

OMB APPROVAL	
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Page 1 of <input style="width: 50px;" type="text" value="15"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No. SR - <input style="width: 50px;" type="text" value="2009"/> - <input style="width: 50px;" type="text" value="020"/> Amendment No. <input style="width: 50px;" type="text"/>
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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 style="width: 80px;" 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 amend BATS Rule 11.9 (Orders and Modifiers) and BATS Rule 11.12 (Priority of Orders) to permit Exchange Users to use a Replace Message to modify certain types of information originally submitted with an order without modifying the priority of such order.

**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”),<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 11.9, entitled “Orders and Modifiers,” and BATS Rule 11.12, entitled “Priority of Orders,” to permit Users to use a “Replace Message” to modify certain types of information originally submitted with an order without modifying the priority of such order. 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.

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

\* \* \* \* \*

Rule 11.9. Orders and Modifiers

(No changes.)

(a) – (d) (No changes.)

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

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

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

<sup>4</sup> Id.

(e) *Cancel/Replace Messages.* A User may, by appropriate entry in the System, cancel or replace an existing order entered by the User, subject to the following limitations.

(1) – (2) (No changes.)

(3) Other than changing a limit order to a market order, only [Only] the price, the sell long or sell short indicator and quantity terms of the order may be changed by a Replace Message [(including changing a limit order to a market order)]. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered.

(4) (No change.)

Rule 11.12. Priority of Orders

(a) (No change.)

(1) – (2) (No changes.)

(3) In the event an order has been cancelled or replaced in accordance with Rule 11.9(e) above, such order only retains priority if such modification involves a decrease in the size of the order or a change in position from sell long to sell short or vice-versa. Any other modification to an order, including an increase in the size of the order and/or price change, will result in such order losing priority as compared to other orders in the BATS Book and the timestamp for such order being revised to reflect the time of the modification.

(4) – (5) (No changes.)

(b) (No change.)

\* \* \* \* \*

(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 June 23, 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.

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 permit Users of the Exchange to change additional terms of an order through the use of a Replace Message. Currently, Rule 11.9(e)(3) states that the only terms of an order that may be changed through use of a Replace Message are the price and quantity terms of an order, including changing a limit order to a market order. Also, current Rule 11.12(a)(3) states that a decrease to the size of an order is the only change that a User can make that will not result in a loss of priority for an order compared to other orders in the BATS Book. The Exchange believes that Users should also be permitted to modify an order through a Replace Message in order to reflect a change from a long sale to a short sale and vice-versa. Under the proposed rule, Users will be permitted to use a Replace Message to modify the sale indicator associated with an order without canceling and resubmitting the order, and, with the proposed change to Rule 11.12(a)(3), without losing priority on the BATS Book. The Exchange does not currently associate the priority of an order with whether an order to sell is a long sale or a short sale, and therefore, does not believe that an update to an order to change the status from long to short or short to long should affect priority. The Exchange notes that it is not at this time proposing a rule change to require Users to update the position indicator associated with a sale order they have submitted, but rather,

is amending its rule to make such updates permissible through use of a Replace Message.<sup>5</sup>

In addition to the proposed change discussed above, in the interest of developing rule text that is easier to understand, the Exchange has proposed modifying the language that permits use of a Replace Message to change a limit order to a market order.

(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.<sup>6</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by modifying its system specifications to permit Users to update the position indicated for a sale (long or short), to the extent such position changes while their order is resting on the Exchange's order book.

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

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

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<sup>5</sup> The proposed rule does not affect Users' obligations contained in Regulation SHO under the Act, and Users must continue to comply with such obligations, including the order marking and locate requirements.

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

<sup>7</sup> 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)

The Exchange has designated this rule filing as non-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 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 prior to the date of filing, or such shorter time as designated by the Commission.<sup>10</sup> The Exchange believes that the proposed rule change will benefit the protection of investors and the public interest by permitting Users to elect to update the sale indicator associated with an order that has already been submitted to the Exchange. In addition, the proposed rule change does not place a significant burden on competition, as it relates solely to the

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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).

information associated with an order to the Exchange. As noted above, the proposed rule will allow the Exchange to make a minor modification to the Exchange's technical specifications that will, in turn, allow Users to change an order from a long sale to a short sale or vice-versa through use of a replace message, rather than having to cancel and re-submit the order. 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.

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> The Exchange requests this waiver because it expects to have technological changes in place to support the proposed rule change on or about July 2, 2009, and believes that benefits to Exchange Members expected from the proposed rule change should not be delayed. Based on the foregoing, the Exchange believes that its proposal should become immediately effective and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>12</sup> 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.

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).



Exhibit 2 – 5: Not applicable.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BATS-2009-020)

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,” and BATS Rule 11.12, entitled “Priority of Orders.”

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 June 29, 2009, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> 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,” and BATS Rule 11.12, entitled “Priority of Orders,” to permit Users to use a “Replace Message” to modify certain types of information originally submitted with an order without modifying the priority of such order.

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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> 15 U.S.C. 78s(b)(3)(A).

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

The text of the proposed rule change is available at the Exchange's Web site 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 permit Users of the Exchange to change additional terms of an order through the use of a Replace Message. Currently, Rule 11.9(e)(3) states that the only terms of an order that may be changed through use of a Replace Message are the price and quantity terms of an order, including changing a limit order to a market order. Also, current Rule 11.12(a)(3) states that a decrease to the size of an order is the only change that a User can make that will not result in a loss of priority for an order compared to other orders in the BATS Book. The Exchange believes that Users should also be permitted to modify an order through a Replace Message in order to reflect a change from a long sale to a short sale and vice-versa. Under the proposed rule, Users will be permitted to use a Replace Message to modify the sale indicator associated with an order without canceling and resubmitting the order, and, with the proposed change to Rule 11.12(a)(3), without losing priority on the BATS Book. The

Exchange does not currently associate the priority of an order with whether an order to sell is a long sale or a short sale, and therefore, does not believe that an update to an order to change the status from long to short or short to long should affect priority. The Exchange notes that it is not at this time proposing a rule change to require Users to update the position indicator associated with a sale order they have submitted, but rather, is amending its rule to make such updates permissible through use of a Replace Message.<sup>5</sup>

In addition to the proposed change discussed above, in the interest of developing rule text that is easier to understand, the Exchange has proposed modifying the language that permits use of a Replace Message to change a limit order to a market order.

## 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.<sup>6</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by modifying its system specifications

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<sup>5</sup> The proposed rule does not affect Users' obligations contained in Regulation SHO under the Act, and Users must continue to comply with such obligations, including the order marking and locate requirements.

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

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

to permit Users to update the position indicated for a sale (long or short), to the extent such position changes while their order is resting on the Exchange's order book.

(B) Self-Regulatory Organization's Statement on 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

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

III. Date of Effectiveness of the Proposed Rule Change 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 Act<sup>8</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>9</sup>

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.

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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-2009-020 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-2009-020. 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-2009-020 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).