes that implementation of the market order thresholds described in this filing is “non-controversial” and is important to its maintenance of a fair and orderly market and the protection of investors, the Exchange has filed this proposal for immediate effectiveness and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.¹³ Waiver of this requirement is consistent with the protection of investors and the public interest for the reasons described above.

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.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____; File No. SR-BATS-2009-001)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.9, entitled “Orders and Modifiers.”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 12, 2009, 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. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it 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 11.9, entitled “Orders and Modifiers,” to provide Exchange system functionality that will cancel any portion of a market order submitted to the Exchange (a “BATS market order”) that would execute at a price that is more than 50 cents or 5 percent worse than the NBBO at the time the order initially reaches the Exchange (the “Initial NBBO”), whichever is greater.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 protect market participants from executions at prices that are significantly worse than the NBBO at the time of order entry by providing Exchange system functionality that will cancel any portion of a BATS market order that would execute at a price that is 50 cents or 5 percentage points worse than the Initial NBBO, whichever is greater. Any portion of a BATS market order that would otherwise execute outside of these thresholds will be immediately cancelled back to the User.⁵ The Exchange believes that Users who submit market orders to the Exchange generally intend to receive executions for the full size of their orders at or near the Initial NBBO and are not always aware that there may not be enough liquidity at that price to fill the entire size of their orders. The Exchange believes that the market order

⁵ As defined in Exchange Rule 1.5(bb).

thresholds proposed in this rule filing will help avoid executions of BATS market orders at prices that are significantly worse than the Initial NBBO, particularly in thinly-traded securities. The following example demonstrates how the BATS market order thresholds would operate:

- A User submits a routable BATS market order⁶ (i.e., not designated as a “BATS Only” order) to buy 1,000 shares of ABC;
- The Initial NBBO in security ABC is \$8.00 (bid) by \$8.05 (offer), 100 shares each, both published by “Market Center A”;
- The Exchange has 100 shares of liquidity at the \$8.05 offer price and also has resting orders on its book to sell 100 shares at \$8.15, 100 shares at \$8.20 and 1,000 shares at \$8.60; and
- Other than the \$8.05 offer published by Market Center A there are no offers to sell the security at or between \$8.05 and \$8.60 at other market centers.

Under the circumstances described above, with the Initial NBBO of \$8.00 (bid) by \$8.05 (offer), the BATS market order would be executed as follows:

- 100 shares executed at the \$8.05 price on the Exchange;
- 900 shares routed to Market Center A as an immediate or cancel order with a price of \$8.05;
- 100 shares executed at Market Center A (presuming this offer was still available and there was no additional non-displayed liquidity at that price);

⁶ If the order is not routable then it would be executed on the Exchange only if such executions would not trade through the protected quotations of other market centers. If the order is a routable order, then such order will be executed in accordance with BATS Rule 11.13(a), however, orders will not be routed away for execution at prices outside of the market order thresholds proposed in this rule filing, which applies both to market orders executed on the Exchange and to market orders that are to be routed away.

- 800 shares returned to the Exchange;
- 100 shares executed at the Exchange at the \$8.15 price level;
- 100 shares executed at the Exchange at the \$8.20 price level.

Under this example, 400 shares of the BATS market order would be executed. The remaining 600 shares of the BATS market order would be cancelled back to the User because the liquidity on the Exchange at the \$8.60 price level exceeds the BATS market order thresholds set forth in proposed Rule 11.9(a)(2), and such order is not eligible for routing outside of such thresholds. Such BATS market order could only be executed or routed by the Exchange up to and including a price of \$8.55 (\$0.50 worse than the Initial NBBO).

For those Users who intend to trade against liquidity at multiple price points from the Initial NBBO beyond the BATS market order thresholds proposed in this rule filing, those Users can clearly and unambiguously specify that intent by submitting a marketable limit order to the Exchange. For example, using the scenario described above, if the User submitted a limit order to buy 1,000 shares of security ABC with a limit price of \$9.00, such order would be executed up to its full size, either on the Exchange (provided that the Exchange would not trade through protected quotations) or at away market centers if the order was routable.

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).⁷ In particular, for the

⁷ 15 U.S.C. 78(f)(b).

reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,⁸ 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 helping to avoid executions of market orders on the Exchange at prices that are significantly worse than the NBBO at the time an order is initially received by the Exchange. The Exchange believes that the Initial NBBO is a fair representation of then-available prices and accordingly provides for an appropriate pricing mechanism such that BATS market orders should not be executed at a significantly worse price. Also, the Exchange believes that this proposal is consistent with existing exchange rules that allow for the breaking of trades deemed clearly erroneous by reference to objective thresholds away from the NBBO.⁹ Accordingly, the modifications to BATS Rule 11.9 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.

(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

The Exchange has neither solicited nor received written comments on the proposed rule change.

⁸ 15 U.S.C. 78f(b)(5).

⁹ See, e.g., NASDAQ Rule 11890.

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

In its filing with the Commission, the Exchange cited excessive volatility in recent months, both in terms of volume and in price, and stated that significant price movements can occur very quickly in the current market. The Exchange believes that investors and market participants will benefit from additional protection from certain executions under such market conditions, particularly of market orders on the Exchange at prices that are significantly worse than the NBBO at the time the Exchange receives such orders. Accordingly, because the Exchange believes that implementation of the market order thresholds described in this filing is “non-controversial” and is important to its maintenance of a fair and orderly market and the protection of investors, the Exchange has filed this proposal for immediate effectiveness.

Because the foregoing proposed rule change 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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

Rule 19b-4(f)(6)(iii)¹² requires the Exchange to give the Commission written notice of the Exchange’s intent to file a proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

date of filing of the proposed rule change, or shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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. Please include File No. SR-BATS-2009-001 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 No. SR-BATS-2009-001. 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-2009-001 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).