

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63803; File No. SR-BATS-2011-003)

January 31, 2011

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a \$5 Strike Price Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on January 28, 2011, BATS Exchange, Inc. (“BATS” or the “Exchange”) 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 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 filing with the Commission a proposal for the BATS Exchange Options Market (“BATS Options”) to amend Rule 19.6 (Series of Options Contracts Open for Trading) to allow the Exchange to list and trade series in intervals of \$5 or greater where the strike price is more than \$200 in up to five (5) option classes on individual stocks (“\$5 Strike Price Program”) to provide investors and traders with additional opportunities and strategies to hedge high priced securities.

The text of the proposed rule change is available at the Exchange’s website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 purpose of this proposed rule change is to modify Rule 19.6 to allow the Exchange to list and trade series in intervals of \$5 or greater where the strike price is more than \$200 in up to five (5) option classes on individual stocks (“\$5 Strike Price Program”) to provide investors and traders with additional opportunities and strategies to hedge high priced securities.

Currently, Rule 19.6 permits strike price intervals of \$10 or greater where the strike price is greater than \$200. The Exchange is proposing to add the proposed \$5 Strike Price Program as an exception to the \$10 or greater program language in Rule 19.6(d)(3). The proposal would allow the Exchange to list series in intervals of \$5 or greater where the strike price is more than \$200 in up to five (5) option classes on individual stocks. The Exchange specifically proposes to create new subparagraph (5) to Rule 19.6(d) to provide that the Exchange may list series in intervals of \$5 or greater where the strike price is more than \$200 in up to five (5) option classes on individual stocks. In addition, the Exchange proposes to include language permitting it to list \$5 strike prices on any other option classes designated by other securities exchanges that employ programs similar to the \$5 Strike Price Program. This reciprocity provision is consistent with

other strike price programs operated by the Exchange and will help to eliminate confusion, as investors will be able to access these series across all exchanges that employ programs similar to the \$5 Strike Price Program. The Exchange believes that this is consistent with the goals of the National Market System and the concepts of price improvement and best execution. Also, because all of the existing strike price programs that have been adopted by the various exchanges include reciprocity provisions, the Exchange believes that current proposal will eliminate confusion and prevent listing errors amongst the exchanges.

The Exchange believes the \$5 Strike Price Program would offer investors a greater selection of strike prices at a lower cost. For example, if an investor wanted to purchase an option with an expiration of approximately one month, a \$5 strike interval could offer a wider choice of strike prices which may result in reduced outlays in order to purchase the option. By way of illustration, using Google, Inc. (“GOOG”) as an example, if GOOG were trading at \$610<sup>3</sup> with approximately one month remaining until expiration, the front month (one month remaining) at-the-money call option (the 610 strike) might trade at approximately \$17.50 and the next highest available strike (the 620 strike) might trade at approximately \$13.00. By offering a 615 strike an investor would be able to trade a GOOG front month call option at approximately \$15.25, thus providing an additional choice at a different price point.

Similarly, if an investor wanted to hedge exposure to an underlying stock position by selling call options, the investor may choose an option term with two months remaining until expiration. An additional \$5 strike interval could offer additional and varying yields to the

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<sup>3</sup> The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

investor. For example if Apple, Inc. (“AAPL”) were trading at \$310<sup>4</sup> with approximately two months remaining until expiration, the second month (two months remaining) at-the-money call option (the 310 strike) might trade at approximately \$14.50 and the next highest available strike (the 320) strike might trade at \$9.90. If at expiration the price of AAPL closed at \$310, the 310 strike call would have yielded a return of 4.68% and the 320 strike call would have yielded a return of 3.19% over the holding period. If the 315 strike call were available, that series might be priced at approximately \$12.10 (a yield of 3.90% over the holding period) and would have had a lower risk of having the underlying stock called away at expiration than that of the 310 strike call.

With regard to the impact of this proposal 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 potential additional traffic associated with the listing and trading of classes on individual stocks \$5 Strike Price Program. The proposed \$5 Strike Price Program would provide investors increased opportunities to improve returns and manage risk in the trading of equity options that overlie high priced stocks. In addition, the proposed \$5 Strike Price Program would allow investors to establish equity options positions that are better tailored to meet their investment, trading and risk management requirements.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular in that it is

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<sup>4</sup> The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the \$5 Strike Price Program proposal will provide the investing public and other market participants increased opportunities because a \$5 series in high priced stocks will provide market participants additional opportunities to hedge high priced securities. This will allow investors to better manage their risk exposure, and the Exchange believes the proposed \$5 Strike Price Program would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the \$5 Strike Price Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes and the Exchange does not believe that the additional price points will result in fractured liquidity.

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 foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by

its terms, does not 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 Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the \$5 Strike Price Program is substantially similar to that of another exchange that is already effective and operative.<sup>9</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>10</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.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). 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 Commission has waived the five-day pre-filing requirement in this case.

<sup>9</sup> See Securities Exchange Act Release No. 63654 (January 6, 2011), 76 FR 2182 (January 12, 2011) (SR-Phlx-2010-158) (order approving establishment of a \$5 Strike Price Program). See also Securities Exchange Act Release No. 63658 (January 6, 2011), 76 FR 2187 (January 12, 2011) (SR-Phlx-2011-02) (notice of filing and immediate effectiveness of reciprocity provision related to the \$5 Strike Price Program).

<sup>10</sup> 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. See 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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2011-003 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-2011-003. 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 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-2011-003 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>11</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).