

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62177; File No. SR-BATS-2010-013)

May 26, 2010

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 19.5, entitled “Minimum Participation Requirement for Opening Trading of Option Series”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 13, 2010, BATS Exchange, Inc. (the “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 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 is proposing to amend BATS Rule 19.5, entitled “Minimum Participation Requirement for Opening Trading of Option Series.” 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.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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).

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 aspects 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 is proposing the elimination of a requirement that at least one Options Market Maker be registered for trading a particular series before it may be opened for trading on BATS Options.

An Options Market Maker is an Options Member⁵ registered with the Exchange as a Market Maker.⁶ Options Market Makers on BATS Options have certain obligations such as maintaining two-sided markets and participating in transactions that are “reasonably calculated to contribute to the maintenance of a fair and orderly market.”⁷ To register as an Options Market Maker, an Options Member must file a written application with the Exchange, which will consider an applicant’s market making ability and other factors it deems appropriate in determining whether to approve an applicant’s registration.⁸ All Options Market Makers are

⁵ The term “Options Member” means a firm, or organization that is registered with the Exchange pursuant to Chapter XVII of the Exchange’s rules for purposes of participating in options trading on BATS Options as an “Options Order Entry Firm” or “Options Market Maker.”

⁶ See Exchange Rule 22.2.

⁷ See Exchange Rule 22.5(a).

⁸ See Exchange Rule 22.2(a).

designated as specialists on BATS Options for all purposes under the Act or rules thereunder.⁹ The BATS Options Rules place no limit on the number of qualifying entities that may become Options Market Makers.¹⁰ The good standing of an Options Market Maker may be suspended, terminated, or withdrawn if the conditions for approval cease to be maintained or the Options Market Maker violates any of its agreements with the Exchange or any provisions of the BATS Options Rules.¹¹ An Options Member that has qualified as an Options Market Maker may register to make markets in individual series of options.¹²

Currently Exchange Rule 19.5 provides in relevant part that after a particular class of options has been approved for listing on BATS Options, the Exchange will allow trading in series of options in that class only if there is at least one Options Market Maker registered for trading that particular series. The Exchange is proposing to eliminate this requirement in order to expand the number of series available to investors for trading and for hedging risks associated with securities underlying those options, as well as to enhance markets in products which are likely to receive customer order flow. The Exchange believes that eliminating the listing requirement to have an Options Market Maker in every series would permit Options Market Makers, who currently may choose to serve as Options Market Makers solely to permit an options to trade on BATS Options, to focus their expertise on the products that are more consistent with their business objectives or more likely to receive customer order flow.

Eliminating the Options Market Maker listing requirement would provide the Exchange the opportunity to trade options that may have occasional interest but that do not necessarily

⁹ See Exchange Rule 22.2.

¹⁰ See Exchange Rule 22.2(c).

¹¹ See Exchange Rule 22.4(b).

¹² See Exchange Rule 22.3(a).

require a two-sided market at all times. The lack of a two-sided market would not cause customer orders to receive prices inferior to the best prices available across all exchanges. BATS Options is designed to systematically avoid trading through protected quotations on other options exchanges, and as such, orders accepted into BATS Options in options that do not have Options Market Makers will not trade at inferior prices even if there is not a two-sided market on BATS Options. As a result, incoming orders are protected from receiving inferior execution prices simply by the fact that there is robust quote competition in the exchange-listed options business with eight competing options exchanges and a multitude of competing Market Makers and liquidity providers. Additionally, the Options Order Protection and Locked/Crossed Market Plan requires plan participants to “establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that participant’s market in Eligible Options Classes.”¹³ With the implementation of this plan, a robust network of private routing has been constructed that ensures routable customer orders can access the best prevailing prices in the market.

Moreover, the Commission recently approved the proposed rule change filing of the NASDAQ Options Market (“NOM”), which has rules that are substantially similar to the Exchange’s, in which NOM eliminated the requirements for having at least one Options Market Maker registered for trading in a particular series before it may be opened for trading on NOM.¹⁴ In its recent approval order for NOM’s identical rule change the Commission cited certain

¹³ See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) (approval order for the Protection and Locked/Crossed Plan); see also Securities Exchange Act Release No 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (File No. SR-BATS-2009-031) (approval order of BATS Options rules, including rules governing participation in Protection and Locked/Crossed Plan).

¹⁴ See Securities Exchange Act Release No. 61735 (March 18, 2010), 75 FR 14227 (March 24, 2010) (File No. SR-NASDAQ-2010-007).

findings that it made in its earlier approval of NOM, including that “the Act does not mandate a particular market model for national securities exchanges” and that “many different types of market models could satisfy the requirements of the Act”.¹⁵ The Commission stated that it does not believe that the Act requires an exchange to have Market Makers.¹⁶ The Commission also noted that in the context of approving NOM, it had previously stated that although Options Market Makers could be an important source of liquidity on NOM, they likely would not be the only source.¹⁷ The Exchange notes that the NOM System operates in a substantially similar manner to the Exchange’s System, and is designed to match buying and selling interest of all participants on the Exchange. The Exchange is proposing simply to remove the Options Market Maker participation requirement as superfluous to the existence of a vibrant options market, nevertheless acknowledging the value Options Market Makers provide to the Exchange.

With regard to the impact on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

The Exchange also proposes to delete paragraph (b) of Rule 19.5, which states that a class of options will be put into a non-regulatory halt if at least one series for that class is not open for trading. Originally, this provision was put in place so that the Exchange could approve

¹⁵ Id. (citing Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521, 14527 (March 18, 2008) (File No. SR-NASDAQ-2007-004) (“NOM Approval Order”).

¹⁶ As the Commission noted in its approval order for the NOM filing, in its release adopting Regulation ATS, the Commission rejected the suggestion that a guaranteed source of liquidity was a necessary component of an exchange. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (“Regulation ATS Release”).

¹⁷ See NOM Approval Order, supra note 15, at 14527.

underlying securities for the listing of options but delay the listing if the Options Market Makers on the Exchange were not yet ready to register in any series of options for that class. With the elimination of the other paragraphs in Rule 19.5 requiring an Options Market Maker, the Exchange will no longer need to delay the listings of particular series and thus will no longer need this provision.

Finally, the Exchange proposes to delete paragraph (c) of Rule 19.5, which addresses the situation where a series of options only has one Options Market Maker that then withdraws its registration. Based on the proposed change described above, this provision is no longer necessary.

2. Statutory Basis

Approval of 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, and, in particular, with the requirements of Section 6(b) of the Act.¹⁸ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁹ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. Specifically, the Exchange believes that the proposed amendment would expand the ability of investors to trade options and hedge risks associated with securities underlying options which are not currently listed due to the lack of an Options Market Maker registration in such options series.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

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 Change and Timing for Commission Action

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²² normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission 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 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.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In making this determination, the Commission notes that BAT's proposed rule change is substantially similar to Nasdaq's recently approved rule change to eliminate its requirement that at least one options Market Maker be registered for trading a particular series before it could be opened for trading on NOM,²⁴ and the Commission believes that BATS' proposed rule change raises no new regulatory issues. The Commission believes that waiving the operative delay will allow BATS to immediately expand the number of series available for trading, permitting BATS to compete with NOM in the trading of these series and should foster intermarket price competition by providing an additional market and source of liquidity for options series that would otherwise have been prohibited from trading on BATS due to the lack of a Market Maker registered in that series. For these reasons, the Commission designates that the proposed rule change become operative immediately.²⁵

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

²⁴ See supra note 14.

²⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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. Please include File Number SR-BATS-2010-013 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 Number SR-BATS-2010-013. 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 (<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 Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the 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-2010-013 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.²⁶

Florence E. Harmon
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).