

Proposed Rule Change by BATS Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input checked="" type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input checked="" type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
Date Expires <input type="text"/>			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document  Exhibit 3 Sent As Paper Document

**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).  
Proposal to designate 75 options classes to be added to the Penny Pilot Program for Options on May 3, 2010.

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Anders Last Name Franzon  
Title VP, Associate General Counsel  
E-mail afranzon@batstrading.com  
Telephone (913) 815-7154 Fax (913) 815-7119

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 04/30/2010  
By Anders Franzon (Name) VP, Associate General Counsel (Title)  
  
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.  
Anders Franzon,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information**

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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” or the “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposal for the BATS Exchange Options Market (“BATS Options”) to designate seventy-five options classes to be added to the Penny Pilot Program (“Penny Pilot”) on May 3, 2010.<sup>3</sup>

(a) The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.<sup>4</sup>

(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.

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

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

<sup>3</sup> The rules of BATS Options, including rules applicable to BATS Options’ participation in the Penny Pilot, were approved on January 26, 2010. See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031). BATS Options commenced operations on February 26, 2010. This proposal represents the first expansion of classes subject to the Penny Pilot since BATS Options commenced operations.

<sup>4</sup> See Rule 21.5 regarding the Penny Pilot.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (913) 815-7000.

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

(a) Purpose

The purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective May 3, 2010. In the Exchange's filing to adopt rules to govern BATS Options,<sup>5</sup> the Exchange proposed commencing operations for BATS Options by trading all options classes that were, as of such date, traded by other options exchanges pursuant to the Penny Pilot and then expanding the Penny Pilot on a quarterly basis, 75 classes at a time, through August 2010. Each such quarterly expansion would be of the seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding the addition of options to the Penny Pilot would not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on May 3, 2010, based on ADVs for the six months ending March 31, 2010.

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<sup>5</sup> See Securities Exchange Act Release No. 61097 (December 2, 2009), 74 FR 64788 (December 8, 2009) (SR-BATS-2009-031) (Notice of Filing of Proposed Rule Change to Establish Rules Governing the Trading of Options on the BATS Options Exchange).

<u>Nat'l Ranking</u>	<u>Symbol</u>	<u>Security Name</u>	<u>Nat'l Rankin g</u>	<u>Symbol</u>	<u>Security Name</u>
153	XLV	Health Care Select Sector SPDR Fund	247	JCP	JC Penney Co Inc
155	CIEN	Ciena Corp	248	ACL	Alcon Inc
157	AMLN	Amylin Pharmaceuticals Inc	249	STP	Suntech Power Holdings Co Ltd
158	CTIC	Cell Therapeutics Inc	250	TLB	Talbots Inc
159	MDT	Medtronic Inc	251	SYMC	Symantec Corp
162	TIVO	TiVo Inc	253	AMED	Amedisys Inc
163	MNKD	MannKind Corp	255	TM	Toyota Motor Corp
171	MDVN	Medivation Inc	257	HK	Petrohawk Energy Corp
176	BRKB	Berkshire Hathaway Inc	258	ENER	Energy Conversion Devices Inc
178	APOL	Apollo Group Inc	259	STT	State Street Corp
181	BSX	Boston Scientific Corp	260	BHP	BHP Billiton Ltd
185	XLY	Consumer Discretionary Sel. Sec. SPDR Fund	261	NFLX	NetFlix Inc
188	CLF	Cliffs Natural Resources Inc	262	LDK	LDK Solar Co Ltd
190	ZION	Zions Bancorporation	263	SPG	Simon Property Group Inc
194	IOC	InterOil Corp	264	TIF	Tiffany & Co
197	ITMN	InterMune Inc	265	BCUY	Bucyrus International Inc
204	GME	GameStop Corp	266	WAG	Walgreen Co
209	XLK	Technology Select Sector SPDR Fund	268	IP	International Paper Co
210	AKS	AK Steel Holding Corp	271	XME	SPDR S&P Metals & Mining ETF
212	GRMN	Garmin Ltd	272	KGC	Kinross Gold Corp
213	MRVL	Marvell Technology Group Ltd	273	EP	El Paso Corp
215	XLP	Consumer Staples Select Sector SPDR Fund	274	SEED	Origin Agritech Ltd
216	UNP	Union Pacific Corp	275	WIN	Windstream Corp
220	DTV	DIRECTV	279	DHI	DR Horton Inc
223	WMB	Williams Cos Inc/The	280	ADBE	Adobe Systems Inc
225	MEE	Massey Energy Co	281	PCX	Patriot Coal Corp
227	CELG	Celgene Corp	282	SPWR A	SunPower Corp
229	GMCR	Green Mountain Coffee Roasters Inc	284	LCC	US Airways Group Inc
231	WDC	Western Digital Corp	285	PRU	Prudential Financial Inc
234	DAL	Delta Air Lines Inc	286	LEN	Lennar Corp
235	FXE	CurrencyShares Euro Trust	287	EWT	iShares MSCI Taiwan Index Fund
237	COST	Costco Wholesale Corp	288	KBH	KB Home
239	MJN	Mead Johnson Nutrition Co	289	CREE	Cree Inc
240	ALL	Allstate Corp/The	290	SIRI	Sirius XM Radio Inc
241	SII	Smith International Inc	291	MMR	McMoRan Exploration Co
242	RTN	Raytheon Co	292	CENX	Century Aluminum Co
243	DVN	Devon Energy Corp	293	GFI	Gold Fields Ltd
244	MT	ArcelorMittal			

(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.<sup>6</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>7</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

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

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

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

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

6. Extension of Time Period for Commission Action

Not applicable.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

Pursuant to Section 19(b)(3)(A)(i) of the Act<sup>8</sup> and paragraph (f)(1) of Rule 19b-4 thereunder,<sup>9</sup> the Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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

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

Not applicable.

9. Exhibits

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

Exhibit 2 – 5: Not applicable.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2010-009)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Add Seventy-Five Options Classes to the Penny Pilot Program.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 30, 2010, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposal for the BATS Exchange Options Market (“BATS Options”) to designate seventy-five options classes to be added to the Penny Pilot Program (“Penny Pilot”) on May 3, 2010.<sup>3</sup> The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.<sup>4</sup>

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

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

<sup>3</sup> The rules of BATS Options, including rules applicable to BATS Options’ participation in the Penny Pilot, were approved on January 26, 2010. See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031). BATS Options commenced operations on February 26, 2010. This proposal represents the first expansion of classes subject to the Penny Pilot since BATS Options commenced operations.

<sup>4</sup> See Rule 21.5 regarding the Penny Pilot.



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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it 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 purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective May 3, 2010. In the Exchange's filing to adopt rules to govern BATS Options,<sup>5</sup> the Exchange proposed commencing operations for BATS Options by trading all options classes that were, as of such date, traded by other options exchanges pursuant to the Penny Pilot and then expanding the Penny Pilot on a quarterly basis, 75 classes at a time, through August 2010. Each such quarterly expansion would be of the seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing

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<sup>5</sup> See Securities Exchange Act Release No. 61097 (December 2, 2009), 74 FR 64788 (December 8, 2009) (SR-BATS-2009-031) (Notice of Filing of Proposed Rule Change to Establish Rules Governing the Trading of Options on the BATS Options Exchange).

under \$200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding the addition of options to the Penny Pilot would not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on May 3, 2010, based on ADVs for the six months ending March 31, 2010.

<u>Nat'l Ranking</u>	<u>Symbol</u>	<u>Security Name</u>	<u>Nat'l Rankin g</u>	<u>Symbol</u>	<u>Security Name</u>
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155	CIEN	Ciena Corp	248	ACL	Alcon Inc
157	AMLN	Amylin Pharmaceuticals Inc	249	STP	Suntech Power Holdings Co Ltd
158	CTIC	Cell Therapeutics Inc	250	TLB	Talbots Inc
159	MDT	Medtronic Inc	251	SYMC	Symantec Corp
162	TIVO	TiVo Inc	253	AMED	Amedisys Inc
163	MNKD	MannKind Corp	255	TM	Toyota Motor Corp
171	MDVN	Medivation Inc	257	HK	Petrohawk Energy Corp
176	BRKB	Berkshire Hathaway Inc	258	ENER	Energy Conversion Devices Inc
178	APOL	Apollo Group Inc	259	STT	State Street Corp
181	BSX	Boston Scientific Corp	260	BHP	BHP Billiton Ltd
185	XLY	Consumer Discretionary Sel. Sec. SPDR Fund	261	NFLX	NetFlix Inc
188	CLF	Cliffs Natural Resources Inc	262	LDK	LDK Solar Co Ltd
190	ZION	Zions Bancorporation	263	SPG	Simon Property Group Inc
194	IOC	InterOil Corp	264	TIF	Tiffany & Co
197	ITMN	InterMune Inc	265	BUCY	Bucyrus International Inc
204	GME	GameStop Corp	266	WAG	Walgreen Co
209	XLK	Technology Select Sector SPDR Fund	268	IP	International Paper Co
210	AKS	AK Steel Holding Corp	271	XME	SPDR S&P Metals & Mining ETF
212	GRMN	Garmin Ltd	272	KGC	Kinross Gold Corp
213	MRVL	Marvell Technology Group Ltd	273	EP	El Paso Corp
215	XLP	Consumer Staples Select Sector SPDR Fund	274	SEED	Origin Agritech Ltd
216	UNP	Union Pacific Corp	275	WIN	Windstream Corp
220	DTV	DIRECTV	279	DHI	DR Horton Inc
223	WMB	Williams Cos Inc/The	280	ADBE	Adobe Systems Inc
225	MEE	Massey Energy Co	281	PCX	Patriot Coal Corp

227	CELG	Celgene Corp	282	SPWR A	SunPower Corp
229	GMCR	Green Mountain Coffee Roasters Inc	284	LCC	US Airways Group Inc
231	WDC	Western Digital Corp	285	PRU	Prudential Financial Inc
234	DAL	Delta Air Lines Inc	286	LEN	Lennar Corp
235	FXE	CurrencyShares Euro Trust	287	EWT	iShares MSCI Taiwan Index Fund
237	COST	Costco Wholesale Corp	288	KBH	KB Home
239	MJN	Mead Johnson Nutrition Co	289	CREE	Cree Inc
240	ALL	Allstate Corp/The	290	SIRI	Sirius XM Radio Inc
241	SII	Smith International Inc	291	MMR	McMoRan Exploration Co
242	RTN	Raytheon Co	292	CENX	Century Aluminum Co
243	DVN	Devon Energy Corp	293	GFI	Gold Fields Ltd
244	MT	ArcelorMittal			

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>6</sup> In particular, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>7</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

### (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

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

Pursuant to Section 19(b)(3)(A)(i) of the Act<sup>8</sup> and paragraph (f)(1) of Rule 19b-4 thereunder,<sup>9</sup> the Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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

IV. Solicitation of Comments

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

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2010-009 on the subject line.

Paper Comments:

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

- 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-2010-009. 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 Web site viewing and printing 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-2010-009 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).