

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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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 11.8, entitled “Obligations of Market Makers,” to provide Exchange functionality to Market Makers who wish to have the Exchange automatically enter orders on their behalf in order to comply with the obligation to maintain continuous two-sided limit orders in securities in which they are registered to trade. The Exchange plans to implement this functionality on February 20, 2009. 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

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

* * * * *

Rule 11.8. Obligations of Market Makers

(a) – (e) No changes.

(f) The Exchange will, upon request from a Market Maker received prior to 9:00 a.m. (Eastern Time) on a day in which the Exchange is open for business, enter on behalf of such Market Maker a two-sided limit order as a \$0.0001 bid and \$999,999.99 offer in each security to which the request applies. Such bids and offers will be designated as BATS Only Orders pursuant to Rule 11.9(c)(4), will be in the amount of one round lot each, and will be posted in the BATS Book during Regular Trading Hours unless cancelled by the Market Maker pursuant to Rule 11.9(e).

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

- (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 provide any Member of the Exchange that is registered as a Market Maker with Exchange system functionality to have the Exchange enter and maintain on its behalf "stub quotes" (i.e., quotes that are substantially far away from the Exchange's best bid or offer such that they are unlikely to be executed).⁴ As part of its Market Maker obligations, pursuant to BATS Rule 11.8(a)(1), a Market Maker is required to maintain continuous, two-sided limit orders in the securities in which the Market Maker is registered to trade. In order to assist Exchange Market Makers with this obligation, the Exchange proposes to offer functionality through which Market Makers could choose to have the Exchange enter and maintain a limit order on either side of the market on their behalf. At 9:00 a.m. Eastern

⁴ As with all BATS quotes, these stub quotes would be firm quotes and, as such, would be immediately and automatically executable. However, to the extent such an execution could be considered clearly erroneous it would subject to review under Rule 11.17 (Clearly Erroneous Executions).

Time, the Exchange will extract information submitted by the Market Maker that provides specific quote instructions for the Exchange to enter a quote on the Market Maker's behalf. Specifically, the Market Maker would instruct the Exchange to enter limit orders of \$0.0001 as a bid and \$999,999.99 as an offer in the amount of one round lot each. Such orders will be posted by the Exchange as BATS Only Orders,⁵ and will be maintained on the Exchange during Regular Trading Hours⁶ unless cancelled by the Market Maker pursuant to the Exchange's Rules.⁷

The proposed rule change would allow the Exchange to provide functionality similar to that provided by both the Nasdaq Stock Market LLC ("NASDAQ") and NYSE Arca Equities, Inc. ("NYSE Arca") to market makers registered with such exchanges. In particular, registered market makers on NASDAQ have the ability to enter "stub quotes" through the NASDAQ system in order to ensure that they are continually meeting their quoting obligations.⁸ Similarly, NYSE Arca provides its registered market makers with the ability to direct that exchange to enter orders on their behalf called "Q Orders," which automatically refresh in the NYSE Arca system,⁹ including orders that would be considered to be "stub quotes."

Although the Exchange believes that its registered Market Makers will be at or near the best bid or offer of the Exchange during much of the trading day, without stub

⁵ As defined in Rule 11.9(c)(4).

⁶ Defined in Rule 1.5(v) as 9:30 a.m. to 4:00 p.m. Eastern Time.

⁷ See Rule 11.9(e).

⁸ See Securities Exchange Act Release No. 56586 (October 1, 2007), 72 FR 57085 (October 5, 2007) (SR-NASDAQ-2007-069).

⁹ See NYSE Arca Rule 7.31(k).

quote functionality, and due to the speed of the modern trading environment, some Market Makers may not have a posted quote on one or both sides of the market for small periods of time, even for fractions of a second. The Exchange believes that the system functionality provided under the proposed rule change will provide Market Makers with a useful tool that they can utilize to meet their quoting obligations on the Exchange. Accordingly, the modifications to BATS Rule 11.8 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. As described in more detail below, the Exchange also believes that the proposed functionality is similar to that provided by other national securities exchanges and permissible under such exchanges' approved rules.¹⁰

(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.¹¹ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹² 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 encouraging Market makers to register with and trade on the Exchange by providing such Market Makers with system

¹⁰ See, e.g., NYSE Arca Rule 7.31(k).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

functionality that will assist them in maintaining continuous, two-sided limit orders in the securities in which they are registered.

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 has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹³ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁴ The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, 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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4.

prior to the date of filing.¹⁵ Also, as described below, the Exchange believes that the proposed rule change is consistent with the rules of another self-regulatory organization. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.

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

The Exchange has drafted the text of Rule 11.8(f) primarily based on NYSE Arca Rule 7.31(k). Although certain language contained in BATS Rule 11.8(f) differs from the language in NYSE Arca Rule 7.31(k), such differences are not material to the substance of this filing. The fundamental change affected through this proposed rule filing is to permit Market Makers to instruct the Exchange to enter orders at a specific price and size on their behalf, and thus, maintain compliance with their quoting obligations under Rule 11.8(a)(1). Rule 11.8(f), as proposed, is similar to NYSE Arca Rule 7.31(k) with respect to such orders entered on behalf of market makers under each rule, however under BATS Rule 11.8(f), such orders will be designated as \$0.0001 for a bid and \$999,999.99 for an offer, whereas for an NYSE Arca Q Order a market maker has the option to set the order at a specified percentage away from the best bid or offer or to use the default of \$0.0001 for a bid and two times the previous days close for an offer. Given recent market volatility, the Exchange does not believe that two times the previous day’s close is sufficient under these circumstances, and thus, has set the offer price at the Exchange’s maximum quoting level. For the reasons set forth above, 11.8(f) and NYSE

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

Arca Rule 7.31(k) are similar with respect to orders entered by an exchange at the request and on behalf of market makers, which is the sole purpose of the proposed rule change.

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-2009-002)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.8, entitled “Obligations of Market Makers.”

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 15, 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 11.8, entitled “Obligations of Market Makers,” to provide Exchange functionality to Market Makers who wish to have the Exchange automatically enter orders on their behalf in order to comply with the obligation to maintain continuous two-sided limit orders in securities in which they are registered to trade.

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)(iii).

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 provide any Member of the Exchange that is registered as a Market Maker with Exchange system functionality to have the Exchange enter and maintain on its behalf "stub quotes" (i.e., quotes that are substantially far away from the Exchange's best bid or offer such that they are unlikely to be executed).⁵ As part of its Market Maker obligations, pursuant to BATS Rule 11.8(a)(1), a Market Maker is required to maintain continuous, two-sided limit orders in the securities in which the Market Maker is registered to trade. In order to assist Exchange Market Makers with this obligation, the Exchange proposes to offer

⁵ As with all BATS quotes, these stub quotes would be firm quotes and, as such, would be immediately and automatically executable. However, to the extent such an execution could be considered clearly erroneous it would be subject to review under Rule 11.17 (Clearly Erroneous Executions).

functionality through which Market Makers could choose to have the Exchange enter and maintain a limit order on either side of the market on their behalf. At 9:00 a.m. Eastern Time, the Exchange will extract information submitted by the Market Maker that provides specific quote instructions for the Exchange to enter a quote on the Market Maker's behalf. Specifically, the Market Maker would instruct the Exchange to enter limit orders of \$0.0001 as a bid and \$999,999.99 as an offer in the amount of one round lot each. Such orders will be posted by the Exchange as BATS Only Orders,⁶ and will be maintained on the Exchange during Regular Trading Hours⁷ unless cancelled by the Market Maker pursuant to the Exchange's Rules.⁸

According to the Exchange, the proposed rule change would allow the Exchange to provide functionality similar to that provided by both the Nasdaq Stock Market LLC ("NASDAQ") and NYSE Arca Equities, Inc. ("NYSE Arca") to market makers registered with such exchanges. In particular, the Exchange represents that registered market makers on NASDAQ have the ability to enter "stub quotes" through the NASDAQ system in order to ensure that they are continually meeting their quoting obligations.⁹ Similarly, the Exchange represents that NYSE Arca provides its registered market makers with the ability to direct that exchange to enter orders on their behalf

⁶ As defined in BATS Rule 11.9(c)(4).

⁷ Defined in BATS Rule 1.5(v) as 9:30 a.m. to 4:00 p.m. Eastern Time.

⁸ See BATS Rule 11.9(e).

⁹ See Securities Exchange Act Release No. 56586 (October 1, 2007), 72 FR 57085 (October 5, 2007) (SR-NASDAQ-2007-069).

called “Q Orders,” which automatically refresh in the NYSE Arca system,¹⁰ including orders that would be considered to be “stub quotes.”

Although the Exchange believes that its registered Market Makers will be at or near the best bid or offer of the Exchange during much of the trading day, without stub quote functionality, and due to the speed of the modern trading environment, some Market Makers may not have a posted quote on one or both sides of the market for small periods of time, even for fractions of a second. The Exchange believes that the system functionality provided under the proposed rule change will provide Market Makers with a useful tool that they can utilize to meet their quoting obligations on the Exchange. Accordingly, the modifications to BATS Rule 11.8 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. The Exchange also believes that the proposed functionality is similar to that provided by other national securities exchanges and permissible under such exchanges’ approved rules.¹¹

2. 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.¹² Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹³ because it would promote just and equitable principles of trade, remove impediments to, and

¹⁰ See NYSE Arca Rule 7.31(k).

¹¹ See, e.g., NYSE Arca Rule 7.31(k).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by encouraging Market makers to register with and trade on the Exchange by providing such Market Makers with system functionality that will assist them in maintaining continuous, two-sided limit orders in the securities in which they are registered.

(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.

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

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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

Rule 19b-4(f)(6)(iii)¹⁶ requires the Exchange to give the Commission written notice of the Exchange's intent to file a proposed rule change along with a brief

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or shorter time as designated by the Commission. The Exchange has satisfied this requirement.

As described above and in its filing with the Commission, the Exchange believes that the proposed rule change is consistent with the rules of another self-regulatory organization. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.¹⁷

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-2009-002 on the subject line.

Paper Comments:

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

¹⁷ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File No. SR-BATS-2009-002. 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-2009-002 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).