



Joan C. Conley
Senior Vice President and Corporate Secretary

May 20, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: SR-BATS-2010-008

Dear Ms. Murphy:

The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) appreciates the opportunity to comment on the above-captioned filing by BATS Exchange, Inc. (“BATS”). NASDAQ OMX supports efforts by the Securities and Exchange Commission (the “Commission”) to require self-regulatory organizations (“SROs”) to rationalize their requirements for registration of associated persons of broker-dealers. NASDAQ OMX believes that BATS’s proposed rule change is a positive step toward achieving that goal. In its consideration of BATS’s filing and similar filings of other SROs, the Commission should make every effort to ensure that each SRO adopts clear and comprehensive rules, that interpretive ambiguities are minimized, and that any differences in the requirements of SROs are either eliminated or grounded in meaningful differences in market structure or policy objectives.

First, we note that BATS’s rules currently state that persons seeking registration with BATS as “general securities representatives, including as Authorized Traders,” are required to pass the Series 7 examination. BATS defines “Authorized Trader” to include “a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange’s trading facilities...”¹ BATS does not, however, clearly state whether associated persons other than Authorized Traders are required to register. By contrast, the Financial Industry Regulatory Authority (“FINRA”) requires the Series 7 examination for “registered representatives,” and FINRA Rule 1031 defines the term to include “persons associated with a member ... who are engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities or who are engaged in the training of persons associated with a member for any of these functions....”

¹ BATS Rule 1.5. The Commission recently approved similar rules for the newly registered EDGA Exchange and EDGX Exchange. Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and -196).

We read BATS's definition of Authorized Trader to be narrower than the FINRA definition of registered representative. For example, it appears that broker-dealer employees with a focus on retail sales or underwriting would be covered by the definition of registered representative but not the definition of Authorized Trader. There may, however, be valid reasons for BATS's narrower focus. Under Section 15(b)(8) of the Securities Exchange Act of 1934 (the "Act") and Rule 15b9-1 thereunder, FINRA has a clear mandate to oversee the activities of all broker-dealers that carry customer accounts or that do not limit their activities to trading on an exchange of which they are a member. Thus, BATS's requirement to register Authorized Traders may reflect a conclusion that BATS's rules should apply only to persons whose activity is focused directly on trading on the BATS Exchange, while ceding to FINRA the responsibility for registering associated persons conducting other activities. If this is a valid distinction, however, the Commission should clearly articulate its acceptance of this distinction in its order approving the BATS proposal, and must allow other exchanges to adopt the same distinction in their own rules.

Second, we note that BATS has proposed adopting a requirement that its members register principals who have passed the Series 24 examination. BATS proposes to define "principal" to mean "any individual responsible for supervising the activities of a Member's Authorized Traders." Because, as discussed above, the definition of "Authorized Trader" is narrow, it appears that BATS will not require registration of persons who are involved in supervising associated persons who are not Authorized Traders, such as sales personnel or persons involved in underwriting. By contrast, FINRA Rule 1021 defines principal to mean "persons associated with a member, enumerated in subparagraphs (1) through (5) hereafter, who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions are designated as principals. Such persons shall include: (1) Sole Proprietors (2) Officers (3) Partners (4) Managers of Offices of Supervisory Jurisdiction, and (5) Directors of Corporations."

In our view, FINRA's definition has at times resulted in an excessive focus on an individual's job title (*i.e.*, officer, partner, or director) rather than the scope of his or her supervisory responsibilities, which may result in smaller firms being required to register disproportionate numbers of their associated persons as principals. BATS seems to be proposing a narrower focus on registering only those persons who supervise persons who conduct business directly with BATS. Accordingly, if the Commission approves BATS's proposed rule change, it should acknowledge the differences between these rules and allow other exchanges to follow BATS's model if they choose.

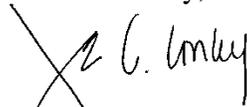
Finally, we note that BATS has proposed requiring registration of at least one Financial/Operations Principal.² The corresponding FINRA rule, Rule 1022(b), however, requires registration of any person with certain enumerated responsibilities, including serving as the firm's chief financial officer. Because it may be possible for one individual to perform all of the enumerated responsibilities for certain firms, such that only one Financial/Operations Principal would be required to be registered, we do not believe that the BATS rule is necessarily

² EDGA Exchange and EDGX Exchange, by contrast, were recently approved as registered exchanges without any clear Financial/Operations Principal registration requirement.

inadequate to provide for adequate financial supervision of broker-dealers. Once again, however, the Commission should clearly articulate the appropriate standard in the course of its review and consideration of BATS's proposed rule.

If you have any questions about our comments, please do not hesitate to contact me at (301) 978-8735 or John Yetter at (301) 978-8497.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan C. Conley". The signature is written in a cursive style with a large loop at the beginning.

Joan C. Conley

Senior Vice President and Corporate Secretary