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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26

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

File No.* SR - 2012 - * 023
Amendment No. (req. for Amendments *)

Proposed Rule Change by BATS Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☑	☐	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	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 adopt additional listing requirements for a company that has become an Act reporting company by combining either directly or indirectly with a public shell, whether through a Reverse Merger, exchange offer, or otherwise (a “Reverse Merger”).

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 * afranzon@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 06/15/2012

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)

Add Remove View

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

Add Remove View

Exhibit Sent As Paper Document

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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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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 Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or the "Exchange 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 adopt additional listing requirements for a company that has become an Act reporting company by combining either directly or indirectly with a public shell, whether through a Reverse Merger, exchange offer, or otherwise (a "Reverse Merger").

(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 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 BATS Exchange Board of Directors of any action taken pursuant to delegated authority. 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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

(a) Purpose

The Exchange is proposing to adopt more stringent listing requirements for operating companies that become Exchange Act reporting companies through a Reverse Merger ("Reverse Merger Companies"). In a Reverse Merger, an existing public shell company merges with a private operating company in a transaction in which the shell company is the surviving legal entity. While the public shell company survives the merger, the shareholders of the private operating company typically hold a large majority of the shares of the public company after the merger and the management and board of the private company will assume those roles in the post-merger public company. The assets and business operations of the post-merger are primarily, if not solely, those of the former private operating company. The Exchange understands that private operating companies generally enter into Reverse Merger transactions to enable the company and its shareholders to sell shares in the public equity markets. By becoming a public reporting company via a Reverse Merger, a private operating company can access the public markets quickly and avoid the generally more expensive and lengthy process of going public by way of an initial public offering. While the public shell company is required to report the Reverse Merger in a Form 8-K filing with the Commission, generally there are no registration requirements under the Securities Act of 1933 (the "Securities Act")[3] at that point in time, as there would be for an IPO.

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[3] 15 U.S.C. 77a.

Significant regulatory concerns, including accounting fraud allegations, have arisen with respect to a number of Reverse Merger Companies in recent times. The Commission has taken direct action against Reverse Merger Companies. During 2011, the Commission suspended trading in the securities of numerous Reverse Merger Companies.[4] The Commission also recently brought an enforcement proceeding against an audit firm relating to its work for Reverse Merger Companies.[5] In addition, the Commission issued a bulletin on the risks of investing in Reverse Merger Companies, noting potential market and regulatory risks related to investing in Reverse Merger Companies.[6]

BATS Rule 14.2 provides the exchange with "broad discretionary authority over the initial and continued listing of securities on the Exchange in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest." BATS Rule 14.2 also provides that the Exchange may use such discretion to "deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange." The Exchange may use this

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4 See Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 ("Schapiro Letter"), at pages 3-4.

5 See Schapiro Letter at page 4.

6 See "Investor Bulletin: Reverse Mergers" 2011-123.

discretionary authority to increase the stringency of its stated listing criteria, but not to decrease their stringency.

In light of the well-documented concerns related to some Reverse Merger Companies described above, the Exchange believes that it is appropriate to codify in its rules specific requirements with respect to the initial listing qualification of Reverse Merger Companies. As proposed, a Reverse Merger Company would not be eligible for listing unless the combined entity had, immediately preceding the filing of the initial listing application:

(1) traded for at least one year in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange following the consummation of the Reverse Merger and (i) in the case of a domestic issuer, filed with the Commission a form 8-K including all of the information required by Item 2.01(f) of Form 8-K, including all required audited financial statements; or (ii) in the case of a foreign private issuer, filed the information described in (i) above on Form 20-F;

(2) maintained on both an absolute and an average basis for a sustained period a minimum stock price of at least $4, but in no event for less than 30 of the most recent 60 trading days prior to each of the filing of the initial listing application and the date of the Reverse Merger Company's listing on the Exchange, except that a Reverse Merger Company that has satisfied the one-year trading requirement described in (1) above and has filed at least four annual reports with the Commission which each contain all required audited financial statements for a full fiscal year commencing after filing

the information described in paragraph (1) above will not be subject to this price requirement; and

(3) timely filed with the Commission all required reports since the consummation of the Reverse Merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the filing described in (1) above.

In addition, a Reverse Merger Company would be required to maintain on both an absolute and an average basis a minimum stock price of at least $4 through listing.

The Exchange believes that requiring a "seasoning" period prior to listing for Reverse Merger Companies should provide great assurance that the company's operations and financial reporting are reliable, and will also provide time for its independent auditor to detect any potential irregularities, as well as for the company to identify and implement enhancements to address any internal control weaknesses. The seasoning period will also provide time for regulatory and market scrutiny of the company and for any concerns that would preclude listing eligibility to be identified.

In addition, the Exchange believes that the proposed rule change will increase transparency to issuers and market participants with respect to the factors considered by the Exchange in assessing Reverse Merger Companies for listing and should generally reduce the risk of regulatory concerns with respect to these companies being discovered after listing. However, the Exchange notes that, while it believes that the proposed requirements would be a meaningful additional safeguard, it is not possible to guarantee that a Reverse Merger Company (or any other listed company) is not engaged in

undetected accounting fraud or subject to other concealed and undisclosed legal or regulatory problems.

For purposes of the proposed amendment to BATS Rules 14.2(c) and 14.3(b)(9) (which will both be applicable to Reverse Merger Companies which qualify to list under BATS Rules) and as defined above, a Reverse Merger would mean any transaction whereby an operating company became an Exchange Act reporting company by combining either directly or indirectly with a shell company that was an Exchange Act reporting company, whether through a Reverse Merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company that qualified for initial listing under BATS Rule 14.2(b) (the Exchange's standard for companies whose business plan is to complete one or more acquisitions). In determining whether a company was a shell company, the Exchange would consider, among other factors: whether the company was considered a "shell company" as defined in Rule 12b-2 under the Exchange Act; what percentage of the company's assets were active versus passive; whether the company generates revenues, and if so, whether the revenues were passively or actively generated; whether the company's expenses were reasonably related to the revenues being generated; how many employees worked in the company's revenue-generating business operations; how long the company had been without material business operations; and whether the company had publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

In order to qualify for initial listing, a Reverse Merger Company would be required to comply with one of the initial listing standards set forth in BATS Rule 14.4 or

14.5 and the stock price and market value requirements of BATS Rule 14.8 or 14.9, as appropriate. Proposed Rules 14.2(c)(3) and 14.3(b)(9) would supplement and not replace any applicable requirements of Chapter XIV of BATS Rules. However, in addition to the otherwise applicable requirements of BATS Rules, a Reverse Merger Company would be eligible to submit an application for an initial listing only if it meets the additional criteria specified above.

The Exchange would have the discretion to impose more stringent requirements than those set forth above if the Exchange believed that it was warranted in the case of a particular Reverse Merger Company, based on, among other things, an inactive trading market in the Reverse Merger Company's securities, the existence of a low number of publicly held shares that were not subject to transfer restrictions, if the Reverse Merger Company had not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger Company had disclosed that it had material weaknesses in its internal controls which had been identified by management and/or the Reverse Merger Company's independent auditor and had not yet implemented an appropriate corrective action plan.

The Exchange reiterates that any Reverse Merger Company would have to comply with all listing standards set forth in BATS Rules, including corporate governance standards. The Exchange also notes that it will monitor the compliance with applicable BATS Rules by any Reverse Merger Company and will investigate any issues that indicate that a Reverse Merger Company is non-compliant with BATS Rules.

A Reverse Merger Company would not be subject to the requirements of proposed BATS Rules 14.2(c)(3) and 14.3(b)(9) if, in connection with its listing, it

completes a firm commitment underwritten public offering where the gross proceeds to the Reverse Merger Company will be at least $40 million.[7] In that case, the Reverse Merger Company would only need to meet the initial listing standards. The Exchange believes that it is appropriate to exempt Reverse Merger Companies from the proposed rule where they are listing in conjunction with a sizable offering, as those companies would be subject to the same Commission review and due diligence by underwriters as a company listing in conjunction with its IPO or any other company listing in conjunction with an initial firm commitment underwritten public offering, so it would be inequitable to subject them to more stringent requirements.

The Exchange notes that the proposal is based on and consistent with recent Commission approvals of analogous rules for the New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("AMEX") and the NASDAQ Stock Market LLC ("Nasdaq").[8]

(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.[9]

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7 The prospectus and registration statement covering the offering would thus need to relate to the combined financial statements and operations of the Reverse Merger Company.

8 See Securities Exchange Act Release Nos. 65709 (November 8, 2011), 76 FR 70795 (November 15, 2011) (File No. SR-NYSE-2011-38); 65710 (November 8, 2011), 76 FR 70790 (November 15, 2011) (File No. SR-NYSEAmex-2011-55); 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (File No. SR-NASDAQ-2011-073).

9 15 U.S.C. 78f(b).

Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[10] because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that, as discussed above under the heading "Purpose", its purpose is to apply more stringent initial listing requirements to a category of companies that have raised regulatory concerns, thereby furthering the goal of protection of investors and the public interest. As set forth above, the proposal is based on and consistent with recent Commission approvals of analogous rules for NYSE, AMEX and Nasdaq.[11]

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.

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10 15 U.S.C. 78f(b)(5).

11 See supra note 8.

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

The Exchange believes that good cause for accelerated effectiveness of the proposed rule changes exists in light of the fact that the proposed rule text is based upon NYSE Listed Company Manual Sections 102.01F and 103.01E as well as Nasdaq Rules 5005(a) and 5110(c), and thus, the proposed changes will provide for consistent listing standards across SROs.

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

This proposed rule change is based on NYSE Listed Company Manual Sections 102.01F and 103.01E, as well as Nasdaq Rules 5005(a) and 5110(c). There are no substantive differences between these rules and proposed BATS Rule 14.2(c)(3).

9. Exhibits

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

Exhibits 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-_____; File No. SR-BATS-2012-023

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to amend BATS Rules 14.2 and 14.3 to Adopt Additional Listing Requirements for Reverse Merger Companies and to Align BATS Rules with the Rules of other Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or the "Exchange Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 15, 2012, 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 proposing to amend BATS Rules 14.2 and 14.3 to adopt additional listing requirements for a company that has become an Act reporting company by combining either directly or indirectly with a public shell, whether through a Reverse Merger, exchange offer, or otherwise (a "Reverse Merger"). The text of the proposed rule addition 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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt more stringent listing requirements for operating companies that become Exchange Act reporting companies through a Reverse Merger ("Reverse Merger Companies"). In a Reverse Merger, an existing public shell company merges with a private operating company in a transaction in which the shell company is the surviving legal entity. While the public shell company survives the merger, the shareholders of the private operating company typically hold a large majority of the shares of the public company after the merger and the management and board of the private company will assume those roles in the post-merger public company. The assets and business operations of the post-merger are primarily, if not solely, those of the former private operating company. The Exchange understands that private operating companies generally enter into Reverse Merger transactions to enable the company and its shareholders to sell shares in the public equity markets. By becoming a public reporting company via a Reverse Merger, a private operating company can access the public markets quickly and avoid the generally more expensive and lengthy process of going public by way of an initial public offering. While the public shell company is

required to report the Reverse Merger in a Form 8-K filing with the Commission, generally there are no registration requirements under the Securities Act of 1933 (the "Securities Act")[3] at that point in time, as there would be for an IPO.

Significant regulatory concerns, including accounting fraud allegations, have arisen with respect to a number of Reverse Merger Companies in recent times. The Commission has taken direct action against Reverse Merger Companies. During 2011, the Commission suspended trading in the securities of numerous Reverse Merger Companies.[4] The Commission also recently brought an enforcement proceeding against an audit firm relating to its work for Reverse Merger Companies.[5] In addition, the Commission issued a bulletin on the risks of investing in Reverse Merger Companies, noting potential market and regulatory risks related to investing in Reverse Merger Companies.[6]

BATS Rule 14.2 provides the exchange with "broad discretionary authority over the initial and continued listing of securities on the Exchange in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest." BATS Rule 14.2 also provides that the Exchange may use such discretion to "deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes

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3 15 U.S.C. 77a.

4 See Letter from Mary L. Schapiro to Hon. Patrick T. McHenry, dated April 27, 2011 ("Schapiro Letter"), at pages 3-4.

5 See Schapiro Letter at page 4.

6 See "Investor Bulletin: Reverse Mergers" 2011-123.

initial or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange." The Exchange may use this discretionary authority to increase the stringency of its stated listing criteria, but not to decrease their stringency.

In light of the well-documented concerns related to some Reverse Merger Companies described above, the Exchange believes that it is appropriate to codify in its rules specific requirements with respect to the initial listing qualification of Reverse Merger Companies. As proposed, a Reverse Merger Company would not be eligible for listing unless the combined entity had, immediately preceding the filing of the initial listing application:

(1) traded for at least one year in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange following the consummation of the Reverse Merger and (i) in the case of a domestic issuer, filed with the Commission a form 8-K including all of the information required by Item 2.01(f) of Form 8-K, including all required audited financial statements; or (ii) in the case of a foreign private issuer, filed the information described in (i) above on Form 20-F;

(2) maintained on both an absolute and an average basis for a sustained period a minimum stock price of at least $4, but in no event for less than 30 of the most recent 60 trading days prior to each of the filing of the initial listing application and the date of the Reverse Merger Company's listing on the Exchange, except that a Reverse Merger Company that has satisfied the

one-year trading requirement described in (1) above and has filed at least four annual reports with the Commission which each contain all required audited financial statements for a full fiscal year commencing after filing the information described in paragraph (1) above will not be subject to this price requirement; and

(3) timely filed with the Commission all required reports since the consummation of the Reverse Merger, including the filing of at least one annual report containing audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the filing described in (1) above.

In addition, a Reverse Merger Company would be required to maintain on both an absolute and an average basis a minimum stock price of at least $4 through listing.

The Exchange believes that requiring a "seasoning" period prior to listing for Reverse Merger Companies should provide great assurance that the company's operations and financial reporting are reliable, and will also provide time for its independent auditor to detect any potential irregularities, as well as for the company to identify and implement enhancements to address any internal control weaknesses. The seasoning period will also provide time for regulatory and market scrutiny of the company and for any concerns that would preclude listing eligibility to be identified.

In addition, the Exchange believes that the proposed rule change will increase transparency to issuers and market participants with respect to the factors considered by the Exchange in assessing Reverse Merger Companies for listing and should generally reduce the risk of regulatory concerns with respect to these companies being discovered

after listing. However, the Exchange notes that, while it believes that the proposed requirements would be a meaningful additional safeguard, it is not possible to guarantee that a Reverse Merger Company (or any other listed company) is not engaged in undetected accounting fraud or subject to other concealed and undisclosed legal or regulatory problems.

For purposes of the proposed amendment to BATS Rules 14.2(c) and 14.3(b)(9) (which will both be applicable to Reverse Merger Companies which qualify to list under BATS Rules) and as defined above, a Reverse Merger would mean any transaction whereby an operating company became an Exchange Act reporting company by combining either directly or indirectly with a shell company that was an Exchange Act reporting company, whether through a Reverse Merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company that qualified for initial listing under BATS Rule 14.2(b) (the Exchange's standard for companies whose business plan is to complete one or more acquisitions). In determining whether a company was a shell company, the Exchange would consider, among other factors: whether the company was considered a "shell company" as defined in Rule 12b-2 under the Exchange Act; what percentage of the company's assets were active versus passive; whether the company generates revenues, and if so, whether the revenues were passively or actively generated; whether the company's expenses were reasonably related to the revenues being generated; how many employees worked in the company's revenue-generating business operations; how long the company had been without material business operations; and whether the company

had publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

In order to qualify for initial listing, a Reverse Merger Company would be required to comply with one of the initial listing standards set forth in BATS Rule 14.4 or 14.5 and the stock price and market value requirements of BATS Rule 14.8 or 14.9, as appropriate. Proposed Rules 14.2(c)(3) and 14.3(b)(9) would supplement and not replace any applicable requirements of Chapter XIV of BATS Rules. However, in addition to the otherwise applicable requirements of BATS Rules, a Reverse Merger Company would be eligible to submit an application for an initial listing only if it meets the additional criteria specified above.

The Exchange would have the discretion to impose more stringent requirements than those set forth above if the Exchange believed that it was warranted in the case of a particular Reverse Merger Company, based on, among other things, an inactive trading market in the Reverse Merger Company's securities, the existence of a low number of publicly held shares that were not subject to transfer restrictions, if the Reverse Merger Company had not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger Company had disclosed that it had material weaknesses in its internal controls which had been identified by management and/or the Reverse Merger Company's independent auditor and had not yet implemented an appropriate corrective action plan.

The Exchange reiterates that any Reverse Merger Company would have to comply with all listing standards set forth in BATS Rules, including corporate governance standards. The Exchange also notes that it will monitor the compliance with

applicable BATS Rules by any Reverse Merger Company and will investigate any issues that indicate that a Reverse Merger Company is non-compliant with BATS Rules.

A Reverse Merger Company would not be subject to the requirements of proposed BATS Rules 14.2(c)(3) and 14.3(b)(9) if, in connection with its listing, it completes a firm commitment underwritten public offering where the gross proceeds to the Reverse Merger Company will be at least $40 million.[7] In that case, the Reverse Merger Company would only need to meet the initial listing standards. The Exchange believes that it is appropriate to exempt Reverse Merger Companies from the proposed rule where they are listing in conjunction with a sizable offering, as those companies would be subject to the same Commission review and due diligence by underwriters as a company listing in conjunction with its IPO or any other company listing in conjunction with an initial firm commitment underwritten public offering, so it would be inequitable to subject them to more stringent requirements.

The Exchange notes that the proposal is based on and consistent with recent Commission approvals of analogous rules for the New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("AMEX") and the NASDAQ Stock Market LLC ("Nasdaq").[8]

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7 The prospectus and registration statement covering the offering would thus need to relate to the combined financial statements and operations of the Reverse Merger Company.

8 See Securities Exchange Act Release Nos. 65709 (November 8, 2011), 76 FR 70795 (November 15, 2011) (File No. SR-NYSE-2011-38); 65710 (November 8, 2011), 76 FR 70790 (November 15, 2011) (File No. SR-NYSEAmex-2011-55); 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (File No. SR-NASDAQ-2011-073).

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.[9] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[10] because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that, as discussed above under the heading "Purpose", its purpose is to apply more stringent initial listing requirements to a category of companies that have raised regulatory concerns, thereby furthering the goal of protection of investors and the public interest. As set forth above, the proposal is based on and consistent with recent Commission approvals of analogous rules for NYSE, AMEX and Nasdaq.[11]

(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.

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9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(5).

11 See supra note 8.

(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

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 self-regulatory organization 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-2012-023 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-2012-023. 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 website (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 website 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-2012-023 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.[12]

Kevin M. O'Neill
Deputy Secretary

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[12] 17 CFR 200.30-3(a)(12).

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

Rules of BATS Exchange, Inc.

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CHAPTER XIV. BATS EXCHANGE LISTING RULES

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Rule 14.2. Regulatory Authority of Exchange

(a) – (b) (No changes.)

(c) Change of Control, Bankruptcy, [and]Liquidation, and Reverse Mergers

(1) - (2) (No changes.)

(3) Reverse Mergers

(A) "Reverse Merger" means any transaction whereby an operating company becomes an Exchange Act reporting company by combining, either directly or indirectly, with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger does not include the acquisition of an operating company by a listed company satisfying the requirements of 14.2(b) or a business combination described in Rule 14.2(c)(1). In determining whether a Company is a shell company, the Exchange will look to a number of factors, including but not limited to: whether the Company is considered a "shell company" as defined in Rule 12b-2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates revenues and, if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

(B) A Company that is formed by a Reverse Merger (a "Reverse Merger Company") shall be eligible to submit an application for initial listing only if the combined entity has, immediately preceding the filing of the initial listing application:

(i) traded for at least one year in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange, following the filing with the Commission or Other Regulatory Authority of all required information about the transaction, including audited financial statements for the combined entity; and

(ii) maintained a closing price of $4 per share or higher for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days.

(C) In addition to satisfying all of the Exchange's other initial listing requirements, a Reverse Merger Company will only be approved for listing if, at the time of approval, it has:

(i) timely filed all required periodic financial reports with the Commission or Other Regulatory Authority (Forms 10-Q, 10-K, or 20-F) for the prior year, including at least one annual report. The annual report must contain audited financial statements for a full fiscal year commencing after filing the information described in paragraph (B)(i) above; and

(ii) maintained a closing price of $4 per share or higher for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to approval.

(D) A Reverse Merger Company will not be subject to the requirements of this Rule if, in connection with its listing, it completes a firm commitment underwritten public offering where the gross proceeds to the Reverse Merger Company will be at least $40 million. In addition, a Reverse Merger Company will no longer be subject to the requirements of this Rule once it has satisfied the one-year trading requirement contained in paragraph (B)(i) above and has filed at least four annual reports with the Commission or Other Regulatory Authority containing all required audited financial statements for a full fiscal year commencing after filing the information described in that paragraph. In either case described in this paragraph (D), the Reverse Merger Company must satisfy all applicable requirements for initial listing, including the minimum price requirement and the requirement contained in Rule 14.3(b)(5) that the Company not be delinquent in its filing obligation with the Commission or Other Regulatory Authority.

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Rule 14.3 General Procedures and Prerequisites for Initial and Continued Listing on the Exchange

(a) (No changes.)

(b) Prerequisites for Applying to List on the Exchange:

(1) - (8) (No changes.)

(9) Reverse Mergers

A security issued by a Company formed by a Reverse Merger shall be eligible for initial listing only if the conditions set forth in Rule 14.2(c)(3) are satisfied.