

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63969; File No. SR-BATS-2011-007)

February 25, 2011

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. to Adopt BATS Rule 11.21, entitled “Input of Accurate Information”

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 February 18, 2011, BATS Exchange, Inc. (“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 proposes to adopt new BATS Rule 11.21 to require Members to identify each order accurately as a Principal, Agency, or Riskless Principal Order.

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

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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).

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 Exchange proposes to add new BATS Rule 11.21 for the purpose of increasing transparency and to enhance the surveillance database and audit trail of transaction data used by the Exchange in surveillance of its market. The proposed rule change would require Members to identify the capacity of each order accurately as a Principal, Agency, or Riskless Principal Order. For purposes of surveillance, the Exchange currently identifies the capacity of each order as Principal, Agency, or Riskless Principal; however, several other capacities are accepted upon order entry, including no response, which are thereafter mapped to one of the above-listed order capacities. By limiting the order capacity upon entry to Principal, Agency, or Riskless Principal and requiring Members to accurately submit an order capacity for each order, the Exchange will be able to more precisely identify the type of order received and more effectively surveil for abusive trading.

BATS does not have a rule that makes an explicit statement regarding a Member's obligation to input accurate information into the System. Notwithstanding, BATS believes that disciplinary cases against Members entering inaccurate or incomplete information may be brought appropriately under BATS Rule 3.1, which requires Members to observe high standards of commercial honor and just and equitable principles of trade. Rule 3.1 protects the investing public and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or

violate a specific rule or regulation. Because of the regulatory importance of accurate information input in the System, BATS believes a rule that directly addresses Members' obligation to provide accurate information is warranted. The proposed rule makes clear Members' obligation to input accurate information into the System and that failure to do so would be considered a violation of BATS Rules.

BATS notes that it already has a rule in place for its equity options platform ("BATS Options") that requires members of BATS Options ("Options Members") to ensure that accurate information is input into the System, a requirement that includes, but is not limited to, the capacity of the Options Member as it relates to the order.<sup>5</sup> The Commission has also previously approved rules proposed by the Nasdaq Stock Market LLC ("Nasdaq") that apply to Nasdaq options and equities platforms and require participants to ensure that accurate information is entered into Nasdaq's system, including but not limited to the capacity of the participant.<sup>6</sup> Thus, the proposed rule change would: (1) make BATS Rules regarding equity trading consistent with its rules regarding options trading; and (2) bring BATS Rules in line with those of other self-regulatory organizations.

In order to allow Members sufficient time to review and complete any systems changes necessitated by this filing, the Exchange has proposed an operative date of April 4, 2011.

## 2. Statutory Basis

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,

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<sup>5</sup> BATS Rule 18.2(a)(6).

<sup>6</sup> See Securities Exchange Act Release 59547 (March 10, 2009), 74 FR 11386 (March 17, 2009).

and, in particular, with the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. Specifically, the changes proposed herein will serve to promote the accuracy of information input into the Exchange. Accurate information is necessary for the efficient and fair operation of the Exchange, and will assist the Exchange in surveilling the markets for fraudulent activity.

(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 Changes and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder because the proposal does not: (i) significantly affect the

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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.<sup>12</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2011-007 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.

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<sup>11</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

All submissions should refer to File Number SR-BATS-2011-007. 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 website (<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 change 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will 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 Number SR-BATS-2011-007 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).