

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60019; File No. SR-BATS-2009-018)

June 1, 2009

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Change the Criteria for Becoming a Member of the Nominating Committee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 28, 2009, BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III 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 Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ 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 amend Article VI, Section 2 of the Amended and Restated By-Laws of BATS Exchange, Inc. (the “By-Laws”).

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 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 Exchange proposes to amend the Exchange's By-Laws, specifically Article VI, Section 2, for the purpose of allowing additional Directors to serve on the Nominating Committee. As currently written, the By-Laws allow only one Director in his or her final year of service on the Board to serve on the Nominating Committee, and that Director must be a Non-Industry Director. The Exchange proposes an amendment to Article VI, Section 2 to allow any Director whose class⁵ is not being considered for nomination and election in the coming year to serve on the Nominating Committee. The proposed amendment would expand the number of current Directors eligible for participation on the Nominating Committee, and allow more Directors to participate in

⁵ As described in Article III, Section 3(b) of the By-Laws, Directors are divided into three classes and serve staggered terms.

the Nominating Committee and thereby be more closely involved in the process of identifying candidates to serve as Directors.⁶

The Exchange believes that more than one Director, including Industry Directors, should be permitted to serve on the Nominating Committee and that the current By-Laws, which allow only a single Non-Industry Director to serve on the Nominating Committee in his or her last year of service, is unduly restrictive. The Exchange is proposing to retain the requirement that the number of Non-Industry members of the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee and believes that this requirement is sufficient to ensure adequate representation of Industry and Non-Industry interests.

In addition, as proposed, the Exchange would prohibit any Director from serving on the Nominating Committee if that Director's class is up for reelection, unless that Director is in his or her final year of service and is not standing for reelection. The Exchange believes that this prohibition would sufficiently prevent a Director from participating in nominating himself or herself to the Board. At the same time, the Exchange's proposal is less restrictive than the current prohibition and would, therefore, enable a larger number of current Directors to consider participation on the Nominating Committee.

The Exchange has proposed these changes because it believes that Directors are particularly well-suited to nominate Director candidates due to the first-hand knowledge they gain through service on the Board. In particular, Directors serving on the

⁶ The proposed rule change would have no effect on the process of selecting Member Representative Directors as described in Article III, Section 4 and Article VI, Sections 1 and 3 of the By-Laws.

Nominating Committee will be qualified to evaluate the strengths and weaknesses of the Board and find other candidates for Director that best fit the needs of the Board.

Additionally, the experience brought by Directors to the Nominating Committee will be an asset to any non-Director members of the Nominating Committee through the sharing of knowledge and information about the operations of the Exchange and the Board.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of: (1) Section 6(b)(1) of the Act,⁸ which requires a national securities exchange to be so organized and have the capacity to carry out purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; (2) Section 6(b)(3) of the Act,⁹ which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer (the “fair representation requirement”); and Section 6(b)(5) of the Act,¹⁰ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78(b)(1).

⁹ 15 U.S.C. 78(b)(3).

¹⁰ 15 U.S.C. 78f(b)(5).

Specifically, Members will continue to be represented on the Board and on key standing committees. Further, the Exchange's proposal does not alter the existing compositional requirements of the Board, which provide a balance between Industry, Member, Non-Industry, and Independent representatives, nor does the proposal alter the existing compositional balance between Industry and Non-Industry representatives on the Nominating Committee.

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

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change is non-controversial and 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide 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

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:

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. Please include File No. SR-BATS-2009-018 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-2009-018. 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

to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BATS has met this requirement.

<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2009-018 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).