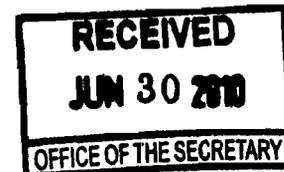




June 29, 2010

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090



**RE: SR-BATS-2010-008**

Ms. Murphy:

BATS Exchange, Inc. (“BATS”) is responding to a comment letter submitted on May 20, 2010, by the NASDAQ OMX Group, Inc. (“NASDAQ OMX”) to the above referenced rule filing related to registration requirements. In its filing, NASDAQ OMX points out one issue with respect to BATS’ current rules, and two issues with respect the proposed changes to BATS rules. NASDAQ OMX does not object to BATS’ existing or proposed rules, but appears to be requesting that the Securities and Exchange Commission (“SEC”) provide additional rationale for their appropriateness in any order approving BATS proposed rule changes.

By way of background, BATS Rule 2.5, Interpretation and Policies .01(c) requires completion of the General Securities Representative Examination (“Series 7” or equivalent foreign examination module approved by BATS) in qualifying persons seeking registration as general securities representatives, including as Authorized Traders on BATS. Further, BATS Rule 11.4(e) explicitly requires Authorized Traders of BATS member firms (“Members”) to successfully complete the Series 7 examination. Pursuant to BATS Rule 1.5(d), the term “Authorized Trader” means a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange’s trading facilities on behalf of his or her Member or Sponsored Participant. While BATS retains the discretion to require all persons associated with a member to complete a proficiency examination, currently BATS only requires Authorized Traders of Members to complete the General Securities Representative Examination.

In its comment letter, NASDAQ OMX notes that BATS’ current rule appears to reflect a narrower registration scope than that required by FINRA’s rules, which requires the Series 7 for “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. . .” NASDAQ OMX further notes that there may be valid reasons for the narrower focus of BATS’ rules. In particular, NASDAQ OMX notes that “[u]nder 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 member.”

As suggested by NASDAQ OMX, BATS' registration rules were intentionally tailored to ensure the appropriate qualification and competence of those individuals who are specifically responsible for sending orders to BATS. BATS believes that its rules appropriately recognize the role of FINRA in ensuring the qualification and competence through registration of individuals whose conduct as an employee of a broker dealer is not limited to activities on an exchange of which their firm is a member. That said, however, BATS would like to dispel any notion that the applicability of its rules or its regulatory jurisdiction is somehow limited by the limitation of its registration requirement. Other than the registration requirement for Authorized Traders, and a short list of enumerated requirements specifically applicable to Authorized Traders included in BATS Rule 11.4, BATS rules apply to Members and their associated persons, and are not limited in scope to Authorized Traders. BATS' rules are clear that it has the authority to discipline any Member or person associated with a Member for a violation of BATS rules (see, e.g., BATS Rule 8.1). An individual's registration status on BATS is not relevant to BATS' disciplinary jurisdiction. BATS further notes that its rules and the rationale for those rules were vetted with SEC staff prior their adoption, were noticed for public comment, and that BATS received no comments on these rules.<sup>1</sup>

In a similar vein, while not raising any objections to BATS' proposed rules, NASDAQ OMX questions a requirement in those proposed rules that individuals who supervise Authorized Traders be required to have passed the Series 24 examination. BATS' proposed Series 24 registration rule is tailored to ensure the appropriate qualification and competence of those individuals who are specifically responsible for supervising persons sending orders to BATS. BATS' proposed Series 24 registration rule appropriately recognizes the role of FINRA in ensuring the qualification and competence through registration of individuals whose supervisory responsibility in connection with their association with a broker-dealer is not limited to activities on an exchange of which their firm is a member. As previously mentioned, BATS rules of general applicability apply to Members and their associated persons and BATS has the authority to discipline any Member or person associated with a Member for a violation of BATS' rules, regardless of their registration status with BATS.

Finally, NASDAQ OMX comments on BATS' proposed requirement for its Members to register at least one Financial/Operations Principal. NASDAQ OMX contrasts BATS' proposed rule with FINRA Rule 1022(b), which requires registration of any person with certain enumerated responsibilities, including serving as the firm's chief financial officer.

BATS notes that under its proposed rule, the person designated by a Member as a Financial/Operations Principal is specifically responsible for "taking appropriate actions to assure that the Member complies with applicable financial and operational requirements under

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<sup>1</sup> BATS' rules applicable to Authorized Traders and registration requirements were adopted when BATS initially registered as a national securities exchange, as approved in Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008).

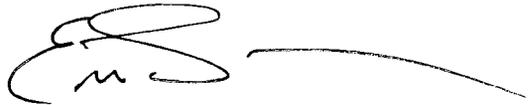
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the Exchange Rules and the Exchange Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records.” BATS’ proposed rule would not specifically require the chief financial officer to assume this responsibility, but would leave it to the discretion of the Member to determine the person or persons most appropriate, given the enumerated responsibilities, to maintain registration as a Financial/Operations principal. BATS notes that a chief financial officer of a diverse corporate entity with a small broker-dealer subsidiary may or may not be the appropriate person to assume these responsibilities and for that reason, BATS believes its rule appropriately focuses on the responsibilities required of the role and not the specific title held.

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BATS appreciates the opportunity to provide this response to NASDAQ OMX’s comment letter. Please feel free to contact me if you have any questions in connection with matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric J. Swanson', with a long horizontal line extending to the right.

Eric J. Swanson  
SVP & General Counsel