

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="74"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="14"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing 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)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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 action (limit 250 characters, required when Initial is checked \*).

BATS Exchange, Inc. proposes a rule change to adopt an Early Trading Session and three New Time-in-Force instructions.

**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 action.

First Name * <input type="text" value="Chris"/>	Last Name * <input type="text" value="Solgan"/>
Title * <input type="text" value="Assistant General Counsel"/>	
E-mail * <input type="text" value="csolgan@bats.com"/>	
Telephone * <input type="text" value="(646) 856-8723"/>	Fax <input type="text"/>

**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.

(Title \*)

Date <input type="text" value="02/12/2016"/>	<input type="text" value="Assistant General Counsel"/>
By <input type="text" value="Chris Solgan"/>	<input type="text"/>
(Name *)	

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 EFFF website.

**Form 19b-4 Information \***

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 \***

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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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, security-based swap submission, or advance notice 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

(a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (“BATS” or the “Exchange”) proposes to amend its rules to: (i) create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new Time-in-Force (“TIF”) instructions.

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

(b) Inapplicable.

(c) Inapplicable.

2. Procedures of the Self-Regulatory Organization

The Exchange submits the proposed rule change pursuant to authority delegated by the Board of Directors of the Exchange on February 11, 2014. Exchange staff will advise the Exchange’s Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change and, therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Eric Swanson  
Executive Vice President and  
General Counsel  
(913) 815-7000

Chris Solgan  
Assistant General Counsel  
(646) 856-8723

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

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

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

(a) Purpose

The Exchange proposes to amend its rules to: (i) create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new TIF instructions.

Early Trading Session

The Exchange trading day is currently divided into three sessions of which a User<sup>3</sup> may select their order(s) be eligible for execution: (i) the Pre-Opening Session which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; (ii) Regular Trading Hours which runs from 9:30 a.m. to 4:00 p.m. Eastern Time; and (iii) the After Hours Session, which runs from 4:00 p.m. to 5:00 p.m. Eastern Time. The Exchange proposes to amend its rules to create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time.<sup>4</sup> Exchange Rule 1.5 would be amended to add a new definition for the term "Early Trading Session" under new

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<sup>3</sup> "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." See Exchange Rule 1.5(cc).

<sup>4</sup> The Exchange notes that NYSE Arca, Inc. ("NYSE Arca") operates an Opening Session that starts at 4:00 a.m. Eastern Time (1:00 a.m. Pacific Time) and ends at 9:30 a.m. Eastern Time (6:30 a.m. Pacific Time). See NYSE Arca Rule 7.34(a)(1). The Nasdaq Stock Market LLC ("Nasdaq") operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See Nasdaq Rule 4701(g). See also Securities Exchange Act Release No. 69151 (March 15, 2013), 78 FR 17464 (March 21, 2013) (SR-Nasdaq-2013-033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pre-Market Hours of the Exchange to 4:00 a.m. EST).

paragraph (ee). “Early Trading Session” would be defined as “the time between 7:00 a.m. and 8:00 a.m. Eastern Time.”<sup>5</sup>

The Exchange also proposes to amend Rule 11.1(a) to account for the Early Trading Session starting at 7:00 a.m. Eastern Time. Other than the proposal to adopt an Early Trading Session starting at 7:00 a.m. Eastern Time, the Exchange does not propose to amend the substance or operation of Rule 11.1(a).

Users currently designate when their orders are eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b). Orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session, or Regular Trading Hours,<sup>6</sup> depending on the TIF selected by the User. Users may enter orders in advance of the trading session they intend the order to be eligible for. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours.<sup>7</sup> As stated above, Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Some Users have requested the ability

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<sup>5</sup> An Exchange having bifurcated after hours trading sessions is not novel. For example, the Chicago Stock Exchange, Inc. (“CHX”) maintains two after hours trading sessions. See CHX Article 20, Rule 1(b). See also Securities Exchange Act Release No. 60605 (September 1, 2009), 74 FR 46277 (September 8, 2009) (SR-CHX-2009-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding Additional Trading Sessions).

<sup>6</sup> “Regular Trading Hours” is defined as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.” See Exchange Rule 1.5(w).

<sup>7</sup> See Exchange Rule 11.9(b)(7).

for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Therefore, the Exchange is proposing to adopt the Early Trading Session as discussed herein.

Order entry and execution during the Early Trading Session would operate in the same manner as it does during the Pre-Opening Session. As amended, Exchange Rule 11.1(a) would state that orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Early Trading Session, Pre-Opening Session, or Regular Trading Hours,<sup>8</sup> depending on the TIF selected by the User. Exchange Rule 11.1(a) will also be amended to state that the Exchange will not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: BATS Post Only Orders,<sup>9</sup> Partial Post Only at Limit Orders,<sup>10</sup> Intermarket Sweep Orders (“ISOs”),<sup>11</sup> BATS Market Orders<sup>12</sup> with a TIF other than Regular Hours Only,<sup>13</sup> Minimum Quantity Orders<sup>14</sup> that also include a TIF of Regular Hours Only, and all orders with a TIF instruction of Immediate-or-Cancel (“IOC”)<sup>15</sup> or Fill-or-Kill (“FOK”).<sup>16</sup> At the commencement of the Early Trading Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00

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<sup>8</sup> “Regular Trading Hours” is defined as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.” See Exchange Rule 1.5(w).

<sup>9</sup> See Exchange Rule 11.9(c)(6).

<sup>10</sup> See Exchange Rule 11.9(c)(7).

<sup>11</sup> See Exchange Rule 11.9(d).

<sup>12</sup> See Exchange Rule 11.9(a)(2).

<sup>13</sup> See Exchange Rule 11.9(b)(7).

<sup>14</sup> See Exchange Rule 11.9(c)(5).

<sup>15</sup> See Exchange Rule 11.9(b)(1).

<sup>16</sup> See Exchange Rule 11.9(b)(6).

a.m. and 8:00 a.m. Eastern Time, will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book,<sup>17</sup> routed, cancelled, or executed in accordance with the terms of the order. As amended, Rule 11.1(a) would state that orders may be executed on the Exchange or routed away from the Exchange during Regular Trading Hours and during the Early Trading, Pre-Opening and After Hours Trading Sessions.

*Operations.* From the Members' operational perspective, the Exchange's goal is to permit trading for those that choose to trade, without imposing burdens on those that do not. Thus, for example, the Exchange will not require any Member to participate in the Early Trading Session, including not requiring registered market makers to make two-sided markets between 7:00 a.m. and 8:00 a.m., just as it does not require such participation between 8:00 a.m. and 9:30 a.m.<sup>18</sup> The Exchange will minimize Members' preparation efforts to the greatest extent possible by allowing Members to trade beginning at 7:00 a.m. with the same equipment, connectivity, order types, and data feeds they currently use from 8:00 a.m. onwards.

*Opening Process.* The Exchange will offer no opening process at 7:00 a.m., just as it offers no opening process at 8:00 a.m. today. Instead, at 7:00 a.m., the System will "wake up" by loading in price/time priority all open trading interest entered after 6:00 a.m.<sup>19</sup> Also at 7:00 a.m., the Exchange will open the execution system and accept new

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<sup>17</sup> See Exchange Rule 1.5(e).

<sup>18</sup> See Exchange Rule 11.8(d)(2) (stating that for NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours).

<sup>19</sup> See Exchange Rule 11.1(a).

eligible orders, just as it currently does at 8:00 a.m. Members will be permitted to enter orders beginning at 6:00 a.m. Market Makers will be permitted but not required to open their quotes beginning at 7:00 a.m. in the same manner they open their quotes today beginning at 8:00 a.m.

*Order Types.* Every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m.<sup>20</sup> All other order types, and all order type behaviors, will otherwise remain unchanged. The Exchange will not extend the expiration times of any orders. For example, an order that is currently available from 8:00 a.m. to 4:00 p.m. will be modified to be available from 7:00 a.m. to 4:00 p.m. An order that is available from 8:00 a.m. to 9:30 a.m. will be modified to be available from 7:00 a.m. to 9:30 a.m. Users must continue to enter a TIF instruction along with their order to indicate when the order is eligible for execution.<sup>21</sup>

*Routing Services.* The Exchange will route orders to away markets between 7:00 a.m. and 8:00 a.m., just as it does today between 8:00 a.m. and 9:30 a.m.<sup>22</sup> All routing strategies set forth in Exchange Rule 11.13 will remain otherwise unchanged, performing the same instructions they perform between 7:00 a.m. and 8:00 a.m. today.<sup>23</sup>

*Order Processing.* Order processing will operate beginning at 7:00 a.m. just as it does today beginning at 8:00 a.m. There will be no changes to the ranking, display, and execution processes or rules.

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<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> See Exchange Rule 11.13(b) (Routing to Away Trading Centers).



*Data Feeds.* The Exchange will report the best bid and offer on the Exchange to the appropriate network processor, as it currently does beginning 8:00 a.m.<sup>24</sup> The Exchange's proprietary data feeds will be disseminated beginning at 7:00 a.m. using the same formats and delivery mechanisms with which the Exchange currently disseminates them beginning at 8:00 a.m.

*Trade Reporting.* Trades executed between 7:00 a.m. and 8:00 a.m. will be reported to the appropriate network processor with the ".T" modifier, just as they are reported today between at 8:00 a.m. and 9:30 a.m.<sup>25</sup>

*Market Surveillance.* The Exchange's commitment to high-quality regulation at all times will extend to 7:00 a.m. The Exchange will offer all surveillance coverage currently performed by the Exchange's surveillance systems, which will launch by the time trading starts at 7:00 a.m.

*Clearly Erroneous Trade Processing.* The Exchange will process trade breaks beginning at 7:00 a.m. pursuant to Exchange Rule 11.17, just as it does today beginning at 8:00 a.m.

*Related changes to Rules 3.21, 11.9, 11.13, 11.17, 11.23, 14.6, 14.11, and 14.12.* The Exchange proposes to also make the following changes to Rules 3.21, 11.9, 11.13, 11.17, 11.23, 14.6, 14.11, and 14.12 to reflect the adoption of the Early Trading Session:

- Rule 3.21, Customer Disclosures. In sum, Exchange Rule 3.21 prohibits Members from accepting an order from a customer for execution in the Pre-Opening or After Hours Trading Session without disclosing to their

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<sup>24</sup> See Exchange Rule 11.14 (Trade Execution and Reporting).

<sup>25</sup> Id.

customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The Exchange proposes to amend Rule 3.21 to include the Early Trading Session as part of the Member's required disclosures to their customers.

- Rule 11.9, Orders and Modifiers. The Exchange proposes to amend the description of BATS Market Orders under Rule 11.9(a)(2), Market Maker Peg Orders under Rule 11.9(c)(16), and Supplemental Peg Orders under Rule 11.9(c)(19) to account for the Early Trading Session. BATS Market Orders are currently not eligible for execution during the Pre-Opening Session or After Hours Trading Session. Rule 11.9(a)(2) would be amended to state that BATS Market Orders would also not be eligible for execution during the Early Trading Session. Market Maker Peg Orders may currently be submitted to the Exchange starting at the beginning of the Pre-Opening Session, but the order will not be executable or automatically priced until the beginning of Regular Trading Hours. Rule 11.9(c)(16) would be amended to state that Market Maker Peg Orders may be submitted to the Exchange starting at the beginning of the Early Trading Session. Market Maker Peg Orders would continue to not be executable or automatically priced until the beginning of Regular Trading Hours. Rule 11.9(c)(19) states that Supplemental Peg Orders are eligible for execution during the Pre-Opening Session, Regular Trading Hours,

and the After Hours Trading Session. Rule 11.9(c)(19) would be amended to state that Supplemental Peg Orders are also eligible for execution during the Early Trading Session. As stated above, every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m. for inclusion in the Early Trading Session.<sup>26</sup> All other order types, and all order type behaviors, will otherwise remain unchanged. The above rules describing BATS Market Orders, Market Maker Peg Orders, and Supplemental Peg Orders specifically reference the trading sessions during which the order type is eligible for execution. Therefore, the Exchange proposes to amend the description of each order type to account for the Early Trading Session.

- Rule 11.13, Order Execution and Routing. Exchange Rule 11.13(a)(2)(B) discusses compliance with Regulation NMS and Trade Through Protections and states that the price of any execution occurring during the Pre-Opening Session or the After Hours Trading Session must be equal to or better than the highest Protected Bid or lowest Protected Offer, unless the order is marked ISO or a Protected Bid is crossing a Protected Offer. The Exchange proposes to amend Rule 11.13(a)(2)(B) to expand the rule's requirements to the Early Trading Session.
- Rule 11.17, Clearly Erroneous Executions. Exchange Rule 11.17 outlines under which conditions the Exchange may determine that an execution is

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<sup>26</sup> See proposed amendments to Exchange Rule 11.1(a).

clearly erroneous. The Exchange proposes to amend Rule 11.17 to include executions that occur during the Early Trading Session.<sup>27</sup> Exchange Rule 11.17(c)(1) sets forth the numerical guidelines the Exchange is to follow when determining whether an execution was clearly erroneous during Regular Trading Hours or the Pre-Opening or After Hours Trading Session. Exchange Rule 11.17(c)(3) sets forth additional factors the Exchange may consider in determining whether a transaction is clearly erroneous. These factors include Pre-Opening and After Hours Trading Session executions. The Exchange proposes to amend Rule 11.17(c)(1) and (3) to include executions occurring during the Early Trading Session.

- Rule 11.23, Auctions. Exchange Rules 11.23(b) and (c) describe the Exchange's Opening and Closing Auction processes. The Exchange proposes to amend Rules 11.23(b)(1)(A) and (c)(1)(A) to reflect that Users may submit orders at the start of the Early Trading Session at 7:00 a.m., rather than 8:00 a.m., to participate in either the Opening or Closing Auctions.
- Rule 14.6, Obligations for Companies Listed on the Exchange. The Exchange proposes to amend Rules 14.6(b)(1), (b)(2), and Interpretation and Policies .01(a),(b), (c), and .02 to require an Exchange-Listed Company that publicly releases material information outside of the

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<sup>27</sup> The Exchange notes that it also proposes to delete the "s" from the word "tapes" in paragraph (c)(3) of Rule 11.17.

Exchange market hours to inform the Exchange's Surveillance

Department of that material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. The Exchange proposes to amend Rule 14.6, Interpretation and Policies .01(a), (b), (c), and .02 to reflect the start of the Early Trading Session at 7:00 a.m. Eastern Time. The amended provisions of Rule 14.6, Interpretation and Policies .01(a), (b), (c), and .02 require companies to notify the Exchange's Surveillance Department of the release of certain material information at least ten minutes prior to the release of such information to the public when the public release of the information is made during Exchange market hours.

- Rule 14.11, Other Securities. The Exchange proposes to amend Rule 14.11(b)(7) and (c)(7) to reflect the extension of the Pre-Opening Session to 7:00 a.m. Eastern Time. The Exchange also proposes to amend the following provisions of Rule 14.11 to include references to the Early Trading Session or to state that transaction in the following products may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions: Commodity-Based Trust Shares; Currency Trust Shares; Commodity Futures Trust Shares; Trust Units; and Managed Trust Securities:
  - *Rule 14.11(d), Securities Linked to the Performance of Indexes and Commodities (Including Currencies)*. The Exchange proposes to amend Rule 14.11(d)(2)(K)(i)(b)(3)(B) and Interpretation and Policies .01(b) of Rule 14.11(e) to state, in sum, that where the

value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange then the last calculated official index value must remain available throughout Regular Trading Hours and the Early Trading, Pre-Opening and After Hours Trading Sessions.

- *Rule 14.11(e)(4), Commodity-Based Trust Shares.* The Exchange proposes to amend Interpretation and Policies .03 to Rule 14.11(e)(4) to state that transactions in Commodity-Based Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.
- *Rule 14.11(e)(5), Currency Trust Shares.* The Exchange proposes to amend Interpretation and Policies .03 to Rule 14.11(e)(5) to state that transactions in Currency Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.
- *Rule 14.11(e)(6), Commodity Index Trust Shares.* The Exchange proposes to amend Interpretation and Policies .03 to Rule

- 14.11(e)(6) to state that transactions in Commodity-Based Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.
- *Rule 14.11(e)(7), Commodity Future Trust Shares.* The Exchange proposes to amend Interpretation and Policies .02 to Rule 14.11(e)(7) to state that transactions in Commodity Future Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.
  - *Rule 14.11(e)(9), Trust Units.* The Exchange proposes to amend Interpretation and Policies .02 to Rule 14.11(e)(9) to state that transactions in Trust Units may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.
  - *Rule 14.11(e)(10), Managed Trust Securities.* The Exchange proposes to amend Interpretation and Policies .02 to Rule 14.11(e)(10) to state that transactions in Managed Trust Securities may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.
  - *Rule 14.11(j), Derivative Securities Traded under Unlisted Trading Privileges.* The Exchange proposes to amend Rule

14.11(j)(2) to state that the Exchange will distribute an information circular prior to the commencement of trading in each UTP Derivative Security that generally includes the same information as contained in the listing circular provided by the listing exchange, including, the risk of trading during the Early Trading Session (7:00 a.m. – 8:00 a.m.) in addition, to the Pre-Opening Session (8:00 a.m. – 9:30 a.m. Eastern Time) and the After Hours Trading Session (4:00 p.m. – 5:00 p.m. Eastern Time), due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value (as defined in Rule 14.11(b)(3)(C)) or a similar value. The Exchange also proposes to amend Rule 14.11(j)(2) to correct an inaccurate description of the Pre-Opening Session, which currently reads as 9:00 a.m. to 9:30 a.m. rather than 8:00 a.m. to 9:30 a.m. as is set forth throughout Exchange Rules.

- Rule 14.12, Failure to Meet Listing Standards. The Exchange proposes to amend Rule 14.12(e) and (m)(11) to require that companies that publicly announce the receipt of a notification of deficiency, Staff Delisting Determination, Public Reprimand Letter, or Adjudicatory Body Decision that serves as a Public Reprimand outside of Exchange market hours inform the Exchange's Surveillance Department of the material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. If the public announcement is made during Exchange market hours, both Rules



would continue to require that the company inform the Exchange's Surveillance Department at least 10 minutes prior to the announcement.

#### TIF Instructions

The Exchange proposes to adopt three new TIF instructions under Rule 11.9(b). Under Rule 11.1(a), a User may designate when their order is eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b). Currently, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session, or Regular Trading Hours, depending on the TIF selected by the User. Users may enter orders in advance of the trading session they intend the order to be eligible for. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours.<sup>28</sup> As stated above, Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m.

As discussed above, the Exchange proposed the Early Trading Session in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Some Users, however, do not wish for their orders to be executed during the Early Trading Session and have requested their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposes to adopt the following three new TIF instructions under Rule 11.9(b):

- Pre-Opening Session Plus ("PRE"). A limit order that is designated for execution during the Pre-Opening Session and Regular Trading Hours.

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<sup>28</sup> See Exchange Rule 11.9(b)(7).

Like the current Good-'til Cancel ("GTC") TIF instruction,<sup>29</sup> any portion not executed expires at the end of Regular Trading Hours.

- Pre-Opening Session 'til Extended Day ("PTX"). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good-'til Extended Day ("GTX") TIF instruction,<sup>30</sup> any portion not executed expires at the end of the After Hours Session.
- Pre-Opening Session 'til Day ("PTD"). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good-'til Day ("GTD") TIF instruction,<sup>31</sup> any portion not executed will be cancelled at the expiration time assigned to the order, which can be no later than the close of the After Hours Trading Session.

Under each proposed TIF instruction, Users may designate that their orders only be eligible for execution starting with the Pre-Opening Session. This is similar to the existing TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours, which starts at 9:30 a.m. Eastern Time. In such case, a User may enter orders starting at 6:00 a.m. Eastern Time, but such order would not be eligible for execution until 9:30 a.m. Eastern Time. Likewise, under each of the proposed TIF instructions, a User may continue to enter orders as early as 6:00 a.m., but

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<sup>29</sup> See Exchange Rule 11.9(b)(3).

<sup>30</sup> See Exchange Rule 11.9(b)(5).

<sup>31</sup> See Exchange Rule 11.9(b)(4).

such orders would not be eligible for execution until 8:00 a.m. Eastern Time, the start of the Pre-Opening Session.<sup>32</sup> At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time with one of the proposed TIF instructions will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book, routed, cancelled, or executed in accordance with the terms of the order.<sup>33</sup>

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>34</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>35</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 also believes that the proposed rule change is non-discriminatory as it would apply to all Members uniformly. The proposed rule change in whole is designed to attract more order flow to the Exchange between 7:00 a.m. and 9:30 a.m. Eastern Time. Increased liquidity during this time will lead to improved price discovery and increased execution opportunities on the Exchange, therefore, promoting just and equitable principles of trade, and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

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<sup>32</sup> Orders utilizing one of the proposed TIF instructions would not be eligible for execution during the proposed Early Trading Session.

<sup>33</sup> See Exchange Rule 11.1(a).

<sup>34</sup> 15 U.S.C. 78f.

<sup>35</sup> 15 U.S.C. 78f(b)(5).

### Early Trading Session

The Exchange believes its proposal to adopt the Early Trading Session promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, prevents fraudulent and manipulative acts and practices, and, in general, protects investors and the public interest. The Exchange believes that the Early Trading Session will benefit investors, the national market system, Members, and the Exchange market by increasing competition for order flow and executions, and thereby spur product enhancements and lower prices. The Early Trading Session will benefit Members and the Exchange market by increasing trading opportunities between 7:00 a.m. and 8:00 a.m. without increasing ancillary trading costs (telecommunications, data, connectivity, etc.) and, thereby, decreasing average trading costs per share. The Exchange notes that trading during the proposed Early Trading Session has been available on NYSE Arca and Nasdaq.<sup>36</sup> The Exchange believes that the availability of trading between 7:00 a.m. and 8:00 a.m. has been beneficial to market participants including investors and issuers on other markets. Introduction of the Early Trading Session on the Exchange will further expand these benefits.

Additionally, the Exchange Act's goal of creating an efficient market system includes multiple policies such as price discovery, order interaction, and competition among markets. The Exchange believes that offering a competing trading session will promote all of these policies and will enhance quote competition, improve liquidity in the market, support the quality of price discovery, promote market transparency, and increase

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<sup>36</sup> See supra note 4.

competition for trade executions while reducing spreads and transaction costs.

Additionally, increasing liquidity during the Early Trading Session will raise investors' confidence in the fairness of the markets and their transactions, particularly due to the lower volume of trading occurring prior to opening.

Although the Exchange will be operating with bifurcated pre-opening trading sessions, the Exchange notes that having bifurcated after hours trading sessions is not novel. For example, the CHX maintains two after hours trading sessions,<sup>37</sup> the Late Trading Session, which runs from 4:00 p.m. to 4:15 p.m. Eastern Time, and the Late Crossing Session, which runs from 4:15 p.m. to 5:00 Eastern Time. As such, the Exchange does not believe that the proposed rule change will disproportionately increase the complexity of the market.

The expansion of trading hours through the creation of the Early Trading Session promotes just and equitable principles of trade by providing market participants with additional options in seeking execution on the Exchange. Order entry and execution during the Early Trading Session would operate in the same manner as it does today during the Pre-Opening Session. In addition, the Exchange will report the best bid and offer on the Exchange to the appropriate network processor, and the Exchange's proprietary data feeds will be disseminated, beginning at 7:00 a.m. The proposal will, therefore, facilitate a well-regulated, orderly, and efficient market during a period of time that is currently underserved.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because all surveillance coverage

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<sup>37</sup> See supra note 5.

currently performed by the Exchange's surveillance systems will launch by the time trading starts at 7:00 a.m. Eastern Time. Further, the Exchange believes that the proposed rule change will protect investors and the public interest because the Exchange is updating its customer disclosure requirements to prohibit Members from accepting an order from a customer for execution in the Early Trading Session without disclosing to their customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk.

#### TIF Instructions

The Exchange believes its proposed TIF instructions promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed TIF instructions will benefit investors by providing them with greater control over their orders. The proposed TIF instructions simply provide investors with additional optionality for when their orders may be eligible for execution.

The ability to select the trading sessions or time upon which an order is to be eligible for execution is not novel and is currently available on the Exchange and other market centers. For example, on the Exchange, a User may enter an order starting at 6:00 a.m. Eastern Time and select that such order not be eligible for execution until 9:30 a.m., the start of Regular Trading Hours using TIF instructions of Regular Hours Only.<sup>38</sup> In addition, like each of the proposed TIF instructions, Nasdaq utilizes a TIF, referred to as

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<sup>38</sup> See Exchange Rule 11.9(b)(7). See also Nasdaq Rule 4703(a) (outlining TIF instructions that do not activate orders until 9:30 a.m. Eastern Time).

ESCN, under which an order using its SCAN routing strategy entered prior to 8:00 a.m.

Eastern Time is not eligible for execution until 8:00 a.m. Eastern Time.<sup>39</sup>

The Exchange proposed the Early Trading Session discussed above in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. However, some Users have requested their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposed the three new TIF instructions in order for Users to designate their orders as eligible for execution as of the start of the Pre-Opening Session.

Members will maintain the ability to cancel or modify the terms of their order at any time, including during the time from when the order is routed to the Exchange until the start of the Pre-Opening Session. As a result, a Member who utilizes the proposed TIF instructions, but later determines that market conditions favor execution during Early Trading Session, can cancel the order residing at the Exchange and enter a separate order to execute during the Early Trading Session. While a User must make every effort to execute a marketable customer order it receives fully and promptly,<sup>40</sup> doing so might not result in the best execution possible for the customer. Such Users may wish to delay the execution of their orders until the start of the Pre-Opening Session for various reasons, including the characteristics of the market for the security as well as the amount of liquidity available in the market as part of their best execution obligations.<sup>41</sup>

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<sup>39</sup> See Nasdaq Rule 4703(a). See also Nasdaq Rule 4703(a)(7).

<sup>40</sup> See Supplemental Material .01 to Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 5310.

<sup>41</sup> A Member’s best execution obligation may also include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers where the execution of their order may be delayed

Specifically, FINRA Rule 5310(a)(1) provides that a Member must use reasonable diligence to ascertain the best market for a security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. And importantly, FINRA Rule 5310(a)(1)(A) states that one of the factors that will be considered in determining whether a member has used “reasonable diligence” is “the character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communication).<sup>42</sup> As such, a Member conducting “reasonable diligence” may determine that due to the character of the Early Trading Session, along with considering other relevant factors, the Member wants to utilize the proposed TIF instructions.

Members will be accustomed to this additional analysis in determining whether to participate in the Early Trading Session, Pre-Opening Session, or Regular Trading Hours. The regulatory guidance with respect to best execution anticipates the continued evolution of execution venues:

[B]est execution is a facts and circumstances determination. A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution . . . , the speed of execution and the trading

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intentionally as the Member utilizes reasonable diligence to ascertain the best market for the security. See FINRA Rule 5130. See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

<sup>42</sup> Tellingly, these characteristics are reflected in the disclosure requirements mandated by Exchange Rule 3.21 before a Member may accept an order from a customer for execution in the Pre-Opening, After Hours, and proposed Early Trading Sessions.



characteristics of the security, together with other non-price factors such as reliability and service.<sup>43</sup>

To the extent there may be best execution obligations at issue, they are no different than the best execution obligations faced by brokers in the current market structure,<sup>44</sup> including the use of the currently available Regular Trading Hours TIF instruction or SCAN/ESCN routing strategy available on Nasdaq discussed above.<sup>45</sup> However, similar to why a Member may utilize the Regular Trading Hours TIF instruction, a User may wish to forgo a possible execution during the Early Trading Session and/or Pre-Opening Session if they believe doing so is consistent with their best execution obligations as they anticipate that the market for the security may improve upon the start of the Pre-Opening Session and/or Regular Trading Hours.<sup>46</sup> Applicable best execution guidance contains no formulaic mandate as to whether or how brokers should direct orders. The optionality created by the proposed rule change simply

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<sup>43</sup> See Securities Exchange Act Release No. 43950 (November 17, 2000), 65 FR 75414 (December 1, 2000) (“Disclosure of Order Execution and Routing Practices release”).

<sup>44</sup> The Commission has also indicated a User’s best execution obligation may not be satisfied simply by obtaining the best bid or offer (“BBO”). See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (“Order Executions Obligations release”). While a User may seek the most favorable terms reasonably available under the circumstances of the transaction, such terms may not necessarily in every case be the best price available. *Id.* See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

<sup>45</sup> See *supra* note 39.

<sup>46</sup> Exchange Rule 3.21 requires Member make certain disclosures to their customers prior to accepting an order for execution outside of Regular Trading Hours. These disclosures include, among other things, the risk of lower liquidity, higher volatility, wider spreads, and changing prices in extended hours trading as compared to regular market hours. See Exchange Rule 3.21(a) – (g).

represents one tool available to Members in order to meet their best execution obligations.

The Exchange notes that it would subject orders that are eligible for execution as of the start of the Pre-Opening Session to all of the Exchange's standard regulatory checks, as it currently does with all orders upon entry. These checks include compliance with Regulation NMS,<sup>47</sup> Regulation SHO,<sup>48</sup> as well as relevant Exchange rules.<sup>49</sup>

Lastly, the Exchange reminds Members of their regulatory obligations when submitting an order one of the proposed TIF instructions. The Market Access Rule under Rule 15c3-5 of the Act requires broker-dealers to, among other things, implement regulatory risk management controls and procedures that are reasonably designed to prevent the entry of orders that fail to comply with regulatory requirements that apply on a pre-order entry basis.<sup>50</sup> These pre-trade controls must, for example, be reasonably designed to assure compliance with Exchange trading rules and Commission rules under Regulation SHO<sup>51</sup> and Regulation NMS.<sup>52</sup> In accordance with the Market Access Rule, a Member's procedures must be reasonably designed to ensure compliance with their applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.

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<sup>47</sup> 17 CFR 242.610 - 611.

<sup>48</sup> 17 CFR 242.200 - 204.

<sup>49</sup> See, e.g., Exchange Rule 11.13(a).

<sup>50</sup> See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File no. S7-03-10).

<sup>51</sup> See e.g., Question 2.6 of the Division of Trading and Markets: Response to Frequently Asked Questions Concerning Regulations SHO, available at <https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.

<sup>52</sup> 17 CFR 240.610 - 611.

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

The Exchange does not believe that its proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will benefit investors, the national market system, Members, and the Exchange market by increasing competition for order flow and executions during the pre-market sessions, thereby spurring product enhancements and lowering prices. The Exchange believes the proposed Early Trading Session would enhance competition by enabling the Exchange to directly compete with NYSE Arca and Nasdaq for order flow and executions starting at 7:00 a.m., rather than 8:00 a.m. Eastern Time. In addition, the proposed TIF instructions will enhance competition by enabling the Exchange to offer functionality similar to Nasdaq.<sup>53</sup> The fact that the extending of the proposed Early Trading Session and TIF instructions are themselves a response to the competition provided by other markets is evidence of its pro-competitive nature.

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 unsolicited 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)

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<sup>53</sup> See supra note 39.

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.

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

The proposed amendments to Rules 1.5(r) and 11.1(a) are based on NYSE Arca Rule 7.34(a)(1) and Nasdaq Rule 4701(g). The only difference is that NYSE Arca and Nasdaq begin trading at 4:00 a.m. Eastern Time, rather than 7:00 a.m. as proposed herein.

9. Security Based- Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for the Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BATS-2016-14)

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Adopt an Early Trading Session and Three New Time-in-Force Instructions

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 \_\_\_\_\_, 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 filed a proposal to amend its rules to: (i) create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new Time-in-Force (“TIF”) instructions.

The text of the proposed rule change is available at the Exchange’s website at [www.batstrading.com](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

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

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

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 proposes to amend its rules to: (i) create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new TIF instructions.

Early Trading Session

The Exchange trading day is currently divided into three sessions of which a User<sup>3</sup> may select their order(s) be eligible for execution: (i) the Pre-Opening Session which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; (ii) Regular Trading Hours which runs from 9:30 a.m. to 4:00 p.m. Eastern Time; and (iii) the After Hours Session, which runs from 4:00 p.m. to 5:00 p.m. Eastern Time. The Exchange proposes to amend its rules to create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time.<sup>4</sup> Exchange Rule 1.5 would be

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<sup>3</sup> “User” is defined as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” See Exchange Rule 1.5(cc).

<sup>4</sup> The Exchange notes that NYSE Arca, Inc. (“NYSE Arca”) operates an Opening Session that starts at 4:00 a.m. Eastern Time (1:00 a.m. Pacific Time) and ends at 9:30 a.m. Eastern Time (6:30 a.m. Pacific Time). See NYSE Arca Rule 7.34(a)(1). The Nasdaq Stock Market LLC (“Nasdaq”) operates a pre-market

amended to add a new definition for the term “Early Trading Session” under new paragraph (ee). “Early Trading Session” would be defined as “the time between 7:00 a.m. and 8:00 a.m. Eastern Time.”<sup>5</sup>

The Exchange also proposes to amend Rule 11.1(a) to account for the Early Trading Session starting at 7:00 a.m. Eastern Time. Other than the proposal to adopt an Early Trading Session starting at 7:00 a.m. Eastern Time, the Exchange does not propose to amend the substance or operation of Rule 11.1(a).

Users currently designate when their orders are eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b). Orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session, or Regular Trading Hours,<sup>6</sup> depending on the TIF selected by the User. Users may enter orders in advance of the trading session they intend the order to be eligible for. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for

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session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See Nasdaq Rule 4701(g). See also Securities Exchange Act Release No. 69151 (March 15, 2013), 78 FR 17464 (March 21, 2013) (SR-Nasdaq-2013-033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pre-Market Hours of the Exchange to 4:00 a.m. EST).

<sup>5</sup> An Exchange having bifurcated after hours trading sessions is not novel. For example, the Chicago Stock Exchange, Inc. (“CHX”) maintains two after hours trading sessions. See CHX Article 20, Rule 1(b). See also Securities Exchange Act Release No. 60605 (September 1, 2009), 74 FR 46277 (September 8, 2009) (SR-CHX-2009-13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding Additional Trading Sessions).

<sup>6</sup> “Regular Trading Hours” is defined as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.” See Exchange Rule 1.5(w).

execution during Regular Trading Hours.<sup>7</sup> As stated above, Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Some Users have requested the ability for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Therefore, the Exchange is proposing to adopt the Early Trading Session as discussed herein.

Order entry and execution during the Early Trading Session would operate in the same manner as it does during the Pre-Opening Session. As amended, Exchange Rule 11.1(a) would state that orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Early Trading Session, Pre-Opening Session, or Regular Trading Hours,<sup>8</sup> depending on the TIF selected by the User. Exchange Rule 11.1(a) will also be amended to state that the Exchange will not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: BATS Post Only Orders,<sup>9</sup> Partial Post Only at Limit Orders,<sup>10</sup> Intermarket Sweep Orders (“ISOs”),<sup>11</sup> BATS Market Orders<sup>12</sup> with a TIF other than Regular Hours Only,<sup>13</sup> Minimum Quantity Orders<sup>14</sup> that also include a TIF of

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<sup>7</sup> See Exchange Rule 11.9(b)(7).

<sup>8</sup> “Regular Trading Hours” is defined as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.” See Exchange Rule 1.5(w).

<sup>9</sup> See Exchange Rule 11.9(c)(6).

<sup>10</sup> See Exchange Rule 11.9(c)(7).

<sup>11</sup> See Exchange Rule 11.9(d).

<sup>12</sup> See Exchange Rule 11.9(a)(2).

<sup>13</sup> See Exchange Rule 11.9(b)(7).

<sup>14</sup> See Exchange Rule 11.9(c)(5).



Regular Hours Only, and all orders with a TIF instruction of Immediate-or-Cancel (“IOC”)<sup>15</sup> or Fill-or-Kill (“FOK”).<sup>16</sup> At the commencement of the Early Trading Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book,<sup>17</sup> routed, cancelled, or executed in accordance with the terms of the order. As amended, Rule 11.1(a) would state that orders may be executed on the Exchange or routed away from the Exchange during Regular Trading Hours and during the Early Trading, Pre-Opening and After Hours Trading Sessions.

*Operations.* From the Members’ operational perspective, the Exchange’s goal is to permit trading for those that choose to trade, without imposing burdens on those that do not. Thus, for example, the Exchange will not require any Member to participate in the Early Trading Session, including not requiring registered market makers to make two-sided markets between 7:00 a.m. and 8:00 a.m., just as it does not require such participation between 8:00 a.m. and 9:30 a.m.<sup>18</sup> The Exchange will minimize Members’ preparation efforts to the greatest extent possible by allowing Members to trade

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<sup>15</sup> See Exchange Rule 11.9(b)(1).

<sup>16</sup> See Exchange Rule 11.9(b)(6).

<sup>17</sup> See Exchange Rule 1.5(e).

<sup>18</sup> See Exchange Rule 11.8(d)(2) (stating that for NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours).

beginning at 7:00 a.m. with the same equipment, connectivity, order types, and data feeds they currently use from 8:00 a.m. onwards.

*Opening Process.* The Exchange will offer no opening process at 7:00 a.m., just as it offers no opening process at 8:00 a.m. today. Instead, at 7:00 a.m., the System will “wake up” by loading in price/time priority all open trading interest entered after 6:00 a.m.<sup>19</sup> Also at 7:00 a.m., the Exchange will open the execution system and accept new eligible orders, just as it currently does at 8:00 a.m. Members will be permitted to enter orders beginning at 6:00 a.m. Market Makers will be permitted but not required to open their quotes beginning at 7:00 a.m. in the same manner they open their quotes today beginning at 8:00 a.m.

*Order Types.* Every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m.<sup>20</sup> All other order types, and all order type behaviors, will otherwise remain unchanged. The Exchange will not extend the expiration times of any orders. For example, an order that is currently available from 8:00 a.m. to 4:00 p.m. will be modified to be available from 7:00 a.m. to 4:00 p.m. An order that is available from 8:00 a.m. to 9:30 a.m. will be modified to be available from 7:00 a.m. to 9:30 a.m. Users must continue to enter a TIF instruction along with their order to indicate when the order is eligible for execution.<sup>21</sup>

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<sup>19</sup> See Exchange Rule 11.1(a).

<sup>20</sup> Id.

<sup>21</sup> Id.

*Routing Services.* The Exchange will route orders to away markets between 7:00 a.m. and 8:00 a.m., just as it does today between 8:00 a.m. and 9:30 a.m.<sup>22</sup> All routing strategies set forth in Exchange Rule 11.13 will remain otherwise unchanged, performing the same instructions they perform between 7:00 a.m. and 8:00 a.m. today.<sup>23</sup>

*Order Processing.* Order processing will operate beginning at 7:00 a.m. just as it does today beginning at 8:00 a.m. There will be no changes to the ranking, display, and execution processes or rules.

*Data Feeds.* The Exchange will report the best bid and offer on the Exchange to the appropriate network processor, as it currently does beginning 8:00 a.m.<sup>24</sup> The Exchange's proprietary data feeds will be disseminated beginning at 7:00 a.m. using the same formats and delivery mechanisms with which the Exchange currently disseminates them beginning at 8:00 a.m.

*Trade Reporting.* Trades executed between 7:00 a.m. and 8:00 a.m. will be reported to the appropriate network processor with the ".T" modifier, just as they are reported today between at 8:00 a.m. and 9:30 a.m.<sup>25</sup>

*Market Surveillance.* The Exchange's commitment to high-quality regulation at all times will extend to 7:00 a.m. The Exchange will offer all surveillance coverage currently performed by the Exchange's surveillance systems, which will launch by the time trading starts at 7:00 a.m.

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<sup>22</sup> Id.

<sup>23</sup> See Exchange Rule 11.13(b) (Routing to Away Trading Centers).

<sup>24</sup> See Exchange Rule 11.14 (Trade Execution and Reporting).

<sup>25</sup> Id.

*Clearly Erroneous Trade Processing.* The Exchange will process trade breaks beginning at 7:00 a.m. pursuant to Exchange Rule 11.17, just as it does today beginning at 8:00 a.m.

*Related changes to Rules 3.21, 11.9, 11.13, 11.17, 11.23, 14.6, 14.11, and 14.12.*

The Exchange proposes to also make the following changes to Rules 3.21, 11.9, 11.13, 11.17, 11.23, 14.6, 14.11, and 14.12 to reflect the adoption of the Early Trading Session:

- Rule 3.21, Customer Disclosures. In sum, Exchange Rule 3.21 prohibits Members from accepting an order from a customer for execution in the Pre-Opening or After Hours Trading Session without disclosing to their customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The Exchange proposes to amend Rule 3.21 to include the Early Trading Session as part of the Member's required disclosures to their customers.
- Rule 11.9, Orders and Modifiers. The Exchange proposes to amend the description of BATS Market Orders under Rule 11.9(a)(2), Market Maker Peg Orders under Rule 11.9(c)(16), and Supplemental Peg Orders under Rule 11.9(c)(19) to account for the Early Trading Session. BATS Market Orders are currently not eligible for execution during the Pre-Opening Session or After Hours Trading Session. Rule 11.9(a)(2) would be amended to state that BATS Market Orders would also not be eligible for execution during the Early Trading Session. Market Maker Peg Orders

may currently be submitted to the Exchange starting at the beginning of the Pre-Opening Session, but the order will not be executable or automatically priced until the beginning of Regular Trading Hours. Rule 11.9(c)(16) would be amended to state that Market Maker Peg Orders may be submitted to the Exchange starting at the beginning of the Early Trading Session. Market Maker Peg Orders would continue to not be executable or automatically priced until the beginning of Regular Trading Hours. Rule 11.9(c)(19) states that Supplemental Peg Orders are eligible for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Trading Session. Rule 11.9(c)(19) would be amended to state that Supplemental Peg Orders are also eligible for execution during the Early Trading Session. As stated above, every order type that is currently available beginning at 8:00 a.m. will be available beginning at 7:00 a.m. for inclusion in the Early Trading Session.<sup>26</sup> All other order types, and all order type behaviors, will otherwise remain unchanged. The above rules describing BATS Market Orders, Market Maker Peg Orders, and Supplemental Peg Orders specifically reference the trading sessions during which the order type is eligible for execution. Therefore, the Exchange proposes to amend the description of each order type to account for the Early Trading Session.

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<sup>26</sup> See proposed amendments to Exchange Rule 11.1(a).

- Rule 11.13, Order Execution and Routing. Exchange Rule 11.13(a)(2)(B) discusses compliance with Regulation NMS and Trade Through Protections and states that the price of any execution occurring during the Pre-Opening Session or the After Hours Trading Session must be equal to or better than the highest Protected Bid or lowest Protected Offer, unless the order is marked ISO or a Protected Bid is crossing a Protected Offer. The Exchange proposes to amend Rule 11.13(a)(2)(B) to expand the rule's requirements to the Early Trading Session.
- Rule 11.17, Clearly Erroneous Executions. Exchange Rule 11.17 outlines under which conditions the Exchange may determine that an execution is clearly erroneous. The Exchange proposes to amend Rule 11.17 to include executions that occur during the Early Trading Session.<sup>27</sup> Exchange Rule 11.17(c)(1) sets forth the numerical guidelines the Exchange is to follow when determining whether an execution was clearly erroneous during Regular Trading Hours or the Pre-Opening or After Hours Trading Session. Exchange Rule 11.17(c)(3) sets forth additional factors the Exchange may consider in determining whether a transaction is clearly erroneous. These factors include Pre-Opening and After Hours Trading Session executions. The Exchange proposes to amend Rule 11.17(c)(1) and (3) to include executions occurring during the Early Trading Session.

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<sup>27</sup> The Exchange notes that it also proposes to delete the "s" from the word "tapes" in paragraph (c)(3) of Rule 11.17.

- Rule 11.23, Auctions. Exchange Rules 11.23(b) and (c) describe the Exchange's Opening and Closing Auction processes. The Exchange proposes to amend Rules 11.23(b)(1)(A) and (c)(1)(A) to reflect that Users may submit orders at the start of the Early Trading Session at 7:00 a.m., rather than 8:00 a.m., to participate in either the Opening or Closing Auctions.
- Rule 14.6, Obligations for Companies Listed on the Exchange. The Exchange proposes to amend Rules 14.6(b)(1), (b)(2), and Interpretation and Policies .01(a),(b), (c), and .02 to require an Exchange-Listed Company that publicly releases material information outside of the Exchange market hours to inform the Exchange's Surveillance Department of that material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. The Exchange proposes to amend Rule 14.6, Interpretation and Policies .01(a), (b), (c), and .02 to reflect the start of the Early Trading Session at 7:00 a.m. Eastern Time. The amended provisions of Rule 14.6, Interpretation and Policies .01(a), (b), (c), and .02 require companies to notify the Exchange's Surveillance Department of the release of certain material information at least ten minutes prior to the release of such information to the public when the public release of the information is made during Exchange market hours.
- Rule 14.11, Other Securities. The Exchange proposes to amend Rule 14.11(b)(7) and (c)(7) to reflect the extension of the Pre-Opening Session to 7:00 a.m. Eastern Time. The Exchange also proposes to amend the

following provisions of Rule 14.11 to include references to the Early Trading Session or to state that transaction in the following products may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions: Commodity-Based Trust Shares; Currency Trust Shares; Commodity Futures Trust Shares; Trust Units; and Managed Trust Securities:

- *Rule 14.11(d), Securities Linked to the Performance of Indexes and Commodities (Including Currencies).* The Exchange proposes to amend Rule 14.11(d)(2)(K)(i)(b)(3)(B) and Interpretation and Policies .01(b) of Rule 14.11(e) to state, in sum, that where the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange then the last calculated official index value must remain available throughout Regular Trading Hours and the Early Trading, Pre-Opening and After Hours Trading Sessions.
- *Rule 14.11(e)(4), Commodity-Based Trust Shares.* The Exchange proposes to amend Interpretation and Policies .03 to Rule 14.11(e)(4) to state that transactions in Commodity-Based Trust



Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.

- *Rule 14.11(e)(5), Currency Trust Shares.* The Exchange proposes to amend Interpretation and Policies .03 to Rule 14.11(e)(5) to state that transactions in Currency Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.
- *Rule 14.11(e)(6), Commodity Index Trust Shares.* The Exchange proposes to amend Interpretation and Policies .03 to Rule 14.11(e)(6) to state that transactions in Commodity-Based Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.
- *Rule 14.11(e)(7), Commodity Future Trust Shares.* The Exchange proposes to amend Interpretation and Policies .02 to Rule 14.11(e)(7) to state that transactions in Commodity Future Trust Shares may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.
- *Rule 14.11(e)(9), Trust Units.* The Exchange proposes to amend Interpretation and Policies .02 to Rule 14.11(e)(9) to state that transactions in Trust Units may occur during the Early Trading

Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.

- *Rule 14.11(e)(10), Managed Trust Securities.* The Exchange proposes to amend Interpretation and Policies .02 to Rule 14.11(e)(10) to state that transactions in Managed Trust Securities may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions.
- *Rule 14.11(j), Derivative Securities Traded under Unlisted Trading Privileges.* The Exchange proposes to amend Rule 14.11(j)(2) to state that the Exchange will distribute an information circular prior to the commencement of trading in each UTP Derivative Security that generally includes the same information as contained in the listing circular provided by the listing exchange, including, the risk of trading during the Early Trading Session (7:00 a.m. – 8:00 a.m.) in addition, to the Pre-Opening Session (8:00 a.m. – 9:30 a.m. Eastern Time) and the After Hours Trading Session (4:00 p.m. – 5:00 p.m. Eastern Time), due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value (as defined in Rule 14.11(b)(3)(C)) or a similar value. The Exchange also proposes to amend Rule 14.11(j)(2) to correct an inaccurate description of the Pre-Opening

Session, which currently reads as 9:00 a.m. to 9:30 a.m. rather than 8:00 a.m. to 9:30 a.m. as is set forth throughout Exchange Rules.

- Rule 14.12, Failure to Meet Listing Standards. The Exchange proposes to amend Rule 14.12(e) and (m)(11) to require that companies that publicly announce the receipt of a notification of deficiency, Staff Delisting Determination, Public Reprimand Letter, or Adjudicatory Body Decision that serves as a Public Reprimand outside of Exchange market hours inform the Exchange's Surveillance Department of the material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. If the public announcement is made during Exchange market hours, both Rules would continue to require that the company inform the Exchange's Surveillance Department at least 10 minutes prior to the announcement.

#### TIF Instructions

The Exchange proposes to adopt three new TIF instructions under Rule 11.9(b). Under Rule 11.1(a), a User may designate when their order is eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b). Currently, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session, or Regular Trading Hours, depending on the TIF selected by the User. Users may enter orders in advance of the trading session they intend the order to be eligible for. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order

only be eligible for execution during Regular Trading Hours.<sup>28</sup> As stated above, Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m.

As discussed above, the Exchange proposed the Early Trading Session in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Some Users, however, do not wish for their orders to be executed during the Early Trading Session and have requested their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposes to adopt the following three new TIF instructions under Rule 11.9(b):

- Pre-Opening Session Plus (“PRE”). A limit order that is designated for execution during the Pre-Opening Session and Regular Trading Hours. Like the current Good-‘til Cancel (“GTC”) TIF instruction,<sup>29</sup> any portion not executed expires at the end of Regular Trading Hours.
- Pre-Opening Session ‘til Extended Day (“PTX”). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good-‘til Extended Day (“GTX”) TIF instruction,<sup>30</sup> any portion not executed expires at the end of the After Hours Session.

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<sup>28</sup> See Exchange Rule 11.9(b)(7).

<sup>29</sup> See Exchange Rule 11.9(b)(3).

<sup>30</sup> See Exchange Rule 11.9(b)(5).

- Pre-Opening Session ‘til Day (“PTD”). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good-‘til Day (“GTD”) TIF instruction,<sup>31</sup> any portion not executed will be cancelled at the expiration time assigned to the order, which can be no later than the close of the After Hours Trading Session.

Under each proposed TIF instruction, Users may designate that their orders only be eligible for execution starting with the Pre-Opening Session. This is similar to the existing TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours, which starts at 9:30 a.m. Eastern Time. In such case, a User may enter orders starting at 6:00 a.m. Eastern Time, but such order would not be eligible for execution until 9:30 a.m. Eastern Time. Likewise, under each of the proposed TIF instructions, a User may continue to enter orders as early as 6:00 a.m., but such orders would not be eligible for execution until 8:00 a.m. Eastern Time, the start of the Pre-Opening Session.<sup>32</sup> At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time with one of the proposed TIF instructions will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book, routed, cancelled, or executed in accordance with the terms of the order.<sup>33</sup>

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<sup>31</sup> See Exchange Rule 11.9(b)(4).

<sup>32</sup> Orders utilizing one of the proposed TIF instructions would not be eligible for execution during the proposed Early Trading Session.

<sup>33</sup> See Exchange Rule 11.1(a).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>34</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>35</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 also believes that the proposed rule change is non-discriminatory as it would apply to all Members uniformly. The proposed rule change in whole is designed to attract more order flow to the Exchange between 7:00 a.m. and 9:30 a.m. Eastern Time. Increased liquidity during this time will lead to improved price discovery and increased execution opportunities on the Exchange, therefore, promoting just and equitable principles of trade, and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

### Early Trading Session

The Exchange believes its proposal to adopt the Early Trading Session promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, prevents fraudulent and manipulative acts and practices, and, in general, protects investors and the public interest. The Exchange believes that the Early Trading Session will benefit investors, the national market system, Members, and the Exchange market by increasing competition

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<sup>34</sup> 15 U.S.C. 78f.

<sup>35</sup> 15 U.S.C. 78f(b)(5).

for order flow and executions, and thereby spur product enhancements and lower prices. The Early Trading Session will benefit Members and the Exchange market by increasing trading opportunities between 7:00 a.m. and 8:00 a.m. without increasing ancillary trading costs (telecommunications, data, connectivity, etc.) and, thereby, decreasing average trading costs per share. The Exchange notes that trading during the proposed Early Trading Session has been available on NYSE Arca and Nasdaq.<sup>36</sup> The Exchange believes that the availability of trading between 7:00 a.m. and 8:00 a.m. has been beneficial to market participants including investors and issuers on other markets. Introduction of the Early Trading Session on the Exchange will further expand these benefits.

Additionally, the Exchange Act's goal of creating an efficient market system includes multiple policies such as price discovery, order interaction, and competition among markets. The Exchange believes that offering a competing trading session will promote all of these policies and will enhance quote competition, improve liquidity in the market, support the quality of price discovery, promote market transparency, and increase competition for trade executions while reducing spreads and transaction costs. Additionally, increasing liquidity during the Early Trading Session will raise investors' confidence in the fairness of the markets and their transactions, particularly due to the lower volume of trading occurring prior to opening.

Although the Exchange will be operating with bifurcated pre-opening trading sessions, the Exchange notes that having bifurcated after hours trading sessions is not

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<sup>36</sup> See supra note 4.

novel. For example, the CHX maintains two after hours trading sessions,<sup>37</sup> the Late Trading Session, which runs from 4:00 p.m. to 4:15 p.m. Eastern Time, and the Late Crossing Session, which runs from 4:15 p.m. to 5:00 Eastern Time. As such, the Exchange does not believe that the proposed rule change will disproportionately increase the complexity of the market.

The expansion of trading hours through the creation of the Early Trading Session promotes just and equitable principles of trade by providing market participants with additional options in seeking execution on the Exchange. Order entry and execution during the Early Trading Session would operate in the same manner as it does today during the Pre-Opening Session. In addition, the Exchange will report the best bid and offer on the Exchange to the appropriate network processor, and the Exchange's proprietary data feeds will be disseminated, beginning at 7:00 a.m. The proposal will, therefore, facilitate a well-regulated, orderly, and efficient market during a period of time that is currently underserved.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because all surveillance coverage currently performed by the Exchange's surveillance systems will launch by the time trading starts at 7:00 a.m. Eastern Time. Further, the Exchange believes that the proposed rule change will protect investors and the public interest because the Exchange is updating its customer disclosure requirements to prohibit Members from accepting an order from a customer for execution in the Early Trading Session without disclosing to

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<sup>37</sup> See supra note 5.



their customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk.

#### TIF Instructions

The Exchange believes its proposed TIF instructions promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed TIF instructions will benefit investors by providing them with greater control over their orders. The proposed TIF instructions simply provide investors with additional optionality for when their orders may be eligible for execution.

The ability to select the trading sessions or time upon which an order is to be eligible for execution is not novel and is currently available on the Exchange and other market centers. For example, on the Exchange, a User may enter an order starting at 6:00 a.m. Eastern Time and select that such order not be eligible for execution until 9:30 a.m., the start of Regular Trading Hours using TIF instructions of Regular Hours Only.<sup>38</sup> In addition, like each of the proposed TIF instructions, Nasdaq utilizes a TIF, referred to as ESCN, under which an order using its SCAN routing strategy entered prior to 8:00 a.m. Eastern Time is not eligible for execution until 8:00 a.m. Eastern Time.<sup>39</sup>

The Exchange proposed the Early Trading Session discussed above in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern

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<sup>38</sup> See Exchange Rule 11.9(b)(7). See also Nasdaq Rule 4703(a) (outlining TIF instructions that do not activate orders until 9:30 a.m. Eastern Time).

<sup>39</sup> See Nasdaq Rule 4703(a). See also Nasdaq Rule 4703(a)(7).

Time. However, some Users have requested their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposed the three new TIF instructions in order for Users to designate their orders as eligible for execution as of the start of the Pre-Opening Session.

Members will maintain the ability to cancel or modify the terms of their order at any time, including during the time from when the order is routed to the Exchange until the start of the Pre-Opening Session. As a result, a Member who utilizes the proposed TIF instructions, but later determines that market conditions favor execution during Early Trading Session, can cancel the order residing at the Exchange and enter a separate order to execute during the Early Trading Session. While a User must make every effort to execute a marketable customer order it receives fully and promptly,<sup>40</sup> doing so might not result in the best execution possible for the customer. Such Users may wish to delay the execution of their orders until the start of the Pre-Opening Session for various reasons, including the characteristics of the market for the security as well as the amount of liquidity available in the market as part of their best execution obligations.<sup>41</sup>

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<sup>40</sup> See Supplemental Material .01 to Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 5310.

<sup>41</sup> A Member’s best execution obligation may also include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers where the execution of their order may be delayed intentionally as the Member utilizes reasonable diligence to ascertain the best market for the security. See FINRA Rule 5130. See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

Specifically, FINRA Rule 5310(a)(1) provides that a Member must use reasonable diligence to ascertain the best market for a security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. And importantly, FINRA Rule 5310(a)(1)(A) states that one of the factors that will be considered in determining whether a member has used “reasonable diligence” is “the character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communication).<sup>42</sup> As such, a Member conducting “reasonable diligence” may determine that due to the character of the Early Trading Session, along with considering other relevant factors, the Member wants to utilize the proposed TIF instructions.

Members will be accustomed to this additional analysis in determining whether to participate in the Early Trading Session, Pre-Opening Session, or Regular Trading Hours. The regulatory guidance with respect to best execution anticipates the continued evolution of execution venues:

[B]est execution is a facts and circumstances determination. A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution . . . , the speed of execution and the trading characteristics of the security, together with other non-price factors such as reliability and service.<sup>43</sup>

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<sup>42</sup> Tellingly, these characteristics are reflected in the disclosure requirements mandated by Exchange Rule 3.21 before a Member may accept an order from a customer for execution in the Pre-Opening, After Hours, and proposed Early Trading Sessions.

<sup>43</sup> See Securities Exchange Act Release No. 43950 (November 17, 2000), 65 FR 75414 (December 1, 2000) (“Disclosure of Order Execution and Routing Practices release”).

To the extent there may be best execution obligations at issue, they are no different than the best execution obligations faced by brokers in the current market structure,<sup>44</sup> including the use of the currently available Regular Trading Hours TIF instruction or SCAN/ESCN routing strategy available on Nasdaq discussed above.<sup>45</sup> However, similar to why a Member may utilize the Regular Trading Hours TIF instruction, a User may wish to forgo a possible execution during the Early Trading Session and/or Pre-Opening Session if they believe doing so is consistent with their best execution obligations as they anticipate that the market for the security may improve upon the start of the Pre-Opening Session and/or Regular Trading Hours.<sup>46</sup> Applicable best execution guidance contains no formulaic mandate as to whether or how brokers should direct orders. The optionality created by the proposed rule change simply represents one tool available to Members in order to meet their best execution obligations.

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<sup>44</sup> The Commission has also indicated a User's best execution obligation may not be satisfied simply by obtaining the best bid or offer ("BBO"). See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Executions Obligations release"). While a User may seek the most favorable terms reasonably available under the circumstances of the transaction, such terms may not necessarily in every case be the best price available. Id. See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

<sup>45</sup> See supra note 39.

<sup>46</sup> Exchange Rule 3.21 requires Member make certain disclosures to their customers prior to accepting an order for execution outside of Regular Trading Hours. These disclosures include, among other things, the risk of lower liquidity, higher volatility, wider spreads, and changing prices in extended hours trading as compared to regular market hours. See Exchange Rule 3.21(a) – (g).

The Exchange notes that it would subject orders that are eligible for execution as of the start of the Pre-Opening Session to all of the Exchange's standard regulatory checks, as it currently does with all orders upon entry. These checks include compliance with Regulation NMS,<sup>47</sup> Regulation SHO,<sup>48</sup> as well as relevant Exchange rules.<sup>49</sup>

Lastly, the Exchange reminds Members of their regulatory obligations when submitting an order one of the proposed TIF instructions. The Market Access Rule under Rule 15c3-5 of the Act requires broker-dealers to, among other things, implement regulatory risk management controls and procedures that are reasonably designed to prevent the entry of orders that fail to comply with regulatory requirements that apply on a pre-order entry basis.<sup>50</sup> These pre-trade controls must, for example, be reasonably designed to assure compliance with Exchange trading rules and Commission rules under Regulation SHO<sup>51</sup> and Regulation NMS.<sup>52</sup> In accordance with the Market Access Rule, a Member's procedures must be reasonably designed to ensure compliance with their applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.

(B) Self-Regulatory Organization's Statement on Burden on Competition

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<sup>47</sup> 17 CFR 242.610 - 611.

<sup>48</sup> 17 CFR 242.200 - 204.

<sup>49</sup> See, e.g., Exchange Rule 11.13(a).

<sup>50</sup> See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File no. S7-03-10).

<sup>51</sup> See e.g., Question 2.6 of the Division of Trading and Markets: Response to Frequently Asked Questions Concerning Regulations SHO, available at <https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>.

<sup>52</sup> 17 CFR 240.610 - 611.

The Exchange does not believe that its proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will benefit investors, the national market system, Members, and the Exchange market by increasing competition for order flow and executions during the pre-market sessions, thereby spurring product enhancements and lowering prices. The Exchange believes the proposed Early Trading Session would enhance competition by enabling the Exchange to directly compete with NYSE Arca and Nasdaq for order flow and executions starting at 7:00 a.m., rather than 8:00 a.m. Eastern Time. In addition, the proposed TIF instructions will enhance competition by enabling the Exchange to offer functionality similar to Nasdaq.<sup>53</sup> The fact that the extending of the proposed Early Trading Session and TIF instructions are themselves a response to the competition provided by other markets is evidence of its pro-competitive nature.

(C) 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 unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 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

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<sup>53</sup> See supra note 39.

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 or disapprove 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](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2016-14 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2016-14. 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 change 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-2016-14 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>54</sup>

Robert W. Errett  
Deputy Secretary

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<sup>54</sup> 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 I. ADOPTION, INTERPRETATION AND APPLICATION OF RULES, AND DEFINITIONS

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#### Rule 1.5 Definitions

Unless the context otherwise requires, for all purposes of these Exchange Rules, terms used in Exchange Rules shall have the meaning assigned in Article I of the Exchange's By-Laws or as set forth below:

(a) – (dd) (No change).

(ee) Early Trading Session

The term "Early Trading Session" shall mean the time between 7:00 a.m. and 8:00 a.m. Eastern Time.

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### CHAPTER III. RULES OF FAIR PRACTICE

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#### Rule 3.21. Customer Disclosures

No Member may accept an order from a customer for execution in the Early Trading, Pre-Opening or After Hours Trading Session without disclosing to such customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for UTP Derivative Securities (as defined in Rule 14.11(j)). The disclosures required pursuant to this Rule may take the following form or such other form as provides substantially similar information:

(a) – (g) (No change).

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## CHAPTER XI. TRADING RULES

## Rule 11.1. Hours of Trading and Trading Days

(a) Orders may be entered into the System from 6:00 a.m. until 8:00 p.m. Eastern Time. Orders entered between 6:00 a.m. and [8:00]7:00 a.m. Eastern Time are not eligible for execution until the start of the Early Trading Session, Pre-Opening Session or Regular Trading Hours, depending on the Time in Force selected by the User. The Exchange will not accept the following orders prior to [8:00]7:00 a.m. Eastern Time: BATS Post Only Orders, Partial Post Only at Limit Orders, ISOs, BATS Market Orders with a Time in Force other than Regular Hours Only, Minimum Quantity Orders that also include a Time in Force of Regular Hours Only, and all orders with a Time in Force of IOC or FOK. At the commencement of the Early Trading[Pre-Opening] Session, orders entered between 6:00 a.m. and [8:00]7:00 a.m. Eastern Time will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BATS Book, routed, cancelled, or executed in accordance with the terms of the order. Orders may be executed on the Exchange or routed away from the Exchange during Regular Trading Hours and during the Early Trading, Pre-Opening and After Hours Trading Sessions.

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## Rule 11.9. Orders and Modifiers

Users may enter into the System the types of orders listed in this Rule 11.9, subject to the limitations set forth in this Rule or elsewhere in these Rules.

(a) *General Order Types*

(1) (No change).

(2) BATS Market Order. An order to buy or sell a stated amount of a security that is to be executed at the NBBO when the order reaches the Exchange. BATS market orders shall not trade through Protected Quotations. A BATS market order that is designated as BATS Only with a time-in-force of Day will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.13(a)(1) unless the reason that such BATS market order cannot be executed is because it is entered into the System and the NBO (NBB) is greater (less) than the Upper (Lower) Price Band, in which case such order will be posted by the System to the BATS Book, displayed at the Upper (Lower) Price Band, and re-priced as set forth in Rule 11.18(e)(5)(B). A BATS market order to sell with a time-in-force of Day that is marked short that cannot be executed because of the existence of a Short Sale Circuit Breaker will be posted by the System to the BATS Book subject to the price sliding process as set forth in paragraph (g) below. A BATS market order will default to a time-in-force of Day unless otherwise specified by a User. A BATS market order that is designated as BATS Only with a time-in-force other than Day will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.13(a)(4).

BATS market orders that are designated as BATS Post Only are rejected. BATS market orders that are not designated as BATS Only and that cannot be executed in accordance with Rule 11.13(a)(4) on the System when reaching the Exchange will be eligible for routing away pursuant to Rule 11.13(b). Any portion of a BATS market order that would execute at a price more than \$0.50 or 5 percent worse than the NBBO at the time the order initially reaches the Exchange, whichever is greater, will be cancelled. BATS market orders are not eligible for execution during the Early Trading Session, Pre-Opening Session or the After Hours Trading Session.

(b) **Time-in-Force.** Orders must have one of the following time-in-force terms.

(1) – (7) (No change).

(8) Pre-Opening Session Plus (“PRE”). A limit order that is designated for execution during the Pre-Opening Session and Regular Trading Hours. Any portion not executed expires at the end of Regular Trading Hours.

(9) Pre-Opening Session ‘til Extended Day (“PTX”). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Any portion not executed expires at the end of the After Hours Session.

(10) Pre-Opening Session ‘til Day (“PTD”). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Any portion not executed will be cancelled at the expiration time assigned to the order, which can be no later than the close of the After Hours Trading Session.

(c) *Other Types of Orders.*

(1) – (15) (No change).

(16) *Market Maker Peg Order.* A limit order that, upon entry or at the beginning of Regular Trading Hours, as applicable, the bid or offer is automatically priced by the System at the Designated Percentage (as defined in Rule 11.8) away from the then current NBB and NBO, or if no NBB or NBO, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Rule 11.8(d). Users may submit Market Maker Peg Orders to the Exchange starting at the beginning of [the Pre-Opening] Early Trading Session, but the order will not be executable or automatically priced until the beginning of Regular Trading Hours and will expire at the end of Regular Trading Hours. Upon reaching the Defined Limit (as defined in Rule 11.8), the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current NBB and NBO, or, if no NBB or NBO, the order will, by default, be the Designated Percentage away from the last

reported sale from the responsible single plan processor. If a Market Maker Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage towards the then current NBB or NBO, which number of percentage points will be determined and published in a circular distributed to Members from time to time, the price of such bid or offer will be adjusted to the Designated Percentage away from the then current NBB and NBO. If no NBB or NBO, the order will be adjusted to the Designated Percentage away from the last reported sale from the responsible single plan processor. If, after entry, the Market Maker Peg Order is priced based on the last reported sale from the single plan processor and such Market Maker Peg Order is established as the NBB or NBO, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until either there is a new consolidated last sale or a new NBB or NBO is established by a national securities exchange. Market Maker Peg Orders are not eligible for routing pursuant to Rule 11.13(b) and are always displayed on the Exchange. Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and re-submitting, as applicable, quotations that meet the requirements of Rule 11.8(d). A new timestamp is created for the order each time that it is automatically adjusted. For purposes of this paragraph, the Exchange will apply the Designated Percentage and Defined Limit as set forth in Rule 11.8, subject to the following exceptions. For all NMS stocks with a price less than \$1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, the Exchange will use the Designated Percentage and Defined Limit applicable to NMS stocks equal to or greater than \$1 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. Market Maker Peg Orders may only be entered by a registered Market Maker. Market Maker Peg Orders will expire at the end of Regular Trading Hours.

(17) – (18) (No change).

(19) *Supplemental Peg Order.* A non-displayed limit order that posts to the BATS Book, and thereafter is eligible for execution at the NBB for buy orders and NBO for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price. Supplemental Peg Orders are passive, resting orders on the BATS Book and do not take liquidity. A User may specify a minimum execution quantity for a Supplemental Peg Order. A minimum execution quantity on a Supplemental Peg Order will no longer apply where the number of shares remaining after a partial execution are less than the minimum execution quantity. Supplemental Peg Orders are eligible for execution in a given security during the Early Trading Session, Pre-Opening Session, Regular Trading Hours, and After Hours Trading Session. Supplemental Peg Orders are not eligible for execution in the Opening Process. A Supplemental Peg Order does not execute at a price that is inferior to a Protected Quotation, and is not permitted to execute if the NBBO is locked or crossed. Any and all remaining, unexecuted Supplemental Peg Orders are cancelled at the conclusion of the After Hours Trading Session.

(d) – (g) (No change).

\* \* \* \* \*

#### Rule 11.13. Order Execution and Routing

(No change).

(a) Execution Against the BATS Book

(No change).

(1) (No change).

(2) *Compliance with Regulation NMS and Trade-Through Protection.*

(A) (No change).

(B) Other Trading Sessions. For any execution to occur during the Early Trading Session, 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, unless the order is marked ISO or a Protected Bid is crossing a Protected Offer.

(C) (No change).

(3) – (4) (No change).

(b) – (e) (No change).

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#### 11.17. Clearly Erroneous Executions

(No change).

(a) – (b) (No change).

(c) *Thresholds.* Determinations of whether an execution is clearly erroneous will be made as follows:

(1) *Numerical Guidelines.* Subject to the provisions of paragraph (c)(3) below, a transaction executed during Regular Trading Hours or during the Early Trading, Pre-Opening or After Hours Session shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the Numerical Guidelines set

forth below. The execution time of the transaction under review determines whether the threshold is Regular Trading Hours or Early Trading, Pre-Opening or After Hours Trading Session[s] (which occur before and after the Regular Trading Hours). The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for: (A) Multi-Stock Events involving twenty or more securities, as described in paragraph (c)(2) below; and (B) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest.

Reference Price, Circumstance or Product	Regular Trading Hours Numerical Guidelines (Subject transaction's % difference from the Reference Price):	<u>Early Trading</u> , Pre-Opening and After Hours Trading Session Numerical Guidelines (Subject transaction's % difference from the Reference Price):
Greater than \$0.00 up to and including \$25.00	10%	20%
Greater than \$25.00 up to and including \$50.00	5%	10%
Greater than \$50.00	3%	6%
Multi-Stock Event – Filings involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less	10%	10%
Multi-Stock Event – Filings involving twenty or more securities whose executions occurred within a period of five minutes or less	30%, subject to the terms of paragraph (c)(2) below	30%, subject to the terms of paragraph (c)(2) below
Leveraged ETF/ETN securities	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (i.e. 2x)

(2) (No change).

(3) *Additional Factors*. Except in the context of a Multi-Stock Event involving five or more securities, an Official may also consider additional factors to determine whether an execution is clearly erroneous, including but not limited to, system malfunctions or disruptions, volume and volatility for the security, derivative securities

products that correspond to greater than 100% in the direction of a tracking index, news released for the security, whether trading in the security was recently halted/resumed, whether the security is an initial public offering, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Early Trading, Pre-Opening or After Hours Session executions, validity of the consolidated tape[s] trades and quotes, consideration of primary market indications, and executions inconsistent with the trading pattern in the stock. Each additional factor shall be considered with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

(d) – (k) (No change).

\* \* \* \* \*

Rule 11.23. Auctions

(a) (No change.)

(b) *Opening Auction*

(1) Order Entry and Cancellation Before Opening Auction

(A) Users may submit orders to the Exchange starting at [8:00]7:00 a.m., the beginning of the Early Trading[Pre-Opening] Session. Any Eligible Auction Orders designated for the Opening Auction will be queued until 9:30 a.m. at which time they will be eligible to be executed in the Opening Auction. Users may submit LOO and MOO orders until 9:28 a.m., at which point any additional LOO and MOO orders submitted to the Exchange will be rejected. RHO market orders will also be rejected between 9:28 a.m. and 9:30 a.m. Users may submit LLOO orders between 9:28 a.m. and 9:30 a.m. Any LLOO orders submitted before 9:28 a.m. or after 9:30 a.m. will be rejected. RHO limit orders submitted between 9:28 a.m. and 9:30 a.m. will be treated as LLOO orders until the Opening Auction has concluded.

(B) (No change.)

(C) Orders eligible for execution in the Early Trading Session or Pre-Opening Session may be cancelled or modified at any time prior to execution.

(2) - (3) (No change.)

(c) *Closing Auction*

(1) Order Entry and Cancellation Before Closing Auction



(A) Users may submit orders to the Exchange starting at [8:00]7:00 a.m., the beginning of the Early Trading[Pre-Opening] Session. Any Eligible Auction Orders designated for the Closing Auction will be queued until 4:00 p.m. at which time they will be eligible to be executed in the Closing Auction. Users may submit LOC and MOC orders until 3:55 p.m., at which point any additional LOC and MOC orders submitted will be rejected. Unlike in the Opening Auction, User submitted Market RHO orders will be accepted immediately prior to the Closing Auction. Users may submit LLOC orders between 3:55 p.m. and 4:00 p.m. Any LLOC orders submitted before 3:55 p.m. or after 4:00 p.m. will be rejected.

(B) - (C) (No change.)

(2) - (3) (No change.)

(d)-(h) (No change.)

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#### CHAPTER XIV. BATS EXCHANGE LISTING RULES

\* \* \* \* \*

##### Rule 14.6. Obligations for Companies Listed on the Exchange

(a) (No change.)

(b) Obligation to Make Public Disclosure

(1) Disclosure of Material Information

Except in unusual circumstances, an Exchange-listed Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to the Exchange's Surveillance Department at least ten minutes prior to public announcement if the information involves any of the events set forth in Interpretation and Policy .01 to this Rule and the public release of the material information is made during the Exchange market hours. If the public release of the material information is made outside of the Exchange market hours, the Exchange Companies must notify the Exchange's Surveillance Department of the material information prior to [7:50]6:50 a.m. ET. As described in Interpretation and Policy .01, prior notice to the Exchange's Surveillance Department must be made through the electronic disclosure submission system available at the Exchange's Web site, except in emergency situations.

(2) Disclosure of Notification of Deficiency

As set forth in Rule 14.12(e), a Company that receives a notification of deficiency from the Exchange is required to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. However, note that in the case of a deficiency related to the requirement to file a periodic report contained in Rule 14.6(c)(1) or (2), the Company is required to make the public announcement by issuing a press release. As described in Rule 14.6(b)(1) above and Interpretation and Policy .01 below, the Company must notify the Exchange's Surveillance Department about the announcement through the electronic disclosure submission system available on the Exchange's Web site, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during the Exchange market hours, the Company must notify the Exchange's Surveillance Department at least ten minutes prior to the announcement. If the public announcement is made outside of the Exchange market hours, the Company must notify the Exchange's Surveillance Department of the announcement prior to ~~[7:50]~~6:50 a.m. ET.

(c) – (e) (No change.)

*Interpretations and Policies*

.01 Disclosure of Material Information

(a) General Disclosure Requirements

Rule 14.6(b)(1) requires that, except in unusual circumstances, Exchange Companies disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Exchange Companies must notify the Exchange at least ten minutes prior to the release to the public of material information that involves any of the events set forth below when the public release of the information is made during Exchange market hours (~~[8:00]~~7:00 a.m. to 5:00 pm. ET). If the public release of the material information is made outside of the Exchange market hours, the Exchange Companies must notify the Exchange's Surveillance Department of the material information prior to ~~[7:50]~~6:50 a.m. ET. Under unusual circumstances Companies may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, the Exchange Companies remain obligated to disclose this information to the Exchange upon request pursuant to Rule 14.6(a).

\* \* \* \* \*

(b) Notification to the Exchange's Surveillance Department

Companies must notify the Exchange's Surveillance Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made during the Exchange market hours ([8:00]7:00 a.m. to 5:00 pm. ET). If the public release of the material information is made outside of the Exchange market hours, The Exchange must notify the Exchange's Surveillance Department of the material information prior to [7:50]6:50 a.m. ET. Except in emergency situations, this notification must be made through the Exchange's electronic disclosure submission system available on the Exchange's Web site. In emergency situations, Companies may instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of computer or internet access; technical problems on the Exchange and a material development such that no draft disclosure document exists, but immediate notification to the Exchange's Surveillance Department is important based on the material event.

\* \* \* \* \*

(c) Trading Halts

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The Exchange's Surveillance Department is required to keep non-public information, confidential and to use such information only for regulatory purposes.

Companies are required to notify the Exchange's Surveillance Department of the release of material information included in the following list of events at least ten minutes prior to the release of such information to the public when the public release of the information is made during Exchange market hours ([8:00]7:00 a.m. to 5:00 pm. ET):

- (1) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."
- (2) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.
- (3) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).
- (4) Senior management changes of a material nature or a change in control.
- (5) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.
- (6) Events regarding the Company's securities — e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.
- (7) Significant legal or regulatory developments. Regulation FD
- (8) Any event requiring the filing of a Form 8-K.

If the public release of the material information is made outside of Exchange market hours, Exchange Companies must notify the Exchange's Surveillance Department of the material

information prior to [7:50]6:50 a.m. ET. It should also be noted that every development that might be reported to the Exchange in these areas would not necessarily be deemed to warrant a trading halt. In addition to the list of events set forth above, the Exchange encourages Companies to avail themselves of the opportunity for advance notification to the Exchange's Surveillance Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

#### .02 Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that a Company chooses to use, Companies are required to notify the Exchange's Surveillance Department of the release of material information that involves any of the events set forth above at least ten minutes prior to its release to the public when the public release of the information is made during Exchange market hours ([8:00]7:00 a.m. to 5:00 pm. ET). If the public release of the material information is made outside of Exchange market hours, Exchange Companies must notify the Exchange's Surveillance Department of the material information prior to [7:50]6:50 a.m. ET. When a Company chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8-K, the Company will be required to provide prior notice to the Exchange's Surveillance Department of: 1) the press release announcing the logistics of the future disclosure event; and 2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

\* \* \* \* \*

#### Rule 14.11. Other Securities

(a) (No change.)

(b) Portfolio Depository Receipts

(1)-(6) (No change.)

(7) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Portfolio Depository Receipts, as specified by the Exchange. In addition, the Exchange may designate each series of Portfolio Depository Receipts for trading during a pre-market session beginning at [8:00]7:00 a.m. and/or a post-market session ending at 5:00 p.m.

(8)-(10) (No change.)

(c) Index Fund Shares

(1)-(6) (No change.)

(7) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange. In addition, the Exchange may designate each series of Index Fund Shares for trading during a pre-market session beginning at [8:00]7:00 a.m. and/or a post-market session ending at 5:00 p.m.

(8)-(10) (No change.)

(d) Securities Linked to the Performance of Indexes and Commodities (Including Currencies)

(No change).

(1) Definitions:

(A) - (B) (No change).

(2) (No change).

(A) – (J) (No change).

(K) Linked Securities

(i) Equity Index-Linked Securities Criteria

(a) (No change).

(b) Continued Listing Criteria

(1) (No change).

(A) – (B) (No change).

(2) (No change).

(3) (No change).

(A) (No change).

(B) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a

60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout Regular Trading Hours and [both] the Early Trading, Pre-Opening and After Hours Trading Sessions; or

(C) (No change).

(4) (No change).

(ii) – (v) (No change).

*Interpretations and Policies:*

(No change).

(e) Trading of Certain Derivative Securities

(1) – (3) (No change).

*Interpretations and Policies:*

.01 (No change).

(a) (No change).

(b) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60- second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout Regular Trading Hours and [both] the Early Trading Session, Pre-Opening and After Hours Trading Sessions; or (c) if such other event shall

occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

.02 - .11 (No change).

(4) Commodity-Based Trust Shares

(A) – (G) (No change).

*Interpretations and Policies:*

.01 - .02 (No change).

.03 Transactions in Commodity-Based Trust Shares will occur during Regular Trading Hours and the Early Trading, Pre-Opening and After Hours Trading Sessions.

.04 (No change).

(5) Currency Trust Shares

(A) – (H) (No change).

*Interpretations and Policies:*

.01 - .02 (No change).

.03 Transactions in Currency Trust Shares will occur during Regular Trading Hours and the Early Trading, Pre-Opening and After Hours Trading Sessions.

.04 - .07 (No change).

(6) Commodity Index Trust Shares

(A) – (G) (No change).

*Interpretations and Policies:*

.01 - .02 (No change).

.03 Transactions in Commodity Index Trust Shares will occur during Regular Trading Hours and the Early Trading, Pre-Opening and After Hours Trading Sessions.

.04 (No change).

(7) Commodity Future Trust Shares

(A) – (H) (No change).

*Interpretations and Policies:*

.01 (No change).

.02 Transactions in Commodity Futures Trust Shares will occur during Regular Trading Hours and the Early Trading, Pre-Opening and After Hours Trading Sessions.

.03 - .05 (No change).

(8) Partnership Units

(A) – (G) (No change).

*Interpretations and Policies:*

.01 (No change).

(9) Trust Units

(A) – (F) (No change).

*Interpretations and Policies:*

.01 (No change).

.02 Transactions in Trust Units will occur during Regular Trading Hours and the Early Trading, Pre-Opening and After Hours Trading Sessions.

.03 (No change).

(10) Managed Trust Securities

(A) – (H) (No change).

*Interpretations and Policies:*

.01 (No change).

.02 Transactions in Managed Trust Securities will occur during Regular Trading Hours and the Early Trading, Pre-Opening and After Hours Trading Sessions.

.03 - .05 (No change).



(11) – (12) (No change).

(f) – (i) (No change).

(j) Derivative Securities Traded under Unlisted Trading Privileges

(No change).

(1) (No change).

(2) Information Circular. The Exchange shall distribute an information circular prior to the commencement of trading in each such UTP Derivative Security that generally includes the same information as contained in the information circular provided by the listing exchange, including: (a) the special risks of trading the new derivative securities product; (b) the Exchange Rules that will apply to the new derivative securities product, including Rule 3.7; (c) information about the dissemination of the value of the underlying assets or indexes; and (d) the risk of trading during the Early Trading Session (7:00 a.m. – 8:00 a.m.), Pre-Opening Session ([9]8:00 a.m. – 9:30 a.m. Eastern Time) and the After Hours Trading Session (4:00 p.m. – 5:00 p.m. Eastern Time) due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value (as defined in Rule 14.11(b)(3)(C)) or a similar value.

(3) – (6) (No change).

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Rule 14.12. Failure to Meet Listing Standards

(a) – (d) (No change.)

(e) Company Disclosure Obligations

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand Letter is required to make a public announcement disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. A Company that receives a notification of deficiency or Staff Delisting Determination related to the requirement to file a periodic report contained in Rule 14.6(c)(1) or (2) is required to make the public announcement by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, in addition to filing any Form 8-K required by SEC rules. In all other cases, the Company may make the public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release. As described in Rule 14.6(b)(1) and Rule 14.6, Interpretation and Policy .01, the Company must notify Exchange's Surveillance Department about the announcement through the electronic disclosure submission system available on the Exchange's Web site, except in emergency situations when notification may instead be provided

by telephone or facsimile. If the public announcement is made during Exchange market hours, the Company must notify the Exchange's Surveillance Department at least ten minutes prior to the announcement. If the public announcement is made outside of Exchange market hours, the Company must notify the Exchange's Surveillance Department of the announcement prior to [7:50]6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.

(f) - (l) (No change.)

(m) Adjudicatory Process: General Information

(1)-(10) (No change.)

(11) Disclosure of Public Reprimand Letter

A Company that receives an Adjudicatory Body Decision that serves as a Public Reprimand Letter must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of the Decision, including the Rule(s) upon which the Decision was based. As described in Rule 14.6(b)(1) and Rule 14.6, Interpretation and Policy .01, the Company must notify the Exchange's Surveillance Department about the announcement through the electronic disclosure submission system available on the Exchange's Web site, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during the Exchange market hours, the Company must notify the Exchange's Surveillance Department at least ten minutes prior to the announcement. If the public announcement is made outside of the Exchange market hours, the Company must notify the Exchange's Surveillance Department of the announcement prior to [7:50]6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the Decision.

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