

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"/>		Date Expires <input type="text"/>	<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 Exhibit 3 Sent As Paper Document

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 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 the Amended and Restated By-Laws of BATS Exchange, Inc. (the “By-Laws”) as they relate to the compositional requirements of the Nominating Committee. 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 attached as Exhibit 5. Material proposed to be added is double-underlined. Material proposed to be deleted is enclosed in brackets.

(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 May 8, 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) 378-8520.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

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

(a) Purpose

The Exchange proposes to amend the Exchange's By-Laws, specifically Article VI, Section 2, for the purpose of allowing additional Directors to serve on the Nominating Committee. As currently written, the By-Laws allow only one Director in his or her final year of service on the Board to serve on the Nominating Committee, and that Director must be a Non-Industry Director. The Exchange proposes an amendment to Article VI, Section 2 to allow any Director whose class⁴ is not being considered for nomination and election in the coming year to serve on the Nominating Committee. The proposed amendment would expand the number of current Directors eligible for participation on the Nominating Committee, and allow more Directors to participate in the Nominating Committee and thereby be more closely involved in the process of identifying candidates to serve as Directors.⁵

The Exchange believes that more than one Director, including Industry Directors, should be permitted to serve on the Nominating Committee and that the current By-Laws, which allow only a single Non-Industry Director to serve on the Nominating Committee in his or her last year of service, is unduly restrictive. The Exchange is proposing to retain the requirement that the number of Non-Industry members of the Nominating Committee shall equal or exceed the number of Industry members on the Nominating

⁴ As described in Article III, Section 3(b) of the By-Laws, Directors are divided into three classes and serve staggered terms.

⁵ The proposed rule change would have no effect on the process of selecting Member Representative Directors as described in Article III, Section 4 and Article VI, Sections 1 and 3 of the By-Laws.

Committee and believes that this requirement is sufficient to ensure adequate representation of Industry and Non-Industry interests.

In addition, as proposed, the Exchange would prohibit any Director from serving on the Nominating Committee if that Director's class is up for reelection, unless that Director is in his or her final year of service and is not standing for reelection. The Exchange believes that this prohibition would sufficiently prevent a Director from participating in nominating himself or herself to the Board. At the same time, the Exchange's proposal is less restrictive than the current prohibition and would, therefore, enable a larger number of current Directors to consider participation on the Nominating Committee.

The Exchange has proposed these changes because it believes that Directors are particularly well-suited to nominate Director candidates due to the first-hand knowledge they gain through service on the Board. In particular, Directors serving on the Nominating Committee will be qualified to evaluate the strengths and weaknesses of the Board and find other candidates for Director that best fit the needs of the Board. Additionally, the experience brought by Directors to the Nominating Committee will be an asset to any non-Director members of the Nominating Committee through the sharing of knowledge and information about the operations of the Exchange and the Board.

(b) Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of: (1) Section 6(b)(1) of the Act,⁷ which requires a

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78(b)(1).

national securities exchange to be so organized and have the capacity to carry out purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; (2) Section 6(b)(3) of the Act,⁸ which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer (the “fair representation requirement”); and Section 6(b)(5) of the Act,⁹ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, Members will continue to be represented on the Board and on key standing committees. Further, the Exchange’s proposal does not alter the existing compositional requirements of the Board, which provide a balance between Industry, Member, Non-Industry, and Independent representatives, nor does the proposal alter the existing compositional balance between Industry and Non-Industry representatives on the Nominating Committee.

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

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

⁸ 15 U.S.C. 78(b)(3).

⁹ 15 U.S.C. 78f(b)(5).

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

Not applicable.

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

As described above, the proposed rule change is being filed to allow additional Directors to serve on the Nominating Committee. Accordingly, 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 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) 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 prior to the date of filing.¹² 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.

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).

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.

Exhibits 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2009-018)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Change the Criteria for Becoming a Member of the Nominating Committee

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 May 28, 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 proposes to amend Article VI, Section 2 of the Amended and Restated By-Laws of BATS Exchange, Inc. (the “By-Laws”).

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.

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).

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 Exchange proposes to amend the Exchange's By-Laws, specifically Article VI, Section 2, for the purpose of allowing additional Directors to serve on the Nominating Committee. As currently written, the By-Laws allow only one Director in his or her final year of service on the Board to serve on the Nominating Committee, and that Director must be a Non-Industry Director. The Exchange proposes an amendment to Article VI, Section 2 to allow any Director whose class⁵ is not being considered for nomination and election in the coming year to serve on the Nominating Committee. The proposed amendment would expand the number of current Directors eligible for participation on the Nominating Committee, and allow more Directors to participate in

⁵ As described in Article III, Section 3(b) of the By-Laws, Directors are divided into three classes and serve staggered terms.

the Nominating Committee and thereby be more closely involved in the process of identifying candidates to serve as Directors.⁶

The Exchange believes that more than one Director, including Industry Directors, should be permitted to serve on the Nominating Committee and that the current By-Laws, which allow only a single Non-Industry Director to serve on the Nominating Committee in his or her last year of service, is unduly restrictive. The Exchange is proposing to retain the requirement that the number of Non-Industry members of the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee and believes that this requirement is sufficient to ensure adequate representation of Industry and Non-Industry interests.

In addition, as proposed, the Exchange would prohibit any Director from serving on the Nominating Committee if that Director's class is up for reelection, unless that Director is in his or her final year of service and is not standing for reelection. The Exchange believes that this prohibition would sufficiently prevent a Director from participating in nominating himself or herself to the Board. At the same time, the Exchange's proposal is less restrictive than the current prohibition and would, therefore, enable a larger number of current Directors to consider participation on the Nominating Committee.

The Exchange has proposed these changes because it believes that Directors are particularly well-suited to nominate Director candidates due to the first-hand knowledge they gain through service on the Board. In particular, Directors serving on the

⁶ The proposed rule change would have no effect on the process of selecting Member Representative Directors as described in Article III, Section 4 and Article VI, Sections 1 and 3 of the By-Laws.

Nominating Committee will be qualified to evaluate the strengths and weaknesses of the Board and find other candidates for Director that best fit the needs of the Board.

Additionally, the experience brought by Directors to the Nominating Committee will be an asset to any non-Director members of the Nominating Committee through the sharing of knowledge and information about the operations of the Exchange and the Board.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of: (1) Section 6(b)(1) of the Act,⁸ which requires a national securities exchange to be so organized and have the capacity to carry out purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; (2) Section 6(b)(3) of the Act,⁹ which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer (the “fair representation requirement”); and Section 6(b)(5) of the Act,¹⁰ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78(b)(1).

⁹ 15 U.S.C. 78(b)(3).

¹⁰ 15 U.S.C. 78f(b)(5).

Specifically, Members will continue to be represented on the Board and on key standing committees. Further, the Exchange's proposal does not alter the existing compositional requirements of the Board, which provide a balance between Industry, Member, Non-Industry, and Independent representatives, nor does the proposal alter the existing compositional balance between Industry and Non-Industry representatives on the Nominating Committee.

(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 on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

Rule 19b-4(f)(6)(iii)¹³ requires the Exchange to give the Commission written notice of the Exchange's intent to file a proposed rule change along with a brief

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 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. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.¹⁴

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-2009-018 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-2009-018. 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

¹⁴ 17 CFR 240.19b-4(f)(6).

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-2009-018 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

Note: Proposed new language is underlined. Proposed deletions are enclosed in brackets.

Exhibit 5

**AMENDED AND RESTATED
BY-LAWS OF BATS EXCHANGE, INC.
(a Delaware corporation)**

* * * * *

**ARTICLE VI
Nominating Committees**

Section 1. Election of Nominating Committee and Member Nominating Committee

(No change.)

Section 2. Nominating Committee

The Nominating Committee shall nominate candidates for election to the Board at the annual stockholder meeting and all other vacant or new Director positions on the Board. The Nominating Committee, in making such nominations, is responsible for ensuring that candidates meet the compositional requirements of Article III, Section 2(b). The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. A Nominating Committee member may [not] simultaneously serve on the Nominating Committee and the Board, unless [such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.] the Nominating Committee is nominating Director candidates for the Director's class, as explained in Article III, Section 3. [No more than one (1) member of the Nominating Committee shall be a current Director, and such Director shall be a Non-Industry Director.] Notwithstanding the preceding sentence, a Director may serve on the Nominating Committee in his or her final year of service on the Board. Following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.

Section 3. Member Nominating Committee

(No change.)

* * * * *