

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No.\* SR - 2011 - \* 045

Amendment No. (req. for Amendments \*)

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"/>
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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 checked="" type="checkbox"/> 19b-4(f)(6)

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Proposal to modify the market opening procedures for BATS Options.

**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 *	Anders	Last Name *	Franzon
Title *	VP, Associate General Counsel		
E-mail *	afranzone@batstrading.com		
Telephone *	(913) 815-7154	Fax	(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 10/25/2011

By Anders Franzon  
(Name \*)VP, Associate General Counsel  
(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.

Anders Franzon,

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)**

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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**

Add Remove View

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 proposal to amend the Rules applicable to the BATS options market (“BATS Options”) in order to modify the opening procedures for BATS Options. 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 operative delay 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 on or about November 4, 2011.

(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.

\* \* \* \* \*

CHAPTER XXI. TRADING SYSTEMS

\* \* \* \* \*

Rule 21.7. Market Opening Procedures

(a) The System shall open options, other than index options, for trading based on the first transaction on the primary listing market after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan. With respect to index options, the System shall open such options for trading at 9:30 a.m. Eastern Time.

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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.

(b) In the event the underlying security has not opened within a reasonable time after 9:30 a.m. Eastern Time, the Exchange shall make an inquiry to determine the cause of the delay. The beginning of trading of options contracts in such security shall be delayed until [the market for] the underlying security has opened for trading on the primary listing market for such security unless the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts.

(c) The Exchange may delay the commencement of trading in any class of options in the interests of a fair and orderly market.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule filing was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on November 10, 2009. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action is necessary for the filing of this proposal.

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

BATS Options currently opens options, other than index options,<sup>5</sup> for trading based on the first transaction after 9:30 a.m. Eastern Time in the securities underlying the

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<sup>5</sup> BATS Rule 21.7 states that index options will open for trading at 9:30 a.m. Eastern Time, without requiring an execution in any underlying security. The Exchange notes that BATS Options does not currently offer trading of index options.

options as reported on the first print disseminated pursuant to an effective national market system plan. The Exchange proposes to modify this procedure to wait for the first transaction on the primary listing market for each underlying security prior to opening trading in the related options. The Exchange believes this change is appropriate because on the primary listing market a security typically opens through an auction mechanism that provides for additional price discovery as compared to non-listing markets.<sup>6</sup> Accordingly, the Exchange believes the proposed change will help to improve the opening process of BATS Options by ensuring that an underlying security has been opened pursuant to a robust price discovery process before opening the overlying options for trading.

(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.<sup>7</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</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. In particular, the proposed rule change will allow the Exchange to protect investors and the public interest by waiting to open options for trading until the primary listing market for the applicable underlying security has

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<sup>6</sup> See, e.g., NYSE/NASDAQ

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

opened such security, which should lead to more accurate prices on BATS Options at the market open.

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>9</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>10</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) 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

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4.

the date of filing, or such shorter time as designated by the Commission.<sup>11</sup> The Exchange believes that investors and market participants will benefit from additional protection from certain executions by waiting for the primary listing market for an underlying security to open, particularly of market orders on BATS Options at the beginning of the trading day. Accordingly, because the Exchange believes that implementation of the change described in this filing is “non-controversial” and is important to its maintenance of a fair and orderly market and the protection of investors, the Exchange has filed this proposal for immediate effectiveness.

As noted above, the Exchange does not believe that this proposal raises any new or novel issues and believes that it should become effective upon filing so that the Exchange will be able to improve its market opening procedures. In addition, the proposed change will not require a significant programming effort by Users<sup>12</sup> of BATS Options or other market participants that would necessitate a delay. Finally, the Exchange requests this waiver because it expects to have operational and technological changes in place to support the proposed rule change on or about November 4, 2011, and that benefits to Users expected from the proposed rule change should not be delayed. Accordingly, the Exchange requests that the Commission waive the 30-day operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>13</sup> Waiver of this

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

<sup>12</sup> As defined in BATS Rule 16.1(a)(62), a “User” on BATS Options is either a member of BATS Options (“Options Member”) or a sponsored participant who is authorized to obtain access to the Exchange’s system pursuant to BATS Rule 11.3 (“Sponsored Participant”).

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

requirement is consistent with the protection of investors and the public interest for the reasons described above.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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.

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.

Exhibit 2 – 5: Not applicable.



EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2011-045)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Market Opening Procedures of BATS Options.

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 October 25, 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 and II 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 the Rules applicable to the BATS options market (“BATS Options”) in order to modify the opening procedures for BATS Options.

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

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

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

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

BATS Options currently opens options, other than index options,<sup>3</sup> for trading based on the first transaction after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan. The Exchange proposes to modify this procedure to wait for the first transaction on the primary listing market for each underlying security prior to opening trading in the related options. The Exchange believes this change is appropriate because on the primary listing market a security typically opens through an auction mechanism that provides for additional price discovery as compared to non-listing markets.<sup>4</sup> Accordingly, the Exchange believes the proposed change will help to improve the opening process of BATS Options by ensuring that an underlying security has been opened pursuant to a robust price discovery process before opening the overlying options for trading.

2. Statutory Basis

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<sup>3</sup> BATS Rule 21.7 states that index options will open for trading at 9:30 a.m. Eastern Time, without requiring an execution in any underlying security. The Exchange notes that BATS Options does not currently offer trading of index options.

<sup>4</sup> See, e.g., NYSE/NASDAQ

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.<sup>5</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</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. In particular, the proposed rule change will allow the Exchange to protect investors and the public interest by waiting to open options for trading until the primary listing market for the applicable underlying security has opened such security, which should lead to more accurate prices on BATS Options at the market open.

(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

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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>7</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2011-045 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-2011-045. 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

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

(<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, on official business days between the hours of 10:00 am and 3:00 pm. 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-2011-045 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>9</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).