

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BATS Rule 11.13, entitled “Order Execution,” to more closely mirror the rules of other self-regulatory organizations related to order routing and to provide the Exchange’s Outbound Router (as defined below) with additional flexibility when routing orders away from the Exchange. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.³ The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁴ If such waiver is granted by the Commission, the Exchange shall implement this rule proposal immediately upon commencement of its operations as a national securities exchange.

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

* * * * *

Rule 11.13. Order Execution

(No changes.)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

⁴ Id.

(a) (No changes.)

(1) (No changes.)

(2) *Routing to Away Trading Centers.* Unless the terms of the order direct the Exchange not to route such order away (*e.g.*, a BATS Only Order), if a market or marketable limit order has not been executed in its entirety pursuant to paragraph (a)(1) above, the order shall be eligible for routing away as follows:

(A) *Routing of Market Orders.* The System will designate market orders as IOC_s [ISOs] and will cause such orders to be routed for execution to one or more [Protected Quotations at other market centers that are better than the Exchange's quote for at least the full displayed size of the Protected Quotation(s) or the balance of the order, or, if Destination Specific Orders, will cause such orders to be routed as IOC orders to the specified market center regardless of whether such market center is displaying a better priced Protected Quotation] Trading Centers (as defined in Rule 2.11) for potential execution, per the entering User's instructions, in compliance with Rule 611 under Regulation NMS. After the System receives responses to orders that were routed away, to the extent an order is not executed in full through the routing process, the System will process the balance of such order as follows. Depending on parameters set by the User when the incoming order was originally entered, the System will either: (i) process the unfilled balance of an order as a BATS Only Order pursuant to Rule 11.9(c)(4), or (ii) repeat the process described in paragraph (a)(1) above and this paragraph (a)(2)(A) by executing against the BATS Book and/or routing orders to other [market centers] Trading Centers until the original, incoming order is executed in its entirety.

(B) *Routing of Marketable Limit Orders.* The System will designate limit orders as IOC_s [ISOs] and will cause such orders to be routed for execution to one or more [Protected Quotations at other market centers that are better than the Exchange's quote for at least the full displayed size of the Protected Quotation(s) or the balance of the order, or, if Destination Specific Orders, will cause such orders to be routed as IOC orders to the specified market center regardless of whether such market center is displaying a better priced Protected Quotation] Trading Centers (as defined in Rule 2.11) for potential execution, per the entering User's instructions, in compliance with Rule 611 under Regulation NMS. After the System receives responses to orders that were routed away, to the extent an order is not executed in full through the routing process, the System will process the balance of such order as follows. Depending on parameters set by the User when the incoming order was originally entered, the System will either: (i) process the unfilled balance of an order as a BATS Only Order pursuant to Rule 11.9(c)(4), or (ii) repeat the process described in paragraph (a)(1) above and this paragraph (a)(2)(B) by executing against the BATS Book and/or routing orders to other

[market centers]Trading Centers until the original, incoming order is executed in its entirety or its limit price is reached. If the order's limit price is reached, the order will be posted in the BATS Book.

(b) – (d) (No changes.)

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on September 15, 2008. This action constitutes requisite approval under the Exchange's By-Laws.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (212) 378-8523.

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

(a) Purpose

The routing performed in connection with the operation of the Exchange will be conducted by an affiliate of the Exchange, BATS Trading, Inc. (the "Outbound Router"), which is regulated as a facility of the Exchange (as defined in Section 3(a)(2) of the Act),⁵ subject to Section 6 of the Act.⁶ The role and functions of the Outbound Router are set forth in BATS Rule 2.11, which has previously been approved by the Commission.

⁵ 15 U.S.C. 78c(a)(2).

⁶ 15 U.S.C. 78f.

The purpose of the proposed rule change is to provide the Exchange's Outbound Router with additional flexibility when routing orders away from the Exchange. The proposed modifications will permit the Outbound Router to route to additional Trading Centers (as defined in Exchange Rule 2.11),⁷ without limiting the permissible destinations to execution venues with "protected quotations" (as defined in Rule 600(b)(58) of the Act).⁸ Under the proposed rule, orders could be routed to one or more Trading Centers provided that such routing is compliant with Regulation NMS, specifically, Rule 611 thereof (the "Order Protection Rule").⁹ Such Trading Centers may include execution venues known as "dark books."

Under current Rule 11.13, when an incoming market or marketable limit order is received by the Exchange, the order will first check the BATS Book. If such order is not executed in full against liquidity on the BATS Book, and is eligible for routing based on the User's instructions, then the order will be transmitted to the Outbound Router to be routed away. The Outbound Router will then route the order to one or more protected quotations for potential execution in compliance with the Order Protection Rule of Regulation NMS. This process continues until the order has been executed in full or the Outbound Router has confirmed that there are no available protected quotations at the routed price level or at a better price level. Following the routing process described above, the order will return to the Exchange to check available liquidity at the next

⁷ The Exchange's definition of Trading Center, contained in Rule 2.11, is consistent with the definition of "trading center" contained in Rule 600(b)(78) of Regulation NMS.

⁸ 17 CFR 242.600(b)(58).

⁹ 17 CFR 242.611.

permissible price level, and, if not executed in full, will either be posted to the BATS Book or again routed away to protected quotations at that next permissible price level.

After the proposed rule change, the Order Router may route orders not only to protected quotations, but also to other Trading Centers, so long as such routing is in compliance with the Order Protection Rule of Regulation NMS. With the exception of this proposed change, the order routing process will continue as it does currently. Thus, orders will continue to be routed in the order routing process until the order has been executed in full or the Outbound Router has confirmed that there are no available protected quotations at the routed price level or at a better price level. The order will then return to the Exchange to check available liquidity at the next permissible price level, and, if not executed in full, will either be posted to the BATS Book or again routed away to available Trading Centers at that next permissible price level.

Routing under the proposed rule change will be subject to the requirements as those contained in Rule 2.11. Such requirements include that: (1) the Outbound Router will operate as a facility of the Exchange, and thus, the Exchange will be responsible for filing with the Commission rule changes related to the operation of, and fees for services provided by, the Outbound Router, and the Outbound Router shall be subject to exchange non-discrimination requirements; (2) for purposes of Rule 17d-1 under the Act,¹⁰ the designated examining authority of the Outbound router will be a self-regulatory organization unaffiliated with the Exchange or any of its affiliates; (3) use of the Outbound Router is optional; (4) the Outbound Router will not engage in any business other than (a) its Outbound Router function and (b) any other activities it may engage in

¹⁰ 17 CFR 240.19b-4.

as approved by the Commission; (5) the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including the Outbound Router), and any other entity, including any affiliate of the Outbound Router, and, if the Outbound Router or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Outbound Router or its affiliate that provides the other business activities and the routing services; and (6) the books, records, premises, officers, agents, directors and employees of the Outbound Router as a facility of the Exchange shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act, and the books and records of the Outbound Router, as a facility of the Exchange shall be subject at all times to inspection and copying by the Exchange and the Commission. Accordingly, the Exchange believes that routing of orders away from the Exchange under the proposed rule change is consistent with the previously approved functions of the Outbound Router, and the Exchange does not believe that such functions are expanded through the proposed rule change.

The Exchange believes that routing under the proposed rule change will enhance order execution opportunities for market participants by allowing such participants to benefit from the Outbound Router's ability to route orders to additional Trading Centers,¹¹ rather than limiting such routing to market centers with protected quotations.

¹¹ Such benefits may include, for example, potentially receiving lower transaction fees or executions at a single price.

Accordingly, the modifications to BATS Rule 11.13 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. As described in more detail below, the Exchange also believes that the proposed modification is similar to routing capabilities provided by other national securities exchanges and permissible under such exchanges' approved rules.¹²

(b) Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹³ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁴ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by providing the Outbound Router with additional flexibility when routing orders away from the Exchange, which may allow market participants to obtain better prices and/or lower access fees for such orders, while making clear the requirement that such routing be compliant with the Order Protection Rule.

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

The proposed rule change does not impose any burden on competition.

¹² See, e.g., Rule 4758(a)(1)(A)(iii) of the Nasdaq Stock Market LLC ("NASDAQ"); see also NYSE Arca Equities Rule 7.37(d).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

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

As described below, the proposed rule change is substantially similar to the rule of other self-regulatory organizations that have previously been approved by the Commission.¹⁵ Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁶ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁷ The Exchange believes that the proposed rule change should take effect immediately upon filing because it will effect a change that: (1) does not significantly

¹⁵ See, e.g., Securities Exchange Act Release No. 53583 (March 31, 2006), 71 FR 19573 (April 14, 2006) (SR-NASDAQ-2006-001); Securities Exchange Act Release No. 34-54549 (September 29, 2006), 71 FR 59179 (October 6, 2006) (SR-NYSEArca-2006-59); see also Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144, 40149 (July 11, 2008) (where the Commission stated that a rule change proposal relating to a trading rule may be designated as immediately effective if “each policy issue raised by the proposed trading rule (i) has been considered previously by the Commission when the Commission approved another exchange’s trading rule (that was subject to notice and comment) pursuant to Section 19(b)(2) of the Exchange Act, and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.”)

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4.

affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) and does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.¹⁸

Because the Exchange anticipates that it may commence operations as a national securities exchange sooner than 30 days from the date of this filing, and because the proposed rule change is non-controversial, the Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.¹⁹ Waiver of this requirement is consistent with the protection of investors and the public interest because it will permit the Outbound Router to more efficiently route orders away from the Exchange upon commencement of its operations as a national securities exchange.

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

The Exchange has modified the text of Rule 11.13 based on NASDAQ Rule 4758(a)(1)(A)(iii). Although certain language contained in BATS Rule 11.13(a)(1)(A) and (B) differs from the language in NASDAQ Rule 4758(a)(1)(A)(iii), such differences are not material to the substance of this filing. The fundamental change affected through this proposed rule filing is to permit the Outbound Router to more effectively make

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

routing decisions in sending orders (when permissible in accordance with Regulation NMS and a User's instructions) to Trading Centers including, but not limited to, Trading Centers with protected quotations. Rule 11.13, as proposed, is substantially similar to NASDAQ Rule 4758(a)(1)(A)(iii) with respect to such routing to available Trading Centers; both rules explain that, after checking the applicable order book for shares, orders are routed to other available execution venues for potential execution, per the User's instructions, in compliance with Regulation NMS. In addition, both Rule 11.13 and NASDAQ Rule 4758(a)(1)(A)(iii) set forth that orders not executed after routing may be posted on the applicable order book. For the reasons set forth above, BATS Rule 11.13 and NASDAQ Rule 4758(a)(1)(A)(iii) are substantially similar with respect to routing destinations, which is the sole purpose of the proposed rule change.

9. Exhibits

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

Exhibit 2 – 5: Not applicable.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2008-007)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.13, entitled “Order Execution.”

Pursuant to Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 9, 2008, BATS Exchange, Inc. (“BATS” or the “Exchange”) 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. BATS has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. BATS has also requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.⁴ If such waiver is granted by the Commission, the Exchange will implement this rule proposal immediately upon commencement of its operations as a national securities exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Id.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.13, entitled "Order Execution," to more closely mirror the rules of other self-regulatory organizations related to order routing and to provide the Exchange's Outbound Router (as defined below) with additional flexibility when routing orders away from the Exchange.

The text of the proposed rule change is available at the Exchange's website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The routing performed in connection with the operation of the Exchange will be conducted by an affiliate of the Exchange, BATS Trading, Inc. (the "Outbound Router"), which is regulated as a facility of the Exchange (as defined in Section 3(a)(2) of the Act),⁵ subject to Section 6 of the Act.⁶ The role and functions of the Outbound Router

⁵ 15 U.S.C. 78c(a)(2).

⁶ 15 U.S.C. 78f.

are set forth in BATS Rule 2.11, which has previously been approved by the Commission.

The purpose of the proposed rule change is to provide the Exchange's Outbound Router with additional flexibility when routing orders away from the Exchange. The proposed modifications will permit the Outbound Router to route to additional Trading Centers (as defined in Exchange Rule 2.11),⁷ without limiting the permissible destinations to execution venues with "protected quotations" (as defined in Rule 600(b)(58) of the Act).⁸ Under the proposed rule, orders could be routed to one or more Trading Centers provided that such routing is compliant with Regulation NMS, specifically, Rule 611 thereof (the "Order Protection Rule").⁹ Such Trading Centers may include execution venues known as "dark books."

Under current Rule 11.13, when an incoming market or marketable limit order is received by the Exchange, the order will first check the BATS Book. If such order is not executed in full against liquidity on the BATS Book, and is eligible for routing based on the User's instructions, then the order will be transmitted to the Outbound Router to be routed away. The Outbound Router will then route the order to one or more protected quotations for potential execution in compliance with the Order Protection Rule of Regulation NMS. This process continues until the order has been executed in full or the Outbound Router has confirmed that there are no available protected quotations at the

⁷ The Exchange's definition of Trading Center, contained in Rule 2.11, is consistent with the definition of "trading center" contained in Rule 600(b)(78) of Regulation NMS.

⁸ 17 CFR 242.600(b)(58).

⁹ 17 CFR 242.611.

routed price level or at a better price level. Following the routing process described above, the order will return to the Exchange to check available liquidity at the next permissible price level, and, if not executed in full, will either be posted to the BATS Book or again routed away to protected quotations at that next permissible price level.

After the proposed rule change, the Order Router may route orders not only to protected quotations, but also to other Trading Centers, so long as such routing is in compliance with the Order Protection Rule of Regulation NMS. With the exception of this proposed change, the order routing process will continue as it does currently. Thus, orders will continue to be routed in the order routing process until the order has been executed in full or the Outbound Router has confirmed that there are no available protected quotations at the routed price level or at a better price level. The order will then return to the Exchange to check available liquidity at the next permissible price level, and, if not executed in full, will either be posted to the BATS Book or again routed away to available Trading Centers at that next permissible price level.

Routing under the proposed rule change will be subject to the requirements as those contained in Rule 2.11. Such requirements include that: (1) the Outbound Router will operate as a facility of the Exchange, and thus, the Exchange will be responsible for filing with the Commission rule changes related to the operation of, and fees for services provided by, the Outbound Router, and the Outbound Router shall be subject to exchange non-discrimination requirements; (2) for purposes of Rule 17d-1 under the Act,¹⁰ the designated examining authority of the Outbound router will be a self-regulatory organization unaffiliated with the Exchange or any of its affiliates; (3) use of the

¹⁰ 17 CFR 240.19b-4.

Outbound Router is optional; (4) the Outbound Router will not engage in any business other than (a) its Outbound Router function and (b) any other activities it may engage in as approved by the Commission; (5) the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including the Outbound Router), and any other entity, including any affiliate of the Outbound Router, and, if the Outbound Router or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Outbound Router or its affiliate that provides the other business activities and the routing services; and (6) the books, records, premises, officers, agents, directors and employees of the Outbound Router as a facility of the Exchange shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act, and the books and records of the Outbound Router, as a facility of the Exchange shall be subject at all times to inspection and copying by the Exchange and the Commission. Accordingly, the Exchange believes that routing of orders away from the Exchange under the proposed rule change is consistent with the previously approved functions of the Outbound Router, and the Exchange does not believe that such functions are expanded through the proposed rule change.

The Exchange believes that routing under the proposed rule change will enhance order execution opportunities for market participants by allowing such participants to benefit from the Outbound Router's ability to route orders to additional Trading

Centers,¹¹ rather than limiting such routing to market centers with protected quotations. Accordingly, the modifications to BATS Rule 11.13 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. As described in more detail below, the Exchange also believes that the proposed modification is similar to routing capabilities provided by other national securities exchanges and permissible under such exchanges' approved rules.¹²

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).¹³ In particular, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁴ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by providing the Outbound Router with additional flexibility when routing orders away from the Exchange, which may allow market participants to obtain better prices and/or lower

¹¹ Such benefits may include, for example, potentially receiving lower transaction fees or executions at a single price.

¹² See, e.g., Rule 4758(a)(1)(A)(iii) of the Nasdaq Stock Market LLC ("NASDAQ"); see also NYSE Arca Equities Rule 7.37(d).

¹³ 15 U.S.C. 78(f)(b).

¹⁴ 15 U.S.C. 78f(b)(5).

access fees for such orders, while making clear the requirement that such routing be compliant with the Order Protection Rule.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received from Members, Participants or Others

No written comments were solicited or received.

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

Because the foregoing proposed rule change is non-controversial and does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ As described below, the Exchange believes that the proposed rule change will make Rule 11.13 substantially similar to the rules of other self-regulatory organizations¹⁷ that have previously been approved by the Commission.¹⁸

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ The Exchange based the proposed rule on Rule 4758(a)(1)(A)(iii) of the Nasdaq Stock Market LLC ("NASDAQ"). Although the language contained in BATS Rule 11.13(a)(1)(A) and (B) differs to an extent from language in NASDAQ Rule 4758(a)(1)(A)(iii), the Exchange does not believe that such differences are material to the substance of the proposed rule change.

¹⁸ See, e.g., Securities Exchange Act Release No. 53583 (March 31, 2006), 71 FR 19573 (April 14, 2006) (SR-NASDAQ-2006-001); Securities Exchange Act Release No. 34-54549 (September 29, 2006), 71 FR 59179 (October 6, 2006)

Because the Exchange anticipates that it may commence operations as a national securities exchange sooner than 30 days from the date of this filing, and because the proposed rule change is non-controversial, the Exchange has requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.¹⁹ The Exchange represents that waiver of this requirement is consistent with the protection of investors and the public interest because it will permit the Outbound Router to more efficiently route orders away from the Exchange upon commencement of its operations as a national securities exchange.

In light of the foregoing, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission has determined to waive the operative delay, and the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,²⁰ and Rule 19b-4(f)(6) thereunder,²¹ with no operative delay.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission

(SR-NYSEArca-2006-59); see also Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144, 40149 (July 11, 2008) (where the Commission stated that a rule change proposal relating to a trading rule may be designated as immediately effective if “each policy issue raised by the proposed trading rule (i) has been considered previously by the Commission when the Commission approved another exchange’s trading rule (that was subject to notice and comment) pursuant to Section 19(b)(2) of the Exchange Act, and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.”)

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ 15 U.S.C. 78s(b)(3)(A)

²¹ 17 CFR 240.19b-4(f)(6).

that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2008-007 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-2008-007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing will also be available for inspection and

copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2008-007 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.²²

Florence E. Harmon
Acting Secretary

²² 17 CFR 200.30-3(a)(12).