

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="24"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2011"/> - * <input type="text" value="002"/> Amendment No. (req. for Amendments *) <input 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 checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	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 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, required when Initial is checked *).

Proposal to amend BATS Rules 11.9, 11.13 and 11.19 to make certain changes consistent with the upcoming implementation of amendments to Regulation SHO.

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 * <input type="text" value="Anders"/>	Last Name * <input type="text" value="Franzon"/>
Title * <input type="text" value="VP, Associate General Counsel"/>	
E-mail * <input type="text" value="afranzon@batstrading.com"/>	
Telephone * <input type="text" value="(913) 815-7154"/>	Fax <input type="text" value="(913) 815-7119"/>

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	<input type="text" value="01/14/2011"/>	
By	<input type="text" value="Anders Franzon"/>	<input type="text" value="VP, Associate General Counsel"/>
	(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 (required)

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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 (required)

Add Remove View

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 Rules 11.9, 11.13 and 11.19 to make certain changes consistent with the upcoming implementation of amendments to Regulation SHO.³

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on January 6, 2011. No other action is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange, at (913) 815-7000.

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

(a) Purpose

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 242.200(g); 17 CFR 242.201. See infra note 4.

On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201,⁴ pursuant to which, among other things, short sale orders in covered securities⁵ generally cannot be executed or displayed by a trading center⁶ such as BATS at a price that is at or below the current national best bid (“NBB”) when a short sale circuit breaker is in effect for the covered security (the “short sale price test restriction”).⁷ In anticipation of the upcoming February 28, 2011 compliance date for Rule 201, the Exchange is proposing to amend certain BATS rules to describe the

⁴ See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a “short exempt” marking requirement. The amendments to Rule 201 and Rule 200(g) have a compliance date of February 28, 2011. See Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). See also Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO.

⁵ Rule 201(a)(1) defines the term “covered security” to mean any “NMS stock” as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an “NMS stock” as “any NMS security other than an option.” Rule 600(b)(46) of Regulation NMS defines an “NMS security” as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(46); and 17 CFR 242.600(b)(47).

⁶ Rule 201(a)(9) states that the term “trading center” shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a “trading center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” 17 CFR 242.600(b)(78).

⁷ 17 CFR 242.201(b)(1). See also Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 2.1 and 2.2 (concerning the duration of a short sale price test restriction).

manner in which the System⁸ will handle short sell orders when a short sale price test restriction is triggered under Rule 201 of Regulation SHO. These changes include establishing a definition for “short sale price sliding,” which is a new form of price sliding the Exchange proposes to offer when the amendments to Regulation SHO become operative, modifying certain BATS rules regarding order execution and routing when a short sale price test restriction is in effect, and modifying BATS rules related to order marking requirements. Additionally, the Exchange proposes to modify the definition of the current “displayed price sliding process” offered by BATS.

In order to comply with the short sale price test restriction of Regulation SHO, as amended, the Exchange proposes to offer short sale price sliding, which will be defined in BATS Rule 11.9(g). As a default, the Exchange will subject a User’s⁹ orders to the short sale price sliding unless they affirmatively choose to opt-out of the process. As proposed, when a User opts out of the price sliding process, any short sale order that could not be executed or displayed due to a short sale price test restriction would be rejected or cancelled by the Exchange upon entry or while resting on the order book, respectively. When a User’s order is subject to the price sliding process, as proposed, orders subject to short sale price sliding that, at the time of entry, could not be executed or displayed due to a short sale price test restriction will be repriced by the System at one

⁸ The “System” is defined in BATS Rule 1.5(aa) as “the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.”

⁹ A “User” is defined in BATS Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

minimum price variation above the current NBB to comply with Rule 201(b)(1)(i).¹⁰ An order subject to short sale price sliding will not be readjusted downward even if it could be displayed at a lower price without violation of Rule 201 of Regulation SHO. In the event the NBB changes such that the price of a non-displayed order subject to short sale price sliding would lock or cross the NBB, the order will receive a new timestamp, and will be repriced by the System at one minimum price variation above the current NBB, again in compliance with Rule 201(b)(1)(i).¹¹

As proposed, neither orders marked “short exempt” nor orders displayed by the System at a price above the then current NBB at the time of initial display when a short sale price test restriction is in effect for a covered security will be subject to short sale price sliding. Certain displayed short sale orders will not be repriced by the System after entry because under Rule 201(b)(1)(iii)(A) a trading center’s policies and procedures must be reasonably designed to permit the execution of short sale orders of covered securities that were displayed at a price above the current NBB at the time of initial display. “Short exempt” orders will not be repriced by the System, but instead, the Exchange will execute, display and/or route such orders without regard to the NBB or any short sale price test restriction in effect under Regulation SHO, as described below.

The Exchange currently offers a process called “displayed price sliding process,” as defined in current Rule 11.9(c)(4), which re-prices and/or displays orders at

¹⁰ Any execution or display will also need to be in compliance with applicable rules regarding minimum pricing increments. 17 CFR 242.612.

¹¹ See Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 4.1 (concerning un-displayed orders).

permissible prices when such orders would lock or cross Protected Quotations¹² in a manner inconsistent with Rule 610(d) of Regulation NMS.¹³ The Exchange proposes to rename the “displayed price sliding process” as “NMS price sliding,” to be included in new paragraph (g) of Rule 11.9, and to define the “price sliding process” as inclusive of both NMS price sliding and short sale price sliding.¹⁴ Also, consistent with the changes described above, the Exchange proposes to replace the term “displayed price sliding process” throughout its equity trading rules with the term “price sliding process.”¹⁵ As is true for displayed price sliding today and short sale price sliding as proposed, if a User chooses to opt-out of the price sliding process, the order will not be subject to NMS price sliding, and thus, the Exchange will cancel back their orders when display or execution of such orders contradict the provisions of Regulation NMS.

The Exchange also proposes a substantive change to NMS price sliding (today known as the displayed price sliding process). Under current System behavior, the Exchange cancels all non-displayed orders when the national best bid or offer (“NBBO”) changes such that the non-displayed order would cross a Protected Quotation, regardless

¹² As defined in BATS Rule 1.5(t), the term “Protected Quotation” means a quotation that is a Protected Bid or Protected Offer. In turn, a “Protected Bid” or “Protected Offer” shall mean a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.

¹³ 17 CFR 242.610(d).

¹⁴ The Exchange acknowledges that potential differences can exist between Protected Bids, as defined above (see supra note 12), and the NBB, upon which the requirements of Regulation SHO, as amended, are based.

¹⁵ The rules of BATS Exchange Options Market (“BATS Options”) also contain references to the displayed price sliding process. The Exchange is not proposing to modify its displayed price sliding process for BATS Options at this time.

of whether the order is subject to the displayed price sliding process. Under the proposed amendment, instead of cancelling such orders, unless a User has opted out of the price sliding process, the Exchange proposes to allow a resting non-displayed order to receive a new timestamp and be repriced at the locking price in the event that the NBBO changes such that the order would cross a Protected Quotation.

The Exchange also proposes to amend its Rule 11.13 to make clear that it will execute, display and route an order consistent with Rule 201 of Regulation SHO, and that if it cannot do so, orders will be cancelled back to the applicable Exchange User. In addition, the Exchange proposes to make clear that it will not route orders away from the Exchange that are marked “short” if a short sale price test restriction is in effect. Instead, such orders, if immediate-or-cancel (“IOC”) or market orders, will be cancelled, and if limit orders, will be posted to the BATS Book,¹⁶ subject to the price sliding process.

Finally, current Rule 11.19 requires Exchange Users to identify short sale orders as “short” when entered into the Exchange’s System. The Exchange proposes to add the term “short exempt” to Rule 11.19 because pursuant to amended Rule 200(g) of Regulation SHO, a broker-dealer can mark a short sale order as either “short” or “short exempt.”¹⁷ The Exchange also proposes to make clear in Rule 11.19 that if an order it received is marked “short exempt,” the Exchange will execute, display and/or route the order without regard to the NBB or any short sale price test restriction in effect under

¹⁶ As defined in BATS Rule 1.5(e).

¹⁷ 17 CFR 242.200(g). Rule 200(g)(2) provides that a sale order shall be marked “short exempt” only if the provisions of paragraphs (c) or (d) of Rule 201 of Regulation SHO are met. See also Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 5.4 and 5.5.

Regulation SHO.¹⁸ The Exchange also proposes to make clear, as it does in Rule 11.9(d)(1) with respect to intermarket sweep orders, that it relies on a Member's¹⁹ marking of an order, in this case the "short exempt" marking, when handling such order. Accordingly, proposed Rule 11.19 states that it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as "short exempt."²⁰

(b) Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.²¹ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,²² because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The Exchange believes that the proposed changes will provide clarity on the short sale order handling procedures employed by the Exchange and certain obligations of Members when sending short sale orders to the Exchange consistent with Regulation SHO, as amended. The Exchange also believes that the proposed short sale price sliding functionality and amendments to the existing displayed price sliding process will assist Users in executing or displaying their orders consistent with Regulation SHO

¹⁸ 17 CFR 242.201(b)(1)(iii)(B).

¹⁹ A "Member" is defined in BATS Rule 1.5(n) as any registered broker or dealer that has been admitted to membership in the Exchange.

²⁰ 17 CFR 242.200(g)(2). See also 17 CFR 242.201(c); 17 CFR 242.201(d).

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

and Regulation NMS, especially under fast moving conditions where the NBBO is quickly updating. In addition, as is currently the case, the amended price sliding process is optional to Users. Specifically, Users can choose to opt-out of the price sliding process, and if they choose to do so, the Exchange will cancel back their orders when such orders contradict the provisions of Regulation SHO or Regulation NMS.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. 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.

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)

Not applicable.

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

Not applicable.

9. Exhibits

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

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2011-002)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Proposed Rule Change to Amend BATS Rules in Connection with the Implementation of Amendments to Regulation SHO.

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 14, 2011, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 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 filing with the Commission a proposal to amend BATS Rules 11.9, 11.13 and 11.19 to make certain changes consistent with the upcoming implementation of amendments to Regulation SHO.³

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 242.200(g); 17 CFR 242.201.

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

On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201,⁴ pursuant to which, among other things, short sale orders in covered securities⁵ generally cannot be executed or displayed by a trading

⁴ See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a "short exempt" marking requirement. The amendments to Rule 201 and Rule 200(g) have a compliance date of February 28, 2011. See Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). See also Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO.

⁵ Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(46); and 17 CFR 242.600(b)(47).

center⁶ such as BATS at a price that is at or below the current national best bid (“NBB”) when a short sale circuit breaker is in effect for the covered security (the “short sale price test restriction”).⁷ In anticipation of the upcoming February 28, 2011 compliance date for Rule 201, the Exchange is proposing to amend certain BATS rules to describe the manner in which the System⁸ will handle short sell orders when a short sale price test restriction is triggered under Rule 201 of Regulation SHO. These changes include establishing a definition for “short sale price sliding,” which is a new form of price sliding the Exchange proposes to offer when the amendments to Regulation SHO become operative, modifying certain BATS rules regarding order execution and routing when a short sale price test restriction is in effect, and modifying BATS rules related to order marking requirements. Additionally, the Exchange proposes to modify the definition of the current “displayed price sliding process” offered by BATS.

In order to comply with the short sale price test restriction of Regulation SHO, as amended, the Exchange proposes to offer short sale price sliding, which will be

⁶ Rule 201(a)(9) states that the term “trading center” shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a “trading center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” 17 CFR 242.600(b)(78).

⁷ 17 CFR 242.201(b)(1). See also Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 2.1 and 2.2 (concerning the duration of a short sale price test restriction).

⁸ The “System” is defined in BATS Rule 1.5(aa) as “the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.”

defined in BATS Rule 11.9(g). As a default, the Exchange will subject a User's⁹ orders to the short sale price sliding unless they affirmatively choose to opt-out of the process. As proposed, when a User opts out of the price sliding process, any short sale order that could not be executed or displayed due to a short sale price test restriction would be rejected or cancelled by the Exchange upon entry or while resting on the order book, respectively. When a User's order is subject to the price sliding process, as proposed, orders subject to short sale price sliding that, at the time of entry, could not be executed or displayed due to a short sale price test restriction will be repriced by the System at one minimum price variation above the current NBB to comply with Rule 201(b)(1)(i).¹⁰ An order subject to short sale price sliding will not be readjusted downward even if it could be displayed at a lower price without violation of Rule 201 of Regulation SHO. In the event the NBB changes such that the price of a non-displayed order subject to short sale price sliding would lock or cross the NBB, the order will receive a new timestamp, and will be repriced by the System at one minimum price variation above the current NBB, again in compliance with Rule 201(b)(1)(i).¹¹

As proposed, neither orders marked "short exempt" nor orders displayed by the System at a price above the then current NBB at the time of initial display when a short sale price test restriction is in effect for a covered security will be subject to short sale

⁹ A "User" is defined in BATS Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

¹⁰ Any execution or display will also need to be in compliance with applicable rules regarding minimum pricing increments. 17 CFR 242.612.

¹¹ See Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A No. 4.1 (concerning un-displayed orders).

price sliding. Certain displayed short sale orders will not be repriced by the System after entry because under Rule 201(b)(1)(iii)(A) a trading center's policies and procedures must be reasonably designed to permit the execution of short sale orders of covered securities that were displayed at a price above the current NBB at the time of initial display. "Short exempt" orders will not be repriced by the System, but instead, the Exchange will execute, display and/or route such orders without regard to the NBB or any short sale price test restriction in effect under Regulation SHO, as described below.

The Exchange currently offers a process called "displayed price sliding process," as defined in current Rule 11.9(c)(4), which re-prices and/or displays orders at permissible prices when such orders would lock or cross Protected Quotations¹² in a manner inconsistent with Rule 610(d) of Regulation NMS.¹³ The Exchange proposes to rename the "displayed price sliding process" as "NMS price sliding," to be included in new paragraph (g) of Rule 11.9, and to define the "price sliding process" as inclusive of both NMS price sliding and short sale price sliding.¹⁴ Also, consistent with the changes described above, the Exchange proposes to replace the term "displayed price sliding

¹² As defined in BATS Rule 1.5(t), the term "Protected Quotation" means a quotation that is a Protected Bid or Protected Offer. In turn, a "Protected Bid" or "Protected Offer" shall mean a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.

¹³ 17 CFR 242.610(d).

¹⁴ The Exchange acknowledges that potential differences can exist between Protected Bids, as defined above (see supra note 12), and the NBB, upon which the requirements of Regulation SHO, as amended, are based.

process” throughout its equity trading rules with the term “price sliding process.”¹⁵ As is true for displayed price sliding today and short sale price sliding as proposed, if a User chooses to opt-out of the price sliding process, the order will not be subject to NMS price sliding, and thus, the Exchange will cancel back their orders when display or execution of such orders contradict the provisions of Regulation NMS.

The Exchange also proposes a substantive change to NMS price sliding (today known as the displayed price sliding process). Under current System behavior, the Exchange cancels all non-displayed orders when the national best bid or offer (“NBBO”) changes such that the non-displayed order would cross a Protected Quotation, regardless of whether the order is subject to the displayed price sliding process. Under the proposed amendment, instead of cancelling such orders, unless a User has opted out of the price sliding process, the Exchange proposes to allow a resting non-displayed order to receive a new timestamp and be repriced at the locking price in the event that the NBBO changes such that the order would cross a Protected Quotation.

The Exchange also proposes to amend its Rule 11.13 to make clear that it will execute, display and route an order consistent with Rule 201 of Regulation SHO, and that if it cannot do so, orders will be cancelled back to the applicable Exchange User. In addition, the Exchange proposes to make clear that it will not route orders away from the Exchange that are marked “short” if a short sale price test restriction is in effect. Instead,

¹⁵ The rules of BATS Exchange Options Market (“BATS Options”) also contain references to the displayed price sliding process. The Exchange is not proposing to modify its displayed price sliding process for BATS Options at this time.

such orders, if immediate-or-cancel (“IOC”) or market orders, will be cancelled, and if limit orders, will be posted to the BATS Book,¹⁶ subject to the price sliding process.

Finally, current Rule 11.19 requires Exchange Users to identify short sale orders as “short” when entered into the Exchange’s System. The Exchange proposes to add the term “short exempt” to Rule 11.19 because pursuant to amended Rule 200(g) of Regulation SHO, a broker-dealer can mark a short sale order as either “short” or “short exempt.”¹⁷ The Exchange also proposes to make clear in Rule 11.19 that if an order it received is marked “short exempt,” the Exchange will execute, display and/or route the order without regard to the NBB or any short sale price test restriction in effect under Regulation SHO.¹⁸ The Exchange also proposes to make clear, as it does in Rule 11.9(d)(1) with respect to intermarket sweep orders, that it relies on a Member’s¹⁹ marking of an order, in this case the “short exempt” marking, when handling such order. Accordingly, proposed Rule 11.19 states that it is the entering Member’s responsibility, not the Exchange’s responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as “short exempt.”²⁰

¹⁶ As defined in BATS Rule 1.5(e).

¹⁷ 17 CFR 242.200(g). Rule 200(g)(2) provides that a sale order shall be marked “short exempt” only if the provisions of paragraphs (c) or (d) of Rule 201 of Regulation SHO are met. See also Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, Q&A Nos. 5.4 and 5.5.

¹⁸ 17 CFR 242.201(b)(1)(iii)(B).

¹⁹ A “Member” is defined in BATS Rule 1.5(n) as any registered broker or dealer that has been admitted to membership in the Exchange.

²⁰ 17 CFR 242.200(g)(2). See also 17 CFR 242.201(c); 17 CFR 242.201(d).

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.²¹ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,²² because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The Exchange believes that the proposed changes will provide clarity on the short sale order handling procedures employed by the Exchange and certain obligations of Members when sending short sale orders to the Exchange consistent with Regulation SHO, as amended. The Exchange also believes that the proposed short sale price sliding functionality and amendments to the existing displayed price sliding process will assist Users in executing or displaying their orders consistent with Regulation SHO and Regulation NMS, especially under fast moving conditions where the NBBO is quickly updating. In addition, as is currently the case, the amended price sliding process is optional to Users. Specifically, Users can choose to opt-out of the price sliding process, and if they choose to do so, the Exchange will cancel back their orders when such orders contradict the provisions of Regulation SHO or Regulation NMS.

(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

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2011-002 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.

All submissions should refer to File No. SR-BATS-2011-002. 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 Web site viewing and printing 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-2011-002 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.²³

Florence E. Harmon
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).

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

Rules of BATS Exchange, Inc.

CHAPTER XI. TRADING RULES

Rule 11.9. Orders and Modifiers

(No changes.)

(a)-(b) (No changes.)

(c) *Other Types of Orders.*

(1)-(3) (No changes.)

(4) *BATS Only Order.* An order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(1) or cancelled, without routing away to another trading center. A BATS Only Order will be subject to the price sliding process as set forth in paragraph (g) below unless a User has entered instructions not to use the price sliding process. [A BATS Only Order that, at the time of entry, would cross a Protected Quotation will be repriced to the locking price and ranked at such price in the BATS Book. A BATS Only Order that, if at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation will be displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers) (collectively, the “displayed price sliding process”). In the event the NBBO changes such that the BATS Only Order at the original locking price would not lock or cross a Protected Quotation, the order will receive a new timestamp, and will be displayed at the original locking price. The System will default to the displayed price sliding process for a BATS Only Order unless the User has entered instructions not to use the displayed price sliding process.]

(5) (No changes.)

(6) *BATS Post Only Order.* An order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(1) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the BATS Book. A BATS Post Only Order will be subject to the [displayed] price sliding process as set forth in paragraph (g) below unless a User has entered instructions not to use the [displayed] price sliding process [as set forth in paragraph (c)(4) above].

(7) *Partial Post Only at Limit Order.* An order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(1) or cancelled, as appropriate, without routing away to another trading center except that the order will only remove liquidity from the BATS Book under the following circumstances:

(A) – (B) (No changes.)

A Partial Post Only at Limit Order will be subject to the [displayed] price sliding process as set forth in paragraph (g) below unless a User has entered instructions not to use the [displayed] price sliding process [as set forth in paragraph (c)(4) above].

(8)-(13) (No changes.)

(d)-(f) (No changes.)

(g) *Price Sliding.* The System will process orders, subject to a User’s instructions, pursuant to the “price sliding process,” as defined below.

(1) *NMS Price Sliding.* An order that, at the time of entry, would cross a Protected Quotation will be repriced to the locking price and ranked at such price in the BATS Book. An order that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation will be displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers) (“NMS price sliding”). In the event the NBBO changes such that the order at the original locking price would not lock or cross a Protected Quotation, the order subject to NMS price sliding will receive a new timestamp, and will be displayed at the original locking price. In the event the NBBO changes such that a Non-Displayed Order subject to NMS price sliding would cross a Protected Quotation, the order will receive a new timestamp, and will be repriced by the System at the locking price.

(2) *Short Sale Price Sliding.* An order that, at the time of entry, could not be executed or displayed based on Rule 201 of Regulation SHO will be repriced by the System at one minimum price variation above the current NBB (“short sale price sliding,” and together with NMS price sliding, the “price sliding process”). An order subject to short sale price sliding will not be readjusted downward even if it could be displayed at a lower price without violation of Rule 201 of Regulation SHO. Neither orders marked “short exempt” nor orders displayed by the System at a price above the then current national best bid at the time of initial display when a short sale price test restriction is in effect shall be subject to short sale price sliding. In the event the NBB changes such that the price of a Non-Displayed Order subject to short sale price sliding would lock or cross the NBB, the order will receive a new timestamp, and will be repriced by the System at one minimum price variation above the current NBB.

(3) *Applicability of Price Sliding.* If an order is eligible for the price sliding process, it will be subject to both NMS price sliding and short sale price sliding.

Rule 11.13. Order Execution

Subject to the restrictions [on short sales] under these Exchange Rules or the Act and the rules and regulations thereunder, orders shall be matched for execution in accordance with this Rule 11.13. For any execution of a short sale order to occur on the Exchange when a short sale price test restriction is in effect, the price must be better than the NBB, unless the sell order was initially displayed by the System at a price above the then current NBB or is marked “short exempt” pursuant to Regulation SHO. For any execution to occur during Regular Trading Hours,[however,] the price must be equal to or better than the Protected NBBO, unless the order is marked ISO or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS. For any execution to occur during the Pre-Opening Session or the After Hours Trading Session, the price must be equal to or better than the highest Protected Bid or lowest Protected Offer. For purposes of this Rule 11.13 any order falling within the parameters of this paragraph shall be referred to as “executable”. An order will be cancelled back to the User if, based on market conditions, User instructions, applicable Exchange Rules and/or the Act and the rules and regulations thereunder, such order is not executable, cannot be routed to another trading center pursuant to Rule 11.13(a)(2) below and cannot be posted to the BATS Book.

(a) *Execution and Routing.*

(1) *Execution against BATS Book.* An incoming order shall first attempt to be matched for execution against orders in the BATS Book. An incoming order to buy will be automatically executed to the extent that it is priced at an amount that equals or exceeds any order to sell in the BATS Book and is executable, as defined above. Such order to buy shall be executed at the price(s) of the lowest order(s) to sell having priority in the BATS Book. An incoming order to sell will be automatically executed to the extent that it is priced at an amount that equals or is less than any other order to buy in the BATS Book and is executable, as defined above. Such order to sell shall be executed at the price(s) of the highest order(s) to buy having priority in the BATS Book.

(2) *Routing to Away Trading Centers.* Depending on the instructions set by the User when the incoming order was originally entered, if a market or marketable limit order has not been executed in its entirety pursuant to paragraph (a)(1) above, the order shall be eligible for additional processing under one or more of the routing options listed under paragraph (a)(3) below. An order marked “short” when a short sale price test restriction is in effect is not eligible for routing by the Exchange. If an order is ineligible for routing due to a short sale price test restriction and such order is an IOC or a market order, then the order will be cancelled. If an order is ineligible for routing due to a short sale price test restriction and such order is a limit order, the Exchange will post the unfilled balance of the order to the BATS Book, subject to the price sliding process as defined in paragraph (g) of Rule 11.9. With respect to an order that is eligible for routing, the [The] System will designate orders as IOCs and will cause such orders to be routed to one or more Trading Centers (as defined in Rule 2.11) for potential execution, per the entering User’s instructions, in compliance with Rule 611 under Regulation NMS.

After the System receives responses to orders that were routed away, to the extent an order is not executed in full through the routing process, the System will process the balance of such order as follows. Depending on parameters set by the User when the incoming order was originally entered, the System will either:

(A) If a limit order, post the unfilled balance of the order to the BATS Book, subject to the [displayed] price sliding process as defined in paragraph [(c)(4)](g) of Rule 11.9;

(B) – (C) (No changes.)

(No changes.)

(3) (No changes.)

(b)-(d) (No changes.)

Rule 11.19. Short Sales

All short sale orders shall be identified as “short” or “short exempt” when entered into the System. If marked “short exempt,” the Exchange shall execute, display and/or route an order without regard to any short sale price test restriction in effect under Regulation SHO. The Exchange relies on the marking of an order as “short exempt” when handling such order, and thus, it is the entering Member’s responsibility, not the Exchange’s responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as “short exempt.”
