



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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (“BATS” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BATS Rule 11.9, entitled “Orders and Modifiers,” to eliminate the ability of Exchange Users to execute market orders on the Exchange outside of Regular Trading Hours.<sup>3</sup> 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>4</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>5</sup> If such waiver is granted by the Commission, the Exchange shall implement this rule proposal on or about July 24, 2009.

(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. Order Execution

(No changes.)

(a) (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> As set forth in BATS Rule 1.5(w), Regular Trading Hours last from 9:30 a.m. until 4:00 p.m. Eastern Time.

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

<sup>5</sup> 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 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 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. BATS market orders are not eligible for execution during the Pre-Opening Session or the After Hours Trading Session.

(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 July 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) 378-8520.

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 amend BATS Rule 11.9(a)(2) to eliminate the ability of Exchange Users to execute market orders on the Exchange during

the Exchange's Pre-Opening or After Hours Trading Session.<sup>6</sup> Although the Exchange imposes certain limitations on how far away from the prevailing market a market order can be executed at any time,<sup>7</sup> the Exchange does currently permit the execution of market orders outside of Regular Trading Hours. The Exchange believes that completely preventing any execution of a BATS market order outside of Regular Trading Hours will help to avoid the execution of such an order at a price that is significantly worse than the price that the User expected to receive based on pricing for a security at the time such market order was initially submitted to the Exchange. Thus, the Exchange believes that the proposal will provide additional protection for those Users that submit market orders to the Exchange.

(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>8</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>9</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 helping to avoid executions of market orders on the Exchange at prices that are significantly worse than the price that a

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<sup>6</sup> As set forth in BATS Rule 1.5(r), the Pre-Opening Session lasts from 8:00 a.m. until 9:30 a.m. Eastern Time. As set forth in BATS Rule 1.5(c), the After Hours Trading Session lasts from 4:00 until 5:00 p.m. Eastern Time.

<sup>7</sup> See BATS Rule 11.9(a)(2).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

User expects to receive based on pricing for a security at the time an order is initially received by the Exchange. Also, this proposal is consistent with existing exchange rules that make clear that market orders are rejected outside of regular trading hours on such exchanges.<sup>10</sup> 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.

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>11</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>12</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,

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<sup>10</sup> See, e.g., NYSE Arca Equities Rule 7.34(d)(1)(C) and (d)(3)(B); ISE Rule 2102, Supplementary Material .01.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4.

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>13</sup> Also, the Exchange does not believe that the proposed rule change presents any policy issues that have not previously been considered by the Commission. In particular, the proposal will align the Exchange's rules with the rules of other market centers and self-regulatory organizations that state that market orders are not executable outside of regular trading hours on such markets.<sup>14</sup> 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 respectfully requests that the Commission waive the 30-day pre-operative delay so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup> Waiver of the 30-day operative delay, specified in Rule 19b-4(f)(6),<sup>17</sup> will allow the Exchange to more promptly implement the changes to its system to reject market orders outside of Regular Trading Hours even if

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<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> See, e.g., NYSE Arca Equities Rule 7.34(d)(1)(C) and (d)(3)(B); ISE Rule 2102, Supplementary Material .01.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> Id.

such orders would otherwise execute. The Exchange expects to have technological changes in place to support the proposed rule change on or about July 24, 2009, and believes that benefits to Exchange Users expected from the proposed rule change should not be delayed. Based on the foregoing, and because the rule filing is non-controversial, 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>18</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

This proposed rule change is based on the rules of other self-regulatory organizations that prohibit the execution of market orders outside of regular trading hours. For example, NYSE Arca Equities Rule 7.34(d)(1)(C) and (d)(3)(B) state, respectively, that market orders are not executable on NYSE Arca Equities during the Opening or Late Trading Sessions. Similarly, International Securities Exchange (“ISE”) Rule 2102, Supplementary Material .01, states that market orders are not accepted by the ISE Stock Exchange in the Pre-Market Session.

9. Exhibits

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

Exhibits 2 – 5: Not applicable.

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<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).



EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BATS-2009-025)

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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 20, 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 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,” to eliminate the ability of Exchange Users to execute market orders on the Exchange outside of Regular Trading Hours.<sup>5</sup>

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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).

<sup>5</sup> As set forth in BATS Rule 1.5(w), Regular Trading Hours last from 9:30 a.m. until 4:00 p.m. Eastern Time.

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 amend BATS Rule 11.9(a)(2) to eliminate the ability of Exchange Users to execute market orders on the Exchange during the Exchange's Pre-Opening or After Hours Trading Session.<sup>6</sup> Although the Exchange imposes certain limitations on how far away from the prevailing market a market order can be executed at any time,<sup>7</sup> the Exchange does currently permit the execution of market orders outside of Regular Trading Hours. The Exchange believes that completely preventing any execution of a BATS market order outside of Regular Trading Hours will help to avoid the execution of such an order at a price that is significantly worse than the

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<sup>6</sup> As set forth in BATS Rule 1.5(r), the Pre-Opening Session lasts from 8:00 a.m. until 9:30 a.m. Eastern Time. As set forth in BATS Rule 1.5(c), the After Hours Trading Session lasts from 4:00 until 5:00 p.m. Eastern Time.

<sup>7</sup> See BATS Rule 11.9(a)(2).

price that the User expected to receive based on pricing for a security at the time such market order was initially submitted to the Exchange. Thus, the Exchange believes that the proposal will provide additional protection for those Users that submit market orders to the Exchange.

## 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>8</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>9</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 helping to avoid executions of market orders on the Exchange at prices that are significantly worse than the price that a User expects to receive based on pricing for a security at the time an order is initially received by the Exchange. Also, this proposal is consistent with existing exchange rules that make clear that market orders are rejected outside of regular trading hours on such exchanges.<sup>10</sup> 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.

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See, e.g., NYSE Arca Equities Rule 7.34(d)(1)(C) and (d)(3)(B); ISE Rule 2102, Supplementary Material .01.

(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>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</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.

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:

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

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

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-2009-025 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-2009-025. 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-2009-025 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>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).