



November 6, 2015

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: Response to Comment Letters, Securities Exchange Act Release No. 34-75693;
File No. SR-BATS-2015-57 as modified by Amendment 1

Dear Mr. Fields:

BATS Exchange, Inc. (“BATS” or “Exchange”) appreciates the opportunity to respond to comment letters submitted in connection with SEC Release No. 34-75693; File No. SR-BATS-2015-57 as modified by Amendment 1 (“Initial Proposal”). After careful analysis of the submitted commentary and simultaneous with the submission of this letter, the Exchange is withdrawing its Initial Proposal and refiling the proposal as File No. SR-BATS-2015-101 (“Revised Proposal”). In this letter, the Exchange describes the purpose of the Initial Proposal and the revisions made in the Revised Proposal and the Exchange addresses the comment letters to the Initial Proposal in light of the Revised Proposal. For the reasons set forth in the Initial Proposal, the Revised Proposal, and in this response, the Exchange believes that the Revised Proposal to adopt proposed Rules 8.17 and 12.15 is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 (“Act”).¹ The Exchange therefore respectfully requests that the Securities and Exchange Commission (“Commission”) approve the Revised Proposal.

I. Background

A. *The Exchange Seeks to Protect Market Participants From Continued Harm During Investigation and Enforcement of Violations*

As explained in the Initial Proposal, as a national securities exchange, the Exchange is required to be organized and to have the capacity to enforce compliance by its Members and persons associated with its Members, with the Act, the rules and regulations thereunder, and the Exchange’s Rules (“Rules”).² The Exchange’s Rules are required to be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade ... and, in general, to protect investors and the public interest.”³ To fulfill these requirements, the Exchange has developed a comprehensive regulatory program that includes surveillance of trading activity that is both operated by Exchange staff and by staff of the Financial Industry

¹ 15 U.S.C. 78f(b)(5).

² Id. at 78f(b)(1).

³ Id. at 78f(b)(5).

Regulatory Authority (“FINRA”) pursuant to a Regulatory Services Agreement (“RSA”). When disruptive, potentially manipulative, or improper quoting and trading activity is identified, the Exchange or FINRA (acting as an agent of the Exchange) conducts an investigation into the activity, requesting additional information from the Member or Members involved. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules have been identified and confirmed, the Exchange or FINRA as its agent will commence the enforcement process, which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or even a temporary or permanent ban from the securities industry.

Due to the often complex nature of disruptive and potentially manipulative improper quoting and trading activity and the gravity of the potential remedial actions at the Exchange’s disposal, the Exchange believes it is generally necessary to thoroughly investigate potential violations and provide adequate due process to the subject Member during enforcement proceedings. The Exchange has observed, however, certain cases of the manipulative practices of “layering” and “spoofing” that are so obvious and uncomplicated that they leave little to question regarding the impropriety of the behavior. These cases of activity that display clear patterns of improper quoting and trading behavior are afforded the same thorough process as more nuanced cases of possible disruptive behavior that is potentially defensible. As a result, a Member – or in many instances, the Member’s clients – are effectively permitted to continue illegal, disruptive behavior that harms the market and its participants pending the completion of the lengthy investigation and enforcement process.

The Exchange believes this result is unacceptable. Indeed, the Exchange has the obligation to “prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade ... and, in general, to protect investors and the public interest.”⁴ To further fulfill this obligation, the Exchange has proposed to specifically define and prohibit the most egregious cases of layering and spoofing⁵ and to provide the Exchange with an expedited hearing process in which a Member who continuously violates the prohibition or continues to permit its client to violate the prohibition can be suspended in a matter of weeks rather than years. The suspension is designed to remain in place for only as long as necessary to cause a Member to cease and desist illegal layering and/or spoofing practices. If a Member is suspended under the proposed Rule, the Member is permitted to apply via an expedited process to have the order modified, set aside, limited, or revoked at any time after the Member is served with a suspension order. The Exchange believes this procedure appropriately places the burden on the offending Member to show that it has halted its harmful practice or its client’s harmful practice before being permitted to resume activity on the Exchange rather than requiring the market to bear the harm of continued manipulative conduct until the Exchange finally disposes of the Member’s case.

⁴ Id.

⁵ The Exchange notes that all instances of layering and spoofing are already prohibited by the broader proscription of 17 CFR 240.10b-5 against deceptive and manipulative practices. See also Rule 12.1; Rule 12.2.

B. The Initial Proposal

In the Initial Proposal, the Exchange proposed to adopt new Rule 8.17 to establish expedited procedures for issuing suspension orders, immediately prohibiting a Member from conducting continued layering or spoofing activity on the Exchange and establishing the procedures to permit the Exchange to order a Member cease and desist providing a client of the Member access to the Exchange when the client of the Member is conducting layering or spoofing activity in violation of proposed Rule 12.15. The definitions of prohibited “Layering” and “Spoofing” contained in Rule 12.15 are designed to encompass conduct the Exchange has observed in the most egregious layering and spoofing cases. Proposed Rule 12.15 prohibits “Layering” and “Spoofing” as follows:

12.15. Layering and Spoofing Prohibited

No member shall engage in or facilitate layering or spoofing activity on the Exchange, as described in Interpretation and Policy .01 of this Rule, including acting in concert with other persons to effect such activity.

Interpretations and Policies

.01 Layering. For purposes of this Rule, layering activity shall include a frequent pattern in which the following facts are present:

- (a) a party enters multiple limit orders on one side of the market at various price levels (the “Layering Orders”); and
- (b) following the entry of the Layering Orders, the level of supply and demand for the security changes; and
- (c) the party enters one or more orders on the opposite side of the market of the Layering Orders (the “Contra-Side Orders”) that are subsequently executed; and
- (d) following the execution of the Contra-Side Orders, the party cancels the Layering Orders.

.02 Spoofing. For purposes of this Rule, spoofing activity shall include a frequent pattern in which the following facts are present:

- (a) a party narrows the spread for a security by placing an order inside the NBBO (the “Spoofing Order”); and
- (b) the party then submits an order on the opposite side of the market (“Contra-Side Order”) that executes against another market

participant that joined the new inside market established by the Spoofing Order.

.03 Applicability. For purposes of this Rule, layering activity and spoofing activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Rule. Further, layering activity and spoofing activity includes a pattern or practice in which all of the layering or spoofing activity is conducted on the Exchange as well as a pattern or practice in which some portion of the layering or spoofing activity is conducted on the Exchange and the other portions of the layering or spoofing activity is conducted on one or more other exchanges.

Essentially, proposed Rule 8.17 provides an expedited suspension hearing process to remedy violations of proposed Rule 12.15. A Member who is accused of a violation or whose client is accused of a violation ("Subject Member") is provided notice requesting that the Subject Member either take action or refrain from action and a detailed statement of facts to support the allegations of a violation of Rule 12.15 signed by a person with knowledge of the factual allegations. Rule 8.17 then provides for the expedited appointment of a hearing panel and a procedure by which the Subject Member may move to disqualify a member of the hearing panel. The Subject Member then must be served with a notice of hearing not later than 7 days before the hearing. The hearing shall take place not less than 15 days after the initiation of suspension proceedings under Rule 8.17. After the hearing, the hearing panel must issue a written decision stating whether a suspension order shall be imposed not later than 10 days after the panel receives the hearing transcript. Under Rule 8.17, a suspension order shall be imposed if the Hearing Panel finds:

- (A) by a preponderance of the evidence that the alleged violation specified in the notice has occurred; and
- (B) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

If the hearing panel imposes a suspension order, the order shall (1) set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order, (2) describe in reasonable detail the act or acts the Subject Member is to take or refrain from taking, and (3) include the date and hour of the order's issuance. A suspension order under Rule 8.17 shall be limited to ordering the Subject Member cease and desist from violating Rule 12.15 and/or providing access to the Exchange to a client of the Subject Member that is causing violations of Rule 12.15. The Initial Proposal also provides sanctions for the Subject Member's violation of a suspension order.

The Initial Proposal provides that any sanction imposed pursuant to proposed Rule 8.17 is final and immediately effective. The proposed Rule dictates that the filing of an application for

review with the SEC does not stay any sanction imposed under the rule unless the SEC orders otherwise. Finally, the proposed Rule permits the Subject Member who is served with a suspension order to apply to the Hearing Panel to request the order be modified, set aside, limited, or revoked. The Hearing Panel must provide an expedited response to the application within ten days.

C. Withdrawal and Revision of the Initial Proposal

After review and consideration of comments from the public, the Exchange has withdrawn the Initial Proposal and refiled the Revised Proposal. The Revised Proposal modifies Rule 12.15 to replace the terms “Layering” and “Spoofing” with the terms “Disruptive Quoting and Trading Activity Type 1” and “Disruptive Quoting and Trading Activity Type 2” respectively. The Revised Proposal also updates the terminology in Rules 8.17 and 12.15 to reflect the revised terminology of Rule 12.15.

In the Revised Proposal, the Exchange also removes subparagraph (f) of proposed Rule 8.17 contained in the Initial Proposal. Subparagraph (f) provided a process for sanctioning violations of a suspension order. It is the Exchange’s position that a suspension order issued under Rule 8.17 is enforceable against the Subject Member and no additional process is required to discipline the violation of an order, thereby making subparagraph (f) of proposed Rule 8.17 in the Initial Proposal superfluous.

Finally, the Revised proposal modifies subparagraph (d)(2)(A) of proposed Rule 8.17 to clarify that a suspension order is to order that a Member served with such order is suspended from access to the Exchange unless and until the Member complies with the cease and desist provisions of the order.

II. Comment Letters and Response

Five Comment Letters were submitted to the SEC by four different commenters in response to the Initial Proposal. See Letters from Samuel F. Lek, Chief Executive Officer, Lek Securities Corporation, dated September 3, 2015 and September 18, 2015 (“Lek Letters”); Letter from R.T. Leuchtkafer, dated September 4, 2015 (“Leuchtkafer Letter”); Letter from Mary Ann Burns, Chief Operating Officer, FIA Principal Traders Group, dated September 9, 2015 (“FIA PTG Letter”); and Comment from Teresa B. Machado, dated August 19, 2015 (“Machado Comment”) (collectively, the “Comment Letters”). The Exchange appreciates the FIA PTG Letter’s support of the Exchange’s objectives and appreciates the specific concerns raised in the FIA PTG Letter. Further, the Exchange appreciates the Lek Letters’ and the Leuchtkafer Letter’s respective critiques of the Initial Proposal. The Exchange also appreciates the Machado Comment’s support of the Initial Proposal. The Exchange responds below to the concerns and criticisms raised in the Comment Letters.

A. Definitions of “Layering” and “Spoofing” Contained in Proposed Rule 12.15

The Lek Letters raise the concern that the definitions of “Layering” and “Spoofing” in Proposed Rule 12.15 are too broad, encompassing activities that “are not manipulative and

accordingly do not violate the anti-fraud provisions of the securities laws.”⁶ The FIA PTG Letter raises the concern that the definitions of “Layering” and “Spoofing” in the Initial Proposal are overbroad and may wrongly penalize “legitimate, good faith actions.”⁷ Specifically, the FIA PTG Letter takes issue with the lack of an express “intent” element in the definition of “Layering” and “Spoofing.”⁸

On the other hand, the Leuchtkafer Letter asserts that the proposed definitions of “Layering” and “Spoofing” “are much too narrow.”⁹ The Leuchtkafer Letter asserts that the Proposed Rule defines “Layering” and “Spoofing” as “very certain kind[s] of act[s], apparently exclusive of any other act[s].”¹⁰ The Leuchtkafer Letter is concerned that the proposed definitions will insulate from enforcement manipulative acts that do not fall tidily within those definitions.¹¹

The Exchange agrees that the harmful practices of layering and spoofing are defined by an intent element. Indeed, intent is often what distinguishes manipulative, fraudulent practices from legitimate, good faith behavior. The Exchange acknowledged this in the Initial Proposal. Proposed Rule 12.15 includes an intent element by defining the respective disruptive quoting and trading activities as a “frequent pattern” of the enumerated conduct. Such a “frequent pattern” evidences manipulative intent.¹²

⁶ See September 3, 2015 Lek Letter, 1. The Lek Letters also lodge an array of semantic arguments against the proposed rule. The Lek Letters argue that the rule is impermissibly vague because it uses the terms “frequent”, “pattern”, and “multiple” without further definition. It is the Exchange’s position that these terms are generally understood by their plain and ordinary meanings and, therefore, adequately describe the proscribed conduct.

⁷ FIA PTG Letter, 3-4.

⁸ FIA PTG Letter, 3. The Lek Letters also argue that, because layered orders could theoretically be executed, a trader engaged in layering could not possibly “intend” the orders not be executed even if he “hopes” that the orders do not execute. September 3, 2015 Lek Letter, 4. This is a logical fallacy akin to arguing that a murderer did not intend to kill because, although he “hoped” that the bullet he aimed and fired would kill his victim, it was possible the bullet *could* miss. The ultimate result of an act is not determinative of intent. Neither are the possible results. Instead, intent is a mental state that must exist at the time of the act in question.

⁹ Leuchtkafer Letter, 1.

¹⁰ Id. at 2.

¹¹ Id. at 3.

¹² The Exchange has observed that the frequent pattern of the proscribed activities is typically the key indication of intent in layering and spoofing cases. While additional corroborating information is sometimes considered to prove intent – such as contemporaneous communications or party testimony – in the Exchange’s experience that

The Leuchtkofer Letter's concern that the definition of certain practices as "Layering" and "Spoofing" could be read to exclude other layering and spoofing practices is also well-taken. The purpose of proposed Rule 12.15, however, is not to provide universal definitions of layering and spoofing. Rather, once "certain obvious and uncomplicated cases of disruptive and manipulative behavior" or particularly harmful behavior has been identified, the purpose of the proposed Rule is to "initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange if a Member is engaging in or facilitating layering or spoofing activity and the Member has received sufficient notice with an opportunity to respond, but such activity has not ceased."¹³ The Exchange has identified certain patterns and practices that are hallmarks of the most egregious spoofing and/or layering conduct. In the initial proposed Rule 12.15 the Exchange defined this conduct as "Spoofing" and "Layering."

But, as discussed by the FIA PTG Letter and the Lek Letters, non-spoofing and non-layering activity could conceivably fall within the definitions of "Layering" and "Spoofing" in the Initial Proposal and, as pointed out by the Leuchtkofer Letter, manipulative layering and spoofing activity could conceivably fall outside the proposed definitions. Since the purpose of proposed Rules 8.7 and 12.15 is not to provide a precise definition of layering and spoofing, but to protect market participants from the harm caused by a Subject Member's refusal to cease obvious disruptive market practices, the Exchange has modified the defined terms in proposed Rule 12.15 in the Revised Proposal. The defined term, "Layering," in initial Proposed Rule 12.15 is now labeled "Disruptive Quoting and Trading Activity Type 1." The defined term, "Spoofing," in the initial Proposed Rule is now labeled "Disruptive Quoting and Trading Activity Type 2."

The Exchange believes this change in terminology advances the objective to protect market participants from harmful, manipulative behavior while alleviating both the concern that the definitions of "Layering" and "Spoofing" could insulate undefined manipulative conduct and the concern that the Proposed Rule would give the Exchange the ability to prove "Layering" and "Spoofing" without expressly proving intent. This change in terminology – paired with the expedited suspension order review application process – highlights that the proposed Rule 8.17 is a market protection rule designed to halt a very specific, readily identifiable type of illegal

information typically serves only to confirm the manipulative intent indicated by a repeated pattern of disruptive activity. While this corroboration will still be obtained where available in an ultimate enforcement action, the Exchange believes that it is unacceptable for the market to continue to be harmed during the time between the initial identification of manipulative intent from a frequent pattern of manipulative conduct and the discovery of corroborating evidence of that manipulative intent. At the same time, the Exchange believes that some indication of intent must exist to take action under the proposed Rules. The Exchange, therefore, proposes to balance these competing interests by requiring a showing of a frequent pattern of disruptive activity – the most prominent badge of intent – before a suspension order may issue.

¹³ See Initial Proposal, Amendment No. 1, at 50371.

trading activity rather than an attempt to define and punish layering and spoofing in every conceivable context.¹⁴

B. Process of Expedited Client Suspension Hearing Proceeding

Proposed Rule 8.17 provides a mechanism to swiftly halt egregious manipulative trading activity by Members and/or clients of Members that ignore the Exchange's requests to cease the manipulative practices. The Proposal provides an innovative mechanism to protect market participants from rogue clients and/or Members who heretofore have been free to continue their manipulative activities pending the investigation and enforcement of their violations.

The Lek Letters raise concerns regarding the expedited process for the proposed suspension proceedings.¹⁵ The Lek Letters argue that the Exchange has no authority to enact the proposed Rule because the Exchange does not have jurisdiction over the clients of Members of the Exchange and that the proposed proceeding does not provide "due process" to a Member's client that is the subject of a suspension order.¹⁶ Finally, the Lek Letters argue that the proposed Expedited Client Suspension Hearing is a "summary proceeding" that violates the Act.¹⁷ The FIA PTG Letter, on the other hand, "believes the Exchange's investigation, notice and hearing processes described in connection with proposed Rule 8.17 are reasonable," but suggests the process described in the Initial Proposal should be provided in an alternative format – *e.g.* as part of the proposed Rules, as interpretive guidance, or as "FAQs".¹⁸

1. The Exchange Has Jurisdiction Over Its Members for Misconduct of a Member's Client

The Lek Letters' argument that the Exchange lacks jurisdiction to remedy a Member's client's misconduct is mistaken. As a condition of Exchange access, Rule 11.3(a) requires a Member to agree to the Exchange's User Agreement, which states:

Except as otherwise provided herein, with respect to all orders submitted to Exchange by User, it is the sole responsibility of User to ensure compliance, by itself, its customers and its representatives, with all applicable United States federal and state laws, rules, and regulations as well as those of FINRA or any

¹⁴ It is the Exchange's position that layering and spoofing are already prohibited illegal practices and, at this time, it is not necessary to separately define those already illegal practices. See 17 CFR 240.10b-5; Rule 12.1; Rule 12.2. The Exchange, of course, will revisit the issue if the need arises to specifically define layering and spoofing beyond the current generally accepted definitions of the prohibited illegal practices.

¹⁵ September 3, 2015 Lek Letter, 5.

¹⁶ Id.

¹⁷ Id.

¹⁸ FIA PTG Letter, 2.

other self-regulatory organization of which the User is a member to the extent applicable to User. User represents and warrants that ... it is and will remain responsible for its use of Exchange and the use of Exchange by any of its employees, customers or agents or, if User is a member of Exchange, by any person which has entered into a sponsorship arrangement with User to use Exchange (a "Sponsored Participant")....

Under the Exchange Rules and the User Agreement, therefore, a Member's client's violation of the Act and/or the Rules is charged to the Member.

Rule 8.1 confers jurisdiction to the Exchange over "[a] Member ... who is alleged to have violated or aided and abetted a violation of any provision of the Act or the rules and regulations promulgated thereunder, or any provision of the Certificate of Incorporation, By-Laws or Rules of the Exchange or any interpretation thereof or any resolution or order of the Board or appropriate Exchange committee" The Exchange Rules, therefore, unquestionably confer jurisdiction to the Exchange to discipline its Members for a Member's client's violations of the Act and the Exchange's Rules. This jurisdiction over a Member for a client's actions is not only permissible – it is essential for the effective regulation of the Exchange.¹⁹ Because the Exchange has jurisdiction over a Member for the Member's client's violations, the Exchange has jurisdiction to enforce proposed Rule 8.17.

The Lek Letters' concern regarding the alleged lack of process provided to a Subject Member's client is similarly misguided. Because the Subject Member has ultimate responsibility for its clients' actions and because proposed Rule 8.17 imposes discipline against the Subject Member – not the client – for the client's violations, due process to the Subject Member is sufficient. While the Exchange recognizes that the client may be adversely affected by the discipline against the Subject Member, there is nothing in the proposed Rules that *prevents* a Subject Member's client from participating in an expedited suspension hearing. To the contrary, the Exchange welcomes the participation of the client at the hearing. Because the suspension order is entered against the Subject Member, however, and not the client, there is no "due process" that must be afforded the Subject Member's client.

2. The Expedited Client Suspension Hearing Provides Due Process Under the Act to the Subject Member

The Lek Letters assert that the proposed expedited client suspension hearing would violate the Act because it is a "summary proceeding" not authorized by Section 6(d)(3) of the Act. This assertion is incorrect because the proposed expedited client suspension proceeding is not a "summary proceeding" under Section 6(d)(3).

¹⁹ The Lek Letters' assertion that the Exchange has no jurisdiction over a Member for a Member's client's conduct would leave the Exchange helpless to enforce its own rules unless the member voluntarily cooperates with the enforcement process. Such a result is obviously untenable and flies in the face of the Exchange's obligation to enforce securities laws under the Act.

The suspension by “summary proceeding” permitted by Section 6(d)(3) is imposed *prior* to notice to the Member and an opportunity to be heard.²⁰ In contrast, the proposed expedited client suspension hearing is governed by Section 6(d)(2) which provides the process for determining whether “a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the exchange or a member thereof”²¹ As required by Section 6(d)(2), the proposed expedited client suspension hearing “notif[ies] such person of, and give[s] him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep[s] a record.”²² The expedited client suspension hearing proceeding, therefore, provides the due process required under the Act.

The Lek Letters also complain that the proposed expedited client suspension hearing proceeding is “unfair” because it does not provide sufficient time for discovery after the Exchange initiates the process. As detailed in the Initial Proposal, however, the Exchange only intends to initiate the expedited client suspension hearing proceeding after an initial investigation and after the Exchange contacts the Member responsible for the orders to request an explanation of the activity and any additional relevant information. Further, the investigation and enforcement proceeding do not terminate upon the entry of a suspension order. Discovery will proceed as it would during any other enforcement action. If during the discovery process a Subject Member discovers information it believes to be exculpatory, the proposed Rule allows a Subject Member “[a]t any time after the [Subject Member] is served with a suspension order” to “apply to the Hearing Panel to have the order modified, set aside, limited, or revoked.” Proposed Rule 8.17 merely places the burden on the Subject Member to show that it has halted its harmful practice or its client’s harmful practice before being permitted to resume activity on the Exchange rather than requiring the market to bear the harm of manipulative conduct during the time-consuming discovery process. Proposed Rule 8.17, therefore, is not “unfair” – it is indeed fairer because it imposes the consequences of a Subject Member’s harmful conduct on the Subject Member rather than imposing those consequences on the entire market.

3. The Initial Proposal Clearly Defines the Parameters of Use of Proposed Rule 8.17

The Initial Proposal and Revised Proposal acknowledge that the formidable power and discretion provided by proposed Rule 8.17 must be exercised only in the most egregious cases after a Subject Member has been given ample notice and opportunity to cease and desist the manipulative practices prohibited by the proposed Rule. While the FIA PTG Letter suggests the Exchange include the process in other places, the Exchange believes that the process of proposed Rule 8.17 and its proposed circumstances of use are clearly detailed in the Revised Proposal and would not be further clarified by repetition.

²⁰ 15 U.S.C. 78f(d)(3).

²¹ Id. at 78f(d)(2).

²² Id.

C. Layering and Spoofing Are Fraudulent, Manipulative, and Illegal Practices

Although many of the issues raised by the Lek Letters address the proposed definition of “Layering” and “Spoofing” in the Initial Proposal, much of the Lek Letters’ argument appears to challenge the existing prohibitions in the Act against the manipulative and deceptive practices of layering and spoofing.²³ In fact, the Lek Letters go so far as to argue that a prohibition of layering and spoofing would violate Section 6(b)(5) of the Act.²⁴

As layering and spoofing are fraudulent and manipulative practices prohibited by the Act, the proposed Rules prohibiting those practices comports with Section 6(b)(5) and advances the Act’s purposes. Further, the proposed Rules are neither anticompetitive nor unfairly discriminatory in violation of the Act as it only disciplines prohibited, illegal behavior. Proposed Rules 8.17 and 12.15, therefore, are consistent with the Act.

III. Conclusion

For the foregoing reasons, the Exchange respectfully requests the Commission approve the Revised Proposal

Very truly yours,



Anders Franzon
VP, Associate General Counsel

cc: Stephen Luparello, Director, Division of Trading & Markets
David Shillman, Associate Director, Division of Trading & Markets
David Liu, Senior Special Counsel, Division of Trading & Markets

²³ See 17 CFR 240.10b-5; Rule 12.1; Rule 12.2.

²⁴ September 3, 2015 Lek Letter, 3-6.