

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="27"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2010"/> - * <input type="text" value="021"/> Amendment No. (req. for Amendments *) <input type="text"/>
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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 type="checkbox"/> Extension of Time Period for Commission Action * <input type="text"/> <small>☐</small>			Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6)		

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

Proposal to amend BATS Rule 23.1 (Exercise of Options Contracts) to extend the cut-off time to submit contrary exercise advices.

**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 \*  Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*  Fax

**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   
 By    
(Name \*) (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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information (required)**

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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 (required)**

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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 proposed rule change to amend BATS Rule 23.1, entitled “Exercise of Options Contracts,” in order to extend the cut-off time to submit contrary exercise advices. 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.<sup>3</sup>

(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.

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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> 17 CFR 240.19b-4(f)(6)(iii).

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 the proposed rule change is to amend Rule 23.1 to extend the cut-off time to submit contrary exercise advices (each a "Contrary Exercise Advice", or, "CEA")<sup>4</sup> to the Exchange. The Exchange also proposes to make certain non-substantive changes to reorganize the text of Rule 23.1 to more clearly present the existing requirements and to eliminate duplicative language.<sup>5</sup>

The Options Clearing Corporation ("OCC") has an established procedure, under OCC Rule 805, that provides for the automatic exercise of certain options that are in-the-money by a specified amount known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under

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<sup>4</sup> Contrary Exercise Advices are also referred to as Expiring Exercise Declarations ("EED") in the OCC rules.

<sup>5</sup> The Exchange proposes to reorganize the current rule text so that the requirement that exercise decisions must be made by 5:30 p.m. Eastern Time is specified in paragraph (c), while the requirements pertaining to submitting CEA instructions are contained in new paragraph (d). The language in new paragraph (d) is comprised of language moved from paragraph (b)(2) and paragraph (c) of the current rule. The Exchange also proposes to eliminate Interpretation and Policy .03 to Rule 23.1 because it is duplicative of the language contained in paragraph (c) of the current rule and paragraph (d)(iii) in the proposal.

different parameters than that of the Ex-by-Ex procedures must instruct OCC of their “contrary intention.”

In addition to the OCC requirement, option holders must file a CEA with the Exchange in accordance with Exchange Rule 23.1. Rule 23.1 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder’s timely decision to exercise or not exercise expiring equity options. Members satisfy this evidentiary requirement by electronically submitting the CEA to the Exchange through OCC’s electronic communications system or any other means prescribed by the Exchange. The submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to make a contrary exercise was made timely and in accordance with Rule 23.1.

Currently under Rule 23.1, option holders have until 5:30 p.m.<sup>6</sup> on the day prior to expiration to make a final decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised. An Exchange member may not accept CEA instructions from its customer or non customer accounts after 5:30 p.m. However, the current rule gives Exchange members an additional one hour, up to 6:30 p.m., to submit these CEA instructions to the Exchange where such member uses an electronic submission process.<sup>7</sup>

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<sup>6</sup> All referenced times are Eastern Time.

<sup>7</sup> If members do not employ an electronic submission procedure, they are required to submit CEAs for non-customer accounts by the 5:30 p.m. deadline. This deadline for manual submission is required in order to prevent firms from improperly extending the 5:30 p.m. deadline to exercise or not exercise an option. This requirement is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

The current process allowing members an additional one hour after the decision making cut off time of 5:30 p.m. to submit a CEA to the various options exchanges was approved by the Commission in 2003.<sup>8</sup>

The Exchange proposes to extend the current 6:30 p.m. deadline for submitting CEA instructions to the Exchange by one additional hour, up to 7:30 p.m. The Exchange believes that this proposed rule change is necessary to maintain consistency with the rules of other exchanges that have recently, or are in the process of, amending their rules. The Exchange understands that such amendments are intended to address concerns expressed by members of various options exchanges that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the existing deadline for submitting CEAs under existing rules is problematic for timely back-office processing. The proposed additional one hour will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange. The Exchange also proposes to modify the language in paragraph (g) of the current rule (new paragraph (h)), which allows a member up to 2 hours and 30 minutes to submit a CEA to the Exchange in the event of a modified close of trading on the day of expiration, by removing the two hour and thirty minute restriction and allowing a member to submit a CEA to the Exchange in the event of a modified close of trading of up to the proposed 7:30 p.m. deadline. This will make consistent the submission deadline for both regular and modified close

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<sup>8</sup> See Securities Exchange Act Release No. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR-AMEX-2001-92); Securities Exchange Act Release No. 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR-ISE-2003-20); Securities Exchange Act Release No. 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR-PCX-2003-47); and Securities Exchange Act Release No. 48639 (October 16, 2003), 68 FR 60767 (October 23, 2003) (SR-Phlx-2003-65).

expiration days. Moreover, this will provide uniformity with submission deadlines for both regular and modified close expiration days which will remove any possibility for error when determining what the submission deadline is on any modified close expiration day.

In addition to the changes described above, the Exchange proposes to add language to Rule 23.1(c) to require that with respect to Quarterly Options Series the 5:30 p.m. Eastern Time deadline applies on the expiration date rather than on the business day immediately prior to the expiration date. Standard options contracts expire on the third Saturday of the applicable expiration month; because the Exchange desires to have all submissions occur on business days rather than weekend days, the Exchange requires Options Members to follow the Contrary Exercise Advice process by no later than 5:30 on the business day immediately prior to expiration for standard options contracts. In contrast, Quarterly Options Series expire on a fixed day that is never a weekend day, specifically the last business day of each calendar quarter, and thus, the Exchange believes it appropriate to require Contrary Exercise Advice filings on the expiration date for any Quarterly Options Series.<sup>9</sup>

It is important to note that this proposed submission deadline does not change the substantive requirement that option holders make a final decision by 5:30 p.m. The Exchange will continue to enforce the 5:30 p.m. decision making requirement, while also allowing additional time to process and submit the CEA instructions. This proposal seeks to increase that additional submission time by one hour, and the Exchange believes that this proposal will be beneficial to the marketplace, particularly as it concerns back-office

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<sup>9</sup> See BATS Rule 19.6, Interpretation and Policy .04.

processing. The initiative to address Exchange member concerns is industry-wide, a rule change regarding this matter has already been approved,<sup>10</sup> and the Exchange anticipates that other options exchanges will also propose a one hour extension for which they will accept a CEA. This proposed additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues.

If the operative date of this proposed rule change is more than 5 business days prior to the date of the next expiration Friday, i.e. the third Friday of the month (“Expiration Friday”)<sup>11</sup>, the Exchange will implement the rule change so as to be effective for that Expiration Friday. If the operative date of this proposed rule change is 5 business days or less prior to the date of the next Expiration Friday, the Exchange will implement the rule change so as to be effective for the following Expiration Friday. The Exchange will notify Members of the implementation date of the rule change via a Regulatory Circular.

(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

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<sup>10</sup> See Securities Exchange Act Release No. 61710 (March 15, 2010), 75 FR 13636 (March 22, 2010) (SR-ISE-2010-02) (order approving proposed rule change submitted by ISE relating to the cut-off time for submitting contrary exercise advices).

<sup>11</sup> For example, Expiration Friday for August 2010 options will be August 20, 2010; Expiration Friday for September options will be September 17, 2010.

the Act.<sup>12</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>13</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, and, in general, protect investors and the public interest. Specifically, the Exchange believes that the proposed amendment will foster coordination with back office personnel engaged in processing information and is consistent with the facilitating of transactions in securities as set forth in Section 6(b)(5) in that it, by providing Exchange Members an additional hour within which to complete the necessary processing of CEAs, will thereby decrease Exchange Members' burden of processing an increasing number of contrary exercise advices and enable them to more easily manage and process these instructions.

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

This proposed rule change does not 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.

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.

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</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)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>14</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, 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, or such shorter time as designated by the Commission.<sup>16</sup>

This proposed rule change is designed to foster coordination with back office personnel engaged in processing information. Also, the Exchange believes that the proposed amendment to Rule 23.1 to extend the CEA deadline is consistent with recently amended ISE Rule 1100 and similar amendments that other options exchanges are in the process of proposing. Accordingly, because the proposed rule change is based on the recently amended rule of another Self-Regulatory Organization and thus does not introduce any new regulatory issues, the Exchange has filed this rule filing as non-

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4.

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

controversial under Section 19(b)(3)(A) of the Act<sup>17</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>18</sup>

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

The proposed rule change is based on ISE Rule 1100, which was recently amended by ISE in a manner consistent with the changes proposed in this rule change proposal. The Exchange notes that current Rule 23.1 contains additional language in current paragraph (k) (to be re-numbered as paragraph (l)) that is not contained in Rule 1100, but rather, is set forth separately in ISE Rule 1102.

9. Exhibits

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

Exhibits 2 – 4: Not applicable.

Exhibit 5: Text of the Proposed Rule Change.

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2010-021)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 23.1, entitled “Exercise of Options Contracts.”

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 August 3, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 23.1, entitled “Exercise of Options Contracts,” in order to extend the cut-off time to submit contrary exercise advices.

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.

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 the proposed rule change is to amend Rule 23.1 to extend the cut-off time to submit contrary exercise advices (each a “Contrary Exercise Advice”, or, “CEA”)<sup>5</sup> to the Exchange. The Exchange also proposes to make certain non-substantive changes to reorganize the text of Rule 23.1 to more clearly present the existing requirements and to eliminate duplicative language.<sup>6</sup>

The Options Clearing Corporation (“OCC”) has an established procedure, under OCC Rule 805, that provides for the automatic exercise of certain options that are in-the-money by a specified amount known as “Exercise-by-Exception” or “Ex-by-Ex.” Under

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<sup>5</sup> Contrary Exercise Advices are also referred to as Expiring Exercise Declarations (“EED”) in the OCC rules.

<sup>6</sup> The Exchange proposes to reorganize the current rule text so that the requirement that exercise decisions must be made by 5:30 p.m. Eastern Time is specified in paragraph (c), while the requirements pertaining to submitting CEA instructions are contained in new paragraph (d). The language in new paragraph (d) is comprised of language moved from paragraph (b)(2) and paragraph (c) of the current rule. The Exchange also proposes to eliminate Interpretation and Policy .03 to Rule 23.1 because it is duplicative of the language contained in paragraph (c) of the current rule and paragraph (d)(iii) in the proposal.

the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must instruct OCC of their “contrary intention.”

In addition to the OCC requirement, option holders must file a CEA with the Exchange in accordance with Exchange Rule 23.1. Rule 23.1 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder’s timely decision to exercise or not exercise expiring equity options. Members satisfy this evidentiary requirement by electronically submitting the CEA to the Exchange through OCC’s electronic communications system or any other means prescribed by the Exchange. The submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to make a contrary exercise was made timely and in accordance with Rule 23.1.

Currently under Rule 23.1, option holders have until 5:30 p.m.<sup>7</sup> on the day prior to expiration to make a final decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised. An Exchange member may not accept CEA instructions from its customer or non customer accounts after 5:30 p.m. However, the current rule gives Exchange members an additional one hour, up to 6:30

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<sup>7</sup> All referenced times are Eastern Time.

p.m., to submit these CEA instructions to the Exchange where such member uses an electronic submission process.<sup>8</sup>

The current process allowing members an additional one hour after the decision making cut off time of 5:30 p.m. to submit a CEA to the various options exchanges was approved by the Commission in 2003.<sup>9</sup>

The Exchange proposes to extend the current 6:30 p.m. deadline for submitting CEA instructions to the Exchange by one additional hour, up to 7:30 p.m. The Exchange believes that this proposed rule change is necessary to maintain consistency with the rules of other exchanges that have recently, or are in the process of, amending their rules. The Exchange understands that such amendments are intended to address concerns expressed by members of various options exchanges that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the existing deadline for submitting CEAs under existing rules is problematic for timely back-office processing. The proposed additional one hour will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange. The Exchange also proposes to

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<sup>8</sup> If members do not employ an electronic submission procedure, they are required to submit CEAs for non-customer accounts by the 5:30 p.m. deadline. This deadline for manual submission is required in order to prevent firms from improperly extending the 5:30 p.m. deadline to exercise or not exercise an option. This requirement is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

<sup>9</sup> See Securities Exchange Act Release No. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR-AMEX-2001-92); Securities Exchange Act Release No. 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR-ISE-2003-20); Securities Exchange Act Release No. 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR-PCX-2003-47); and Securities Exchange Act Release No. 48639 (October 16, 2003), 68 FR 60767 (October 23, 2003) (SR-Phlx-2003-65).

modify the language in paragraph (g) of the current rule (new paragraph (h)), which allows a member up to 2 hours and 30 minutes to submit a CEA to the Exchange in the event of a modified close of trading on the day of expiration, by removing the two hour and thirty minute restriction and allowing a member to submit a CEA to the Exchange in the event of a modified close of trading of up to the proposed 7:30 p.m. deadline. This will make consistent the submission deadline for both regular and modified close expiration days. Moreover, this will provide uniformity with submission deadlines for both regular and modified close expiration days which will remove any possibility for error when determining what the submission deadline is on any modified close expiration day.

In addition to the changes described above, the Exchange proposes to add language to Rule 23.1(c) to require that with respect to Quarterly Options Series the 5:30 p.m. Eastern Time deadline applies on the expiration date rather than on the business day immediately prior to the expiration date. Standard options contracts expire on the third Saturday of the applicable expiration month; because the Exchange desires to have all submissions occur on business days rather than weekend days, the Exchange requires Options Members to follow the Contrary Exercise Advice process by no later than 5:30 on the business day immediately prior to expiration for standard options contracts. In contrast, Quarterly Options Series expire on a fixed day that is never a weekend day, specifically the last business day of each calendar quarter, and thus, the Exchange

believes it appropriate to require Contrary Exercise Advice filings on the expiration date for any Quarterly Options Series.<sup>10</sup>

It is important to note that this proposed submission deadline does not change the substantive requirement that option holders make a final decision by 5:30 p.m. The Exchange will continue to enforce the 5:30 p.m. decision making requirement, while also allowing additional time to process and submit the CEA instructions. This proposal seeks to increase that additional submission time by one hour, and the Exchange believes that this proposal will be beneficial to the marketplace, particularly as it concerns back-office processing. The initiative to address Exchange member concerns is industry-wide, a rule change regarding this matter has already been approved,<sup>11</sup> and the Exchange anticipates that other options exchanges will also propose a one hour extension for which they will accept a CEA. This proposed additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues.

If the operative date of this proposed rule change is more than 5 business days prior to the date of the next expiration Friday, i.e. the third Friday of the month (“Expiration Friday”)<sup>12</sup>, the Exchange will implement the rule change so as to be effective for that Expiration Friday. If the operative date of this proposed rule change

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<sup>10</sup> See BATS Rule 19.6, Interpretation and Policy .04.

<sup>11</sup> See Securities Exchange Act Release No. 61710 (March 15, 2010), 75 FR 13636 (March 22, 2010) (SR-ISE-2010-02) (order approving proposed rule change submitted by ISE relating to the cut-off time for submitting contrary exercise advices).

<sup>12</sup> For example, Expiration Friday for August 2010 options will be August 20, 2010; Expiration Friday for September options will be September 17, 2010.

is 5 business days or less prior to the date of the next Expiration Friday, the Exchange will implement the rule change so as to be effective for the following Expiration Friday. The Exchange will notify Members of the implementation date of the rule change via a Regulatory Circular.

## 2. 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>13</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>14</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, and, in general, protect investors and the public interest. Specifically, the Exchange believes that the proposed amendment will foster coordination with back office personnel engaged in processing information and is consistent with the facilitating of transactions in securities as set forth in Section 6(b)(5) in that it, by providing Exchange Members an additional hour within which to complete the necessary processing of CEAs, will thereby decrease Exchange Members' burden of processing an increasing number of contrary exercise advices and enable them to more easily manage and process these instructions.

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

(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

Because the foregoing proposed rule change 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 Act<sup>15</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>16</sup>

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:

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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-2010-021 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-2010-021. 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-2010-021 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>17</sup>

Florence E. Harmon  
Deputy Secretary

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

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

## Rules of BATS Exchange, Inc.

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### CHAPTER XXIII. EXERCISES AND DELIVERIES

#### Rule 23.1. Exercise of Options Contracts

(a) (No change).

(b) Special procedures apply to the exercise of equity options on the last business day before their expiration (“expiring options”). Unless waived by the Clearing Corporation, expiring options are subject to the Exercise-by-Exception (“Ex-by-Ex”) procedure under Clearing Corporation Rule 805. This Rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to the Rules of the Clearing Corporation, the following BATS Options requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either:

(1) take no action and allow exercise determinations to be made in accordance with the Clearing Corporation’s Ex-by-Ex procedure where applicable; or

(2) submit a “Contrary Exercise Advice” to [the Options Clearing Corporation]BATS Options through the participant’s clearing firm as [by the deadline] specified in paragraph [(c)](d) below. [A Contrary Exercise Advice is a communication either: (A) to not exercise an option that would be automatically exercised under the Clearing Corporation’s Ex-by-Ex procedure, or (B) to exercise an option that would not be automatically exercised under the Clearing Corporation’s Ex-by-Ex procedure. A Contrary Exercise Advice may be submitted by an Options Member by using the Clearing Corporation’s ENCORE system, a Contrary Exercise Advice form of any other national securities exchange of which the firm is an Options Member and where the option is listed, or such other method as BATS Options may prescribe. A Contrary Exercise Advice may be canceled by filing an Advice Cancel at any time up to the submission cut-off times specified below.]

(c) Exercise cut-off time.

Option holders have until 5:30 p.m. Eastern Time on the business day immediately prior to the expiration date or, in the case of Quarterly Options Series, on the expiration date, to make a final decision to exercise or not exercise an expiring option. Options Members may not accept exercise instructions for customer or non-customer accounts after 5:30 p.m. Eastern Time.

(d) Submission of Contrary Exercise Advices. A Contrary Exercise Advice is a communication either: (A) to not exercise an option that would be automatically exercised under

the Clearing Corporation's Ex-by-Ex procedure, or (B) to exercise an option that would not be automatically exercised under the Clearing Corporation's Ex-by-Ex procedure.

(i) A Contrary Exercise Advice may be submitted to BATS Options by an Options Member by using the Clearing Corporation's ENCORE system, a Contrary Exercise Advice form of any other national securities exchange of which the firm is a member and where the option is listed, or such other method as BATS Options may prescribe. A Contrary Exercise Advice may be canceled by filing an "Advice Cancel" with BATS Options or resubmitted at any time up to the submission cut-off times specified below.

(ii) [For customer accounts,]Deadline for CEA Submission for Customer Accounts. An Options Member[s may not accept exercise instructions after 5:30 p.m. Eastern Time but have] has until [6:30] 7:30 p.m. Eastern Time to submit a Contrary Exercise Advice.

(iii) [For noncustomer accounts,]Deadline for CEA Submission for Non-Customer Accounts. An Options Member[s may not accept exercise instructions after 5:30 p.m. Eastern Time but have] has until [6:30] 7:30 p.m. Eastern Time to submit a Contrary Exercise Advice if such Options Member employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. [Consistent with Interpretation and Policy .03 to this Rule,] An Options Member[s are] is required to manually submit a Contrary Exercise Advice by 5:30 p.m. Eastern Time for non-customer accounts if such Options Member[s] does not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders.

[(d)](e)If the Clearing Corporation has waived the Ex-by-Ex procedure for an options class, Options Members must either:

- (1) submit to [the Options Clearing Corporation]BATS Options, a Contrary Exercise Advice, in a manner specified by [OCC]BATS Options, within the time limits specified in paragraph [(c)](d) above if the holder intends to exercise the option; or
- (2) take no action and allow the option to expire without being exercised.

In cases where the Ex-by-Ex procedure has been waived, the Rules of the Clearing Corporation require that Options Members wishing to exercise such options must submit an affirmative Exercise Notice to the Clearing Corporation, whether or not a Contrary Exercise Advice has been filed with BATS Options.

[(e)](f) An Options Member that has accepted the responsibility to indicate final exercise decisions on behalf of another Options Member or non-Member broker-dealer shall take the necessary steps to ensure that such decisions are properly indicated to BATS Options. Such Member may establish a processing cut-off time prior to BATS Options's exercise cut-off time at which it will no longer accept final exercise decisions in expiring options from option holders for whom it indicates final exercise decisions. Each Member that indicates final exercise decisions through another broker-dealer is responsible for ensuring that final exercise decisions for all of

its proprietary (including market maker) and public customer account positions are indicated in a timely manner to such broker-dealer.

[(f)](g) Notwithstanding the foregoing, Options Members may make final exercise decisions after the exercise cut-off time but prior to expiration without having submitted a Contrary Exercise Advice in the circumstances listed below. A memorandum setting forth the circumstance giving rise to instructions after the exercise cutoff time shall be maintained by the Options Member and a copy thereof shall be filed with BATS Options no later than 12:00 noon Eastern Time on the first business day following the respective expiration. An exercise decision after the exercise cut-off time may be made:

- (1) in order to remedy mistakes or errors made in good faith; or
- (2) where exceptional circumstances have restricted an option holder's ability to inform an Options Member of a decision regarding exercise, or an Options Member's ability to receive an option holder's decision by the cut-off time. The burden of establishing any of the above exceptions rests solely on the Options Member seeking to rely on such exceptions.

[(g)](h) In the event BATS Options provides advance notice on or before 5:30 p.m. Eastern Time on the business day immediately prior to the last business day before the expiration date indicating that a modified time for the close of trading in equity options on such last business day before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in [BATS] paragraph (c) of this Rule. However, an Options Members [may] has until 7:30 p.m. Eastern Time to deliver a Contrary Exercise Advice or Advice Cancel to BATS Options [within 2 hours 30 minutes following the time announced for the close of trading in equity options on that day instead of the 6:30 p.m. Eastern Time deadline found in paragraph (c) of this Rule] for customer accounts and non-customer accounts where such Options Member employs an electronic submission procedure with time stamp for the submission of exercise instructions. For non-customer accounts, Options Members that do not employ an electronic procedure with time stamp for the submission of exercise instructions are required to deliver a Contrary Exercise Advice or Advice Cancel within 1 hour and 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in paragraph [(c)](d) of this Rule.

[(h)](i) Modification of cut-off time.

- (1) BATS Options may establish extended cut-off times for decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances. For purposes of this subparagraph [(h)](i)(1), an "unusual circumstance" includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or

update market bids and offers and/or execute or route orders; or other similar occurrences.

(2) BATS Options with at least one (1) business day prior advance notice, by 12:00 noon Eastern Time on such day, may establish a reduced cut-off time for the decision to exercise or not exercise an expiring option and for the submission of Contrary Exercise Advices on a case-by-case basis due to unusual circumstances; provided, however, that under no circumstances should the exercise cut-off time and the time for submission of a Contrary Exercise Advice be before the close of trading. For purposes of this subparagraph [(h)](i)(2), an “unusual circumstance” includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day immediately prior to expiration.

[(i)](j) Submitting or preparing an exercise instruction, contrary exercise advice or advice cancel after the applicable exercise cut-off time in any expiring options on the basis of material information released after the cut-off time is activity inconsistent with just and equitable principles of trade.

[(j)](k) The failure of any Options Member to follow the procedures in this Rule may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by BATS Options.

[(k)](l) Clearing Members must follow the procedures of the Clearing Corporation when exercising American-style cash-settled index options contracts issued or to be issued in any account at the Clearing Corporation. Options Members must also follow the procedures set forth below with respect to American-style cash-settled index options:

(1) For all contracts exercised by the Options Member or by any customer of the Options Member, an “exercise advice” must be delivered by the Options Member in such form or manner prescribed by the Exchange no later than 4:20 p.m. Eastern Time, or if trading hours are extended or modified in the applicable options class, no later than five (5) minutes after the close of trading on that day.

(2) Subsequent to the delivery of an “exercise advice,” should the Options Member or a customer of the Options Member determine not to exercise all or part of the advised contracts, the Options Member must also deliver an “advice cancel” in such form or manner prescribed by the Exchange no later than 4:20 p.m. Eastern Time, or if trading hours are extended or modified in the applicable options class, no later than five (5) minutes after the close of trading on that day.

(3) The Exchange may determine to extend the applicable deadline for the delivery of “exercise advice” and “advice cancel” notifications pursuant to this paragraph [(k)](l) if unusual circumstances are present.

(4) No Options Member may prepare, time stamp or submit an “exercise advice” prior to the purchase of the contracts to be exercised if the Options Member knew or had reason to know that the contracts had not yet been purchased.

(5) The failure of any Options Member to follow the procedures in this paragraph [(k)](l) may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Exchange.

(6) Preparing or submitting an “exercise advice” or “advice cancel” after the applicable deadline on the basis of material information released after such deadline, in addition to constituting a violation of this Rule, is activity inconsistent with just and equitable principles of trade.

(7) The procedures set forth in subparagraphs (1)-(2) of this [sub]paragraph [(k)](l) do not apply (A) on the business day prior to expiration in series expiring on a day other than a business day or (B) on the expiration day in series expiring on a business day.

(8) Exercises of American-style, cash-settled index options (and the submission of corresponding “exercise advice” and “advice cancel” forms) shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:

(A) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by the Exchange, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension.

(B) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the last business day prior to their expiration.

(C) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 4:00 p.m. Eastern Time. In the event of such a trading halt, exercises may occur through 4:20 p.m. Eastern Time. In addition, if trading resumes following such a trading halt (pursuant to Rule 20.4 (Resumption of Trading After a Halt)), exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph (C) are subject to the authority of the Exchange to impose restrictions on transactions and exercises pursuant to Rule 18.12 (Other Restrictions on Options Transactions and Exercises).

(D) The Exchange may determine to permit the exercise of American style, cash-settled index options while trading in such options is delayed, halted, or suspended.

*Interpretations and Policies*

.01 For purposes of this Rule, the terms “customer account” and “non-customer account” have the same meaning as defined in the Clearing Corporation By-Laws Article I(C)(28) and Article I(N)(2), respectively.

.02 Each Options Member shall prepare a memorandum of every exercise instruction received showing the time when such instruction was so received. Such memoranda shall be subject to the requirements of SEC Rule 17a-4(b).

[.03 Although the deadline for all option holders to make a final decision to exercise or not exercise is 5:30 p.m. Eastern Time, the deadline for the submission of the Contrary Exercise Advice in the case of noncustomer accounts will depend on the manner of the decision to exercise or not exercise.

(a) For electronic time stamp submissions of the exercise decision by noncustomer option holders, a Contrary Exercise Advice submitted by Options Members must be received by BATS Options by 6:30 p.m. Eastern Time.

(b) For manual submissions of the exercise decision by non-customer option holders, a Contrary Exercise Advice submitted by Options Members must be received by BATS Options by 5:30 p.m. Eastern Time.]

[.04].03 Each Options Member shall establish fixed procedures to insure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options.

[.05].04 The filing of a Contrary Exercise Advice required by this Rule does not serve to substitute as the effective notice to the Clearing Corporation for the exercise or non-exercise of expiring options.