

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. (“BATS” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BATS Rule 5.5, entitled “Information Barrier Procedures,” to modify the Exchange’s rule regarding information barrier procedures required of certain Exchange Members. The Exchange is also proposing to add new Exchange Rule 12.13, entitled “Trading Ahead of Research Reports.”

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (212) 378-8520.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) Purpose

The Exchange proposes to eliminate the requirements of BATS Rule 5.5 that require a Member³ that trades for its own account or that has a specialist or market maker operation on another market (defined in BATS Rule 5.5(a) as a "specialist") to establish and maintain certain specifically prescribed information barrier procedures and to file such procedures with the Exchange. At the same time, the Exchange proposes to amend BATS Rule 5.5 to more closely mirror the rules of other self-regulatory organizations that create certain obligations for all Member firms related to the prevention of the misuse of material, non-public information. Finally, the Exchange proposes to add new BATS Rule 12.13, which: (i) prohibits Members from trading ahead of research reports, and (ii) requires each Member to establish, maintain and enforce procedures regarding the flow of information between research department personnel and trading department personnel.

(i) All Members Must Maintain Policies Concerning the Misuse of Material Non-Public Information

Presently, the Exchange requires that each Member establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information, which includes review of employee and proprietary trading, memorialization and documentation of procedures, substantive supervision of interdepartmental communications by the Member's compliance department and procedures concerning proprietary trading when the firm is in possession of material,

³ See BATS Rule 1.5(n).

non-public information.⁴ The Exchange also has specific rules prohibiting Members from disadvantaging their customers or other market participants by improperly capitalizing on the Members' access to or receipt of material, non-public information. For example, the Exchange prohibits a Member from trading ahead of its customer's limit orders.⁵

(ii) Proposed Amendments to General Standards and Deletion of Specific Information Barrier Procedures

As noted above, the Exchange currently maintains a general standard for all Members to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information, including certain specific procedures. The Exchange also currently requires specific information barrier procedures for Members that meet the definition in BATS Rule 5.5(a) of a "specialist" and requires such firms to file their information barrier procedures with the Exchange. The Exchange proposes amending the language that imposes the general standard of preventing the misuse of material, non-public information and adding additional language to provide clarity regarding the minimum policies and procedures a Member must implement to comply with such general standards. As described in further detail below, the Exchange also proposes deleting the specific information barrier procedures required to be maintained by Exchange Members that meet the definition of "specialist."

Under the proposal, amended BATS Rule 5.5 would provide flexibility to a BATS Member to develop and maintain procedures and controls to prevent the misuse of material, non-public information that are effective and appropriate to that Member. The

⁴ See BATS Rule 5.5(a).

⁵ See BATS Rule 12.6.

Exchange proposes adding Interpretation and Policy .01 to BATS Rule 5.5 that would provide examples of conduct that would constitute the misuse of material, non-public information.⁶ Proposed Interpretation and Policy .02 to BATS Rule 5.5 would set forth specific policies and procedures that would be required of Members.⁷ However, as made clear by the proposed Interpretation and Policy, such policies and procedures would not in all cases, satisfy the requirements and intent of amended BATS Rule 5.5; the adequacy of each Member's policies and procedures would depend upon the nature of such Member's business.

⁶ Such examples include: (a) Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or (b) Trading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in the security or related securities; or (c) Disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

⁷ The specific policies and procedures required, at a minimum, would include: (a) All associated persons of the Member must be advised in writing of the prohibition against the misuse of material, non-public information; and (b) All associated persons of the Member must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and (c) Each Member must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person: has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the Member for the purpose of detecting the possible misuse of material, non-public information; and (d) All associated persons must disclose to the Member whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

The Exchange proposes to eliminate, in their entirety, the requirements set forth in BATS Rule 5.5 that require certain members to maintain and file with the Exchange specifically prescribed information barrier procedures. This proposal is consistent with the change recently approved by the Commission for NYSE Arca Equities, Inc. (“NYSE Arca”), which allowed the elimination of a specific information barrier requirement previously contained in NYSE Arca rules.⁸ This proposal is also consistent with the approach currently employed by the Nasdaq Stock Market, L.L.C. (“Nasdaq”), which does not generally require its members to establish or maintain information barriers.

If the deletion of the requirement to maintain and file with the Exchange certain prescribed information barrier procedures is approved, the only specific information barrier requirement of the Exchange will be the requirement described below, under proposed Rule 12.13, to maintain policies and procedures reasonably designed to restrict or limit the information flow between those with knowledge of the content or timing of a research report and trading department personnel. However, the Exchange does not intend to indicate that information barriers may not be necessary for Members in other contexts. To the contrary, information barrier procedures may be a necessary or effective means to manage conflicts of interest or to prevent communications of material non-public information between certain individuals or groups.⁹ Further, as described above,

⁸ Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (SR-NYSEArca-2009-78).

⁹ The Exchange represents that it will issue a Regulatory Circular to its Members notifying such Members of this proposal and addressing related regulatory topics. For instance, the Regulatory Circular will reinforce the requirement that Members of the Exchange maintain policies and procedures that are reasonably designed to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder and the Exchange’s rules, including

under proposed Interpretation and Policy .02, the adequacy of each Member's policies and procedures will depend upon the nature of each Member's business.

(iii) Proposed Addition of BATS Rule 12.13

In an attempt to achieve additional consistency with certain other market centers, the Exchange further proposes to add new BATS Rule 12.13, prohibiting Members from establishing, increasing, decreasing or liquidating an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security. Similar to FINRA Rule 5280 and NYSE Arca Rule 6.7, the Exchange also proposes to require Members to establish, maintain and enforce procedures reasonably designed to restrict or limit the information flow between research department personnel and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report.

(iv) Members Retain Responsibility for Compliance

those relating to the misuse of material non-public information. In addition, the Exchange represents that the Regulatory Circular will include the following guidance: "Pursuant to the proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. While information barriers are not specifically required under the proposal, a Member's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules."

By prohibiting the misuse of material, non-public information, the Exchange believes it has appropriately defined the behavior that its participants must avoid. However, the Exchange also believes that prescribing the form that these policies and procedures must take is unnecessarily burdensome. By defining certain prohibited behavior (*e.g.*, BATS Rule 12.6) the Exchange has placed its participants on notice as to their specific compliance burdens with respect to preventing the misuse of material, non-public information. Further, BATS Rule 5.1 requires each Member to establish, maintain and enforce written procedures that enable such Member to supervise the activities of associated persons of the Member and to assure their compliance with applicable securities laws and regulations, and with BATS Rules. Pursuant to this proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. In addition, in the context of approving a similar proposal by NYSE Arca, the Commission stated that, “while information barriers are not specifically required under the proposal, a [firm’s] business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.”¹⁰

¹⁰ See Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR at

(v) Comparison to Framework Employed by Nasdaq and NYSE Arca

By amending its rules in accordance with this proposal, the Exchange reinforces a regulatory structure that clearly identifies prohibited conduct (*e.g.*, misuse of material, non-public information) without further requiring Members to establish and maintain specific compliance mechanisms (*e.g.*, information barriers). For example, Nasdaq prohibits the misuse of material, non-public information but does not generally require that its members establish and maintain information barriers,¹¹ and NYSE Arca recently eliminated a requirement applicable to NYSE Arca market makers specifically requiring information barriers. In conjunction with such amendment, NYSE Arca adopted NYSE Arca Rule 6.7, a rule that the Exchange has mirrored with its proposal of BATS Rule 12.13. Finally, similar to BATS Rule 5.1, Nasdaq Rule 3010 and NYSE Arca Rule 6.18 require the members of Nasdaq and NYSE Arca, respectively, to establish and maintain systems to supervise the activities of associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and the applicable rules of the exchange.

The Exchange believes that the approach proposed herein is consistent with Nasdaq and NYSE Arca's respective structures. First, like Nasdaq and NYSE Arca, market makers registered with BATS and other firms that are Members of BATS that trade for their own accounts do not have any advantages regarding relevant trading information provided by the Exchange, either at, or prior to, the point of execution vis-à-vis other market participants. Second, BATS has similar requirements to Nasdaq and

46275 (September 8, 2009) (SR-NYSEArca-2009-78).

¹¹ See Nasdaq Rules 2110-2, 2110-3, and 2110-4.

NYSE Arca concerning the maintenance of a supervisory system and written supervisory procedures. The Exchange notes that FINRA and BATS have previously acknowledged, pursuant to the provisions of Rule 17d-2 under the Securities Exchange Act of 1934 (“17d-2 Agreement”), that, collectively, BATS Rules 5.1, 5.2, 5.3 and 5.4 are substantially similar to FINRA’s NASD Rule 3010, which Nasdaq and NYSE Arca rules incorporate by reference. For instance, BATS Rule 5.4 is similar to Rule 3010(c), which requires each FINRA member to conduct an annual review of the businesses in which it engages and to conduct annual office inspections including the “periodic examination of customer accounts to detect and prevent irregularities or abuses.” Although the Exchange has not incorporated Rule 3010(c) into its Rules by reference, Rule 3010(c) would apply to all broker-dealers that engage in a customer business, because such firms are required to be members of FINRA.¹² Also, although not as detailed as Rule 3010(c) with respect to the requirements of the inspection, BATS Rule 5.4 is nearly identical in that it requires BATS Members to “review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses.”

Based on the foregoing, it is appropriate for the Exchange to establish a similar approach with respect to information barriers employed by Nasdaq and NYSE Arca.¹³

(vi) Conclusion: Flexibility and Accountability

Eliminating substantial portions of BATS Rule 5.5, and adding to the general standards set forth therein to prohibit the misuse of material, non-public information, as

¹² See 15 U.S.C. 78o(b)(8); see also 17 CFR 240.15b9-1(a).

¹³ BATS notes that its current examination procedure regarding its review for appropriate supervisory systems and procedures will remain in place.

proposed by this filing, offers Exchange participants both certainty and flexibility. BATS Members are on notice as to their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information. Like Nasdaq and NYSE Arca participants, BATS Members will now be afforded the same flexibility to maintain compliance mechanisms of their own design. The Exchange believes that this approach fosters a fair and orderly marketplace without being overly burdensome upon its Members.

(b) Statutory Basis

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.¹⁴ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁵ because it is designed to prevent fraudulent and manipulative acts and practices, to 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. Eliminating portions of BATS Rule 5.5 that prescribe specific procedures and information barriers that must be maintained by certain Member firms, while establishing more clarity regarding the minimum procedures that must be maintained by any Member, consistent with other self-regulatory organizations, should eliminate unnecessary regulatory burdens while at the same time retaining an appropriate mechanism designed to ensure that material, non-public information continues to be protected. In particular, the proposed rule change will

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

reduce the burdens on certain Members that are currently required to maintain, and file with the Exchange, specified information barriers. The Exchange believes that the proposed changes will make compliance obligations with respect to prevention of the misuse of material, non-public information more clear to Exchange Members. The amended rule structure will be more consistent with that of other exchanges and will nonetheless continue to ensure protection of investors through existing regulations relevant to misuse of material, non-public information that apply to Exchange Members through the applicability and enforcement of relevant provisions of the Act, including Section 15(f);¹⁶ rules imposed by other self-regulatory organizations; a joint industry effort to surveil for potential insider trading violations through a Rule 17d-2 Agreement¹⁷ and Regulatory Services Agreements between all self-regulatory organizations that trade equity securities; and through the Exchange's examination program.

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

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

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

The Exchange has 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.

¹⁶ 15 U.S.C. 78o(f).

¹⁷ See Securities Exchange Act Release 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008); Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008).

6. Extension of Time Period for Commission Action

Not applicable.

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

The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act.¹⁸ This proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange notes that this filing does not propose any novel issues or provisions that are unique or unproven. Specifically, the proposed rule changes will result in the Exchange's rules being consistent with other self-regulatory organizations, including Nasdaq and NYSE Arca. Accelerated approval will assist Exchange Members affected by the inconsistency between the Exchange's rules and the rules of other self-regulatory organizations in structuring their compliance programs. The Exchange believes that benefits to Members of the Exchange expected from the proposed rule change should not be delayed.

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

This proposed rule change is based on NYSE Arca Rules 6.3 and 6.7. The proposed amendment to BATS Rule 5.5 will result in a rule that is functionally equivalent to NYSE Arca Rule 6.3. Proposed Rule 12.13 is identical to NYSE Arca Rule 6.7 other than the terminology used to refer to the members of each exchange.

9. Exhibits

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

¹⁸ 15 U.S.C. 78s(b)(2).

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-BATS-2010-003)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 5.5, entitled “Information Barrier Procedures,” and to add New BATS Rule 12.13, entitled “Trading Ahead of Research Reports.”

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 February 11, 2010, BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to amend BATS Rule 5.5, entitled “Information Barrier Procedures,” to modify the Exchange’s rule regarding information barrier procedures required of certain Exchange Members. The Exchange is also proposing to add new Exchange Rule 12.13, entitled “Trading Ahead of Research Reports.”

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to eliminate the requirements of BATS Rule 5.5 that require a Member³ that trades for its own account or that has a specialist or market maker operation on another market (defined in BATS Rule 5.5(a) as a "specialist") to establish and maintain certain specifically prescribed information barrier procedures and to file such procedures with the Exchange. At the same time, the Exchange proposes to amend BATS Rule 5.5 to more closely mirror the rules of other self-regulatory organizations that create certain obligations for all Member firms related to the prevention of the misuse of material, non-public information. Finally, the Exchange proposes to add new BATS Rule 12.13, which: (i) prohibits Members from trading ahead of research reports, and (ii) requires each Member to establish, maintain and enforce procedures regarding the flow of information between research department personnel and trading department personnel.

(i) All Members Must Maintain Policies Concerning the Misuse of Material Non-Public Information

³ See BATS Rule 1.5(n).

Presently, the Exchange requires that each Member establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information, which includes review of employee and proprietary trading, memorialization and documentation of procedures, substantive supervision of interdepartmental communications by the Member's compliance department and procedures concerning proprietary trading when the firm is in possession of material, non-public information.⁴ The Exchange also has specific rules prohibiting Members from disadvantaging their customers or other market participants by improperly capitalizing on the Members' access to or receipt of material, non-public information. For example, the Exchange prohibits a Member from trading ahead of its customer's limit orders.⁵

(ii) Proposed Amendments to General Standards and Deletion of Specific Information Barrier Procedures

As noted above, the Exchange currently maintains a general standard for all Members to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information, including certain specific procedures. The Exchange also currently requires specific information barrier procedures for Members that meet the definition in BATS Rule 5.5(a) of a "specialist" and requires such firms to file their information barrier procedures with the Exchange. The Exchange proposes amending the language that imposes the general standard of preventing the misuse of material, non-public information and adding additional language to provide clarity regarding the minimum policies and procedures a Member must

⁴ See BATS Rule 5.5(a).

⁵ See BATS Rule 12.6.

implement to comply with such general standards. As described in further detail below, the Exchange also proposes deleting the specific information barrier procedures required to be maintained by Exchange Members that meet the definition of “specialist.”

Under the proposal, amended BATS Rule 5.5 would provide flexibility to a BATS Member to develop and maintain procedures and controls to prevent the misuse of material, non-public information that are effective and appropriate to that Member. The Exchange proposes adding Interpretation and Policy .01 to BATS Rule 5.5 that would provide examples of conduct that would constitute the misuse of material, non-public information.⁶ Proposed Interpretation and Policy .02 to BATS Rule 5.5 would set forth specific policies and procedures that would be required of Members.⁷ However, as made

⁶ Such examples include: (a) Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or (b) Trading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in the security or related securities; or (c) Disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

⁷ The specific policies and procedures required, at a minimum, would include: (a) All associated persons of the Member must be advised in writing of the prohibition against the misuse of material, non-public information; and (b) All associated persons of the Member must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and (c) Each Member must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person: has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the Member for the purpose of detecting the possible misuse of material, non-public information; and (d) All associated persons must disclose to the Member whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or

clear by the proposed Interpretation and Policy, such policies and procedures would not in all cases, satisfy the requirements and intent of amended BATS Rule 5.5; the adequacy of each Member's policies and procedures would depend upon the nature of such Member's business.

The Exchange proposes to eliminate, in their entirety, the requirements set forth in BATS Rule 5.5 that require certain members to maintain and file with the Exchange specifically prescribed information barrier procedures. This proposal is consistent with the change recently approved by the Commission for NYSE Arca Equities, Inc. ("NYSE Arca"), which allowed the elimination of a specific information barrier requirement previously contained in NYSE Arca rules.⁸ This proposal is also consistent with the approach currently employed by the Nasdaq Stock Market, L.L.C. ("Nasdaq"), which does not generally require its members to establish or maintain information barriers.

If the deletion of the requirement to maintain and file with the Exchange certain prescribed information barrier procedures is approved, the only specific information barrier requirement of the Exchange will be the requirement described below, under proposed Rule 12.13, to maintain policies and procedures reasonably designed to restrict or limit the information flow between those with knowledge of the content or timing of a research report and trading department personnel. However, the Exchange does not intend to indicate that information barriers may not be necessary for Members in other

10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

⁸ Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (SR-NYSEArca-2009-78).

contexts. To the contrary, information barrier procedures may be a necessary or effective means to manage conflicts of interest or to prevent communications of material non-public information between certain individuals or groups.⁹ Further, as described above, under proposed Interpretation and Policy .02, the adequacy of each Member's policies and procedures will depend upon the nature of each Member's business.

(iii) Proposed Addition of BATS Rule 12.13

In an attempt to achieve additional consistency with certain other market centers, the Exchange further proposes to add new BATS Rule 12.13, prohibiting Members from establishing, increasing, decreasing or liquidating an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security. Similar to FINRA Rule 5280 and NYSE Arca Rule 6.7, the Exchange also proposes to require Members to establish, maintain and

⁹ The Exchange represents that it will issue a Regulatory Circular to its Members notifying such Members of this proposal and addressing related regulatory topics. For instance, the Regulatory Circular will reinforce the requirement that Members of the Exchange maintain policies and procedures that are reasonably designed to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder and the Exchange's rules, including those relating to the misuse of material non-public information. In addition, the Exchange represents that the Regulatory Circular will include the following guidance: "Pursuant to the proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. While information barriers are not specifically required under the proposal, a Member's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules."

enforce procedures reasonably designed to restrict or limit the information flow between research department personnel and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report.

(iv) Members Retain Responsibility for Compliance

By prohibiting the misuse of material, non-public information, the Exchange believes it has appropriately defined the behavior that its participants must avoid. However, the Exchange also believes that prescribing the form that these policies and procedures must take is unnecessarily burdensome. By defining certain prohibited behavior (*e.g.*, BATS Rule 12.6) the Exchange has placed its participants on notice as to their specific compliance burdens with respect to preventing the misuse of material, non-public information. Further, BATS Rule 5.1 requires each Member to establish, maintain and enforce written procedures that enable such Member to supervise the activities of associated persons of the Member and to assure their compliance with applicable securities laws and regulations, and with BATS Rules. Pursuant to this proposed rule change, Members may utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. A Member should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. In addition, in the context of approving a similar proposal by NYSE Arca, the Commission stated that, “while information barriers are not specifically required under the proposal, a [firm’s]

business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.”¹⁰

(v) Comparison to Framework Employed by Nasdaq and NYSE Arca

By amending its rules in accordance with this proposal, the Exchange reinforces a regulatory structure that clearly identifies prohibited conduct (*e.g.*, misuse of material, non-public information) without further requiring Members to establish and maintain specific compliance mechanisms (*e.g.*, information barriers). For example, Nasdaq prohibits the misuse of material, non-public information but does not generally require that its members establish and maintain information barriers,¹¹ and NYSE Arca recently eliminated a requirement applicable to NYSE Arca market makers specifically requiring information barriers. In conjunction with such amendment, NYSE Arca adopted NYSE Arca Rule 6.7, a rule that the Exchange has mirrored with its proposal of BATS Rule 12.13. Finally, similar to BATS Rule 5.1, Nasdaq Rule 3010 and NYSE Arca Rule 6.18 require the members of Nasdaq and NYSE Arca, respectively, to establish and maintain systems to supervise the activities of associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and the applicable rules of the exchange.

The Exchange believes that the approach proposed herein is consistent with Nasdaq and NYSE Arca’s respective structures. First, like Nasdaq and NYSE Arca,

¹⁰ See Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR at 46275 (September 8, 2009) (SR-NYSEArca-2009-78).

¹¹ See Nasdaq Rules 2110-2, 2110-3, and 2110-4.

market makers registered with BATS and other firms that are Members of BATS that trade for their own accounts do not have any advantages regarding relevant trading information provided by the Exchange, either at, or prior to, the point of execution vis-à-vis other market participants. Second, BATS has similar requirements to Nasdaq and NYSE Arca concerning the maintenance of a supervisory system and written supervisory procedures. The Exchange notes that FINRA and BATS have previously acknowledged, pursuant to the provisions of Rule 17d-2 under the Securities Exchange Act of 1934 (“17d-2 Agreement”), that, collectively, BATS Rules 5.1, 5.2, 5.3 and 5.4 are substantially similar to FINRA’s NASD Rule 3010, which Nasdaq and NYSE Arca rules incorporate by reference. For instance, BATS Rule 5.4 is similar to Rule 3010(c), which requires each FINRA member to conduct an annual review of the businesses in which it engages and to conduct annual office inspections including the “periodic examination of customer accounts to detect and prevent irregularities or abuses.” Although the Exchange has not incorporated Rule 3010(c) into its Rules by reference, Rule 3010(c) would apply to all broker-dealers that engage in a customer business, because such firms are required to be members of FINRA.¹² Also, although not as detailed as Rule 3010(c) with respect to the requirements of the inspection, BATS Rule 5.4 is nearly identical in that it requires BATS Members to “review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses.”

¹² See 15 U.S.C. 78o(b)(8); see also 17 CFR 240.15b9-1(a).

Based on the foregoing, it is appropriate for the Exchange to establish a similar approach with respect to information barriers employed by Nasdaq and NYSE Arca.¹³

(vi) Conclusion: Flexibility and Accountability

Eliminating substantial portions of BATS Rule 5.5, and adding to the general standards set forth therein to prohibit the misuse of material, non-public information, as proposed by this filing, offers Exchange participants both certainty and flexibility. BATS Members are on notice as to their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information. Like Nasdaq and NYSE Arca participants, BATS Members will now be afforded the same flexibility to maintain compliance mechanisms of their own design. The Exchange believes that this approach fosters a fair and orderly marketplace without being overly burdensome upon its Members.

2. Statutory Basis

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.¹⁴ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁵ because it is designed to prevent fraudulent and manipulative acts and practices, to 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. Eliminating portions of BATS

¹³ BATS notes that its current examination procedure regarding its review for appropriate supervisory systems and procedures will remain in place.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

Rule 5.5 that prescribe specific procedures and information barriers that must be maintained by certain Member firms, while establishing more clarity regarding the minimum procedures that must be maintained by any Member, consistent with other self-regulatory organizations, should eliminate unnecessary regulatory burdens while at the same time retaining an appropriate mechanism designed to ensure that material, non-public information continues to be protected. In particular, the proposed rule change will reduce the burdens on certain Members that are currently required to maintain, and file with the Exchange, specified information barriers. The Exchange believes that the proposed changes will make compliance obligations with respect to prevention of the misuse of material, non-public information more clear to Exchange Members. The amended rule structure will be more consistent with that of other exchanges and will nonetheless continue to ensure protection of investors through existing regulations relevant to misuse of material, non-public information that apply to Exchange Members through the applicability and enforcement of relevant provisions of the Act, including Section 15(f);¹⁶ rules imposed by other self-regulatory organizations; a joint industry effort to surveil for potential insider trading violations through a Rule 17d-2 Agreement¹⁷ and Regulatory Services Agreements between all self-regulatory organizations that trade equity securities; and through the Exchange's examination program.

¹⁶ 15 U.S.C. 78o(f).

¹⁷ See Securities Exchange Act Release 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008); Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008).

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

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

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2010-003 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-BATS-2010-003. 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-2010-003 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

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

Rules of BATS Exchange, Inc.

CHAPTER V. SUPERVISION

Rule 5.5. [Information Barrier Procedures]Prevention of the Misuse of Material, Non-Public Information

[(a) A Member that trades for its own account in a security or has a specialist or market maker operation on another market (a Member engaged in any of the foregoing is referred to in this Rule 5.5 as a “specialist”) must establish a functional separation (“Information Barrier”) between the specialist operation and any associated or affiliated persons as appropriate to its operation. Further, all] Each Member[s] must establish, maintain and enforce written procedures reasonably designed, taking into consideration the nature of such Member’s business, to prevent the misuse of material, non-public information by such Member or persons associated with such Member. Members for whom the Exchange is the Designated Examining Authority (“DEA”) that are required to file SEC form X-17A-5 with the Exchange on an annual or more frequent basis must file contemporaneously with the submission for the calendar year end ITSFEA compliance acknowledgements stating that the procedures mandated by this Rule have been established, enforced and maintained. Any Member or associated person of a Member who becomes aware of a possible misuse of material, non-public information must notify the Exchange’s Surveillance Department[, which includes review of employee and proprietary trading, memorialization and documentation of procedures, substantive supervision of interdepartmental communications by the firm’s Compliance Department and procedures concerning proprietary trading when the firm is in possession of material, non-public information. The Member must obtain the prior written approval of the Exchange that it has complied with the requirements of this Rule in establishing functional separation as appropriate to the operation and that it has established proper compliance and audit procedures to ensure the maintenance of the functional separation. A copy of these Information Barrier procedures, and any amendments thereto, must be filed with the Exchange.

(b) The following are the minimum procedural and maintenance requirements:

- (1) The associate or affiliated person can have no influence on specific specialist trading decisions.
- (2) Material, non-public corporate or market information obtained by the associated or affiliated person from the issuer may not be made available to the specialist.
- (3) Clearing and margin financing information regarding the specialist may be routed only to employees engaged in such work and managerial employees engaged in overseeing operation of the affiliated or associated persons and specialists entities.

(c) Information that may be made available to others:

(1) A broker affiliated with an associated or affiliated person may make available to the specialist only the market information that he would make available to an unaffiliated specialist in the normal course of his trading and “market probing” activity.

(2) A specialist may make known to a broker affiliated with an affiliated or associated person only the information about market conditions in specialty stocks that he would make available in the normal course of specializing to any other broker and in the same manner as it would make such information available to any other broker.

(3) An affiliated or associated person can popularize a specialty stock provided it makes adequate disclosure about the existence of possible conflicts of interests.

(d) A specialist who becomes privy to material, non-public information must communicate that fact promptly to his firm’s compliance officer or other designated official. The specialist shall seek guidance from the compliance officer or other designated official as to what procedures the specialist should follow after receipt of such information or such other action that should be taken. Appropriate records shall be maintained by the compliance officer or other designated official. The record should include a summary of the information received by the specialist and a description of the action taken by the compliance officer or other designated official.

(e) The Exchange has established the following procedures to monitor compliance with this rule:

(1) Examination of the Information Barrier procedures established by Exchange specialist firms.

(2) Surveillance of proprietary trades effected by an affiliated or associated person and its affiliated or associated specialist firm.

Accordingly, the Exchange will conduct periodic examinations of each specialist firm’s Information Barrier procedures to ensure that a functional separation between the associated or affiliated person and the specialist has been created and thereafter maintained. The Exchange will also monitor the trading activities of affiliated or associated persons and affiliated or associated specialists in each specialist firm’s specialty stocks in order to monitor the possible trading while in possession of material, non-public information through the periodic review of trade and comparison reports generated by the Exchange.]

Interpretations and Policies

.01 For purposes of this Rule, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

(a) Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or

(b) Trading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in the security or related securities; or

(c) Disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

.02 This Rule provides that, at a minimum, each Member establish, maintain, and enforce the following policies and procedures:

(a) All associated persons of the Member must be advised in writing of the prohibition against the misuse of material, non-public information; and

(b) All associated persons of the Member must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and

(c) Each Member must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person: has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the Member for the purpose of detecting the possible misuse of material, non-public information; and

(d) All associated persons must disclose to the Member whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

Maintenance of the foregoing policies and procedures will not, in all cases, satisfy the requirements and intent of this Rule; the adequacy of each Member's policies and procedures will depend upon the nature of such Member's business.

CHAPTER XII. TRADING PRACTICE RULES

Rule 12.13. Trading Ahead of Research Reports

(a) No Member shall establish, increase, decrease or liquidate an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security.

(b) Members must establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the Member or any other person.