

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66580; File No. SR-BATS-2012-012)

March 13, 2012

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Exchange Rule 14.3, entitled “General Procedures and Prerequisites for Initial and Continued Listing on the Exchange”

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 March 8, 2012, 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 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 to amend Rule 14.3, entitled “General Procedures and Prerequisites for Initial and Continued Listing on the Exchange” to include additional requirements for the listing of securities that are issued by the Exchange or any of its affiliates.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 Exchange is proposing a rule change to adopt a new Rule 14.3(e) that would impose additional reporting requirements on the Exchange should the Exchange or an affiliate of the Exchange list a security on the Exchange (collectively, the "BATS Affiliates"). In the event that a BATS Affiliate seeks to list a security on the Exchange (the "Affiliate Security"), the proposed rule change would require that prior to the initial listing of the Affiliate Security on the Exchange, Exchange personnel determine that such security satisfies the Exchange's rules for listing, and such finding must be approved by the Regulatory Oversight Committee of the Exchange's Board of Directors. The proposed rule change would also require the Exchange to prepare a quarterly report for the Regulatory Oversight Committee of the Exchange's Board of Directors detailing: (1) the Exchange's monitoring of the Affiliate Security's compliance with the Exchange's listing standards, including the Affiliate Security's compliance with the Exchange's minimum share price requirement and the Affiliate Security's compliance with each of the quantitative continued listing requirements; and (2) the Exchange's monitoring of the trading of the Affiliate Security, including summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Rule 11.17,

investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules. The Exchange would be required to promptly furnish a copy of this quarterly report to the Commission.

To the extent the Exchange uses Exchange staff to conduct surveillance of trading activity on the Exchange, which it does today, the Exchange would be required to engage an independent third party once a year to review and prepare a report regarding surveillance of the Affiliate Security and promptly forward to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission a copy of the report prepared by the independent third party. In connection with the engagement of this third party, the Exchange would look for appropriate subject-matter expertise and would consider engaging appropriately qualified entities such as independent accounting firms, law firms, consulting firms or other self-regulatory organizations. The Exchange would also be required to commission an annual review and report by an independent accounting firm of the compliance of the Affiliate Security with the Exchange's listing requirements. The Exchange would be required to promptly furnish a copy of this annual report to the Regulatory Oversight Committee of the Exchange's Board of Directors and the Commission.

In the event that the Exchange determines that the BATS Affiliate is not in compliance with any of the Exchange's listing standards, the rule would require the Exchange to notify the issuer of such non-compliance promptly and request a plan of compliance. The Exchange would be required to file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The required report would identify the date of the non-compliance, type of non-compliance, and any other material information conveyed to the

issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, the Exchange would be again required to notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Exchange's listing standards, if any.

The Exchange is proposing to exclude from the definition of Rule 14.3(e)—solely for purposes of this rule— securities that meet the definition of “Portfolio Depository Receipts” and “Index Fund Shares” under Rules 14.11(b)(1)(A) and 14.11(c)(1)(A), respectively. These securities, commonly referred to as “exchange traded funds” or “ETFs,” are issued by investment companies registered under the Investment Company Act of 1940 and are based on an index or portfolio of securities. An ETF is designed to provide investment results that correspond generally to the price and yield performance of the underlying index or portfolio of securities. The Exchange believes that such securities do not present the same concerns as other securities, even if issued by a BATS Affiliate. ETFs, which do not represent investments in an individual company, are already exempt from a number of listing standards including corporate governance rules standards, such as the requirement to have a board of directors comprised of a majority of independent directors and to have a code of conduct applicable to all employees and directors. The Exchange does not believe that the additional reporting requirements in the proposed rule change would provide any value in this context because ETFs would not constitute an investment in a BATS Affiliate. Further, these issuers are already subject to a comprehensive scheme of regulation pursuant to the Investment Company Act of 1940.

The listing of securities of a BATS Affiliate could potentially create a conflict of interest between the Exchange's self regulatory responsibility to vigorously oversee the listing and

trading of the stock on its market, and its own commercial or economic interests. Such “self-listing” may raise questions as to the Exchange’s ability to independently and effectively enforce its rules against an affiliate or the operator/owner of its facility. In addition, such listing has the potential to exacerbate possible conflicts that may arise when the Exchange oversees competitors that may also be listed on the Exchange. The Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Commission with respect to the Exchange’s oversight of the listing and trading on the Exchange of the securities of any BATS Affiliate, will help protect against any concern that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirement that an independent accounting firm review such issuer’s compliance with the Exchange’s listing standards adds a degree of independent oversight to the Exchange’s regulation of the listing of these securities, which should help mitigate against any potential or actual conflicts of interest. The Exchange also believes that the additional requirements contained in the proposed rule change would provide additional assurance that any Affiliate Securities listed on the Exchange by a BATS Affiliate comply with the Exchange’s listing standards on an on-going basis. Finally, the Exchange believes that the proposed rule change would eliminate any perception of a potential conflict of interest if a BATS Affiliate seeks to list a security on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal 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.³ Specifically, the proposed change

³ 15 U.S.C. 78f(b).

is consistent with Section 6(b)(5) of the Act,⁴ 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 facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change, by requiring heightened reporting by the Exchange to the Commission with respect to oversight of the listing and trading on the Exchange of Affiliate Securities, will help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. In addition, the requirement that an independent accounting firm review such issuer's compliance with the Exchange's listing standards adds a degree of independent oversight to the Exchange's regulation of the listing of these securities, which may mitigate any potential or actual conflicts of interest. Further, the additional requirements contained in the proposed rule change would help to provide additional assurance that any Affiliate Securities listed on the Exchange by a BATS Affiliate comply with the Exchange's listing standards both upon the initial listing of the BATS Affiliate and on an on-going basis. The Exchange believes that the proposed rule change would eliminate any perception of a potential conflict of interest if a BATS Affiliate seeks to list a security on the Exchange.

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.

⁴ 15 U.S.C. 78f(b)(5).

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

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 Act⁵ and Rule 19b-4(f)(6) thereunder.⁶

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it would permit the Exchange to immediately implement the proposed rule change in the event an Affiliate seeks to list on the Exchange.⁷ The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to implement protections against potential conflicts of interest that may arise from listing an Affiliate security on the Exchange without undue delay. The Commission notes that the proposed rule change is based on and

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 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 Exchange has satisfied this requirement.

⁷ See SR-BATS-2012-012, Item 7.

similar to New York Stock Exchange Rule 497.⁸ Therefore, the Commission designates the proposal operative upon filing.⁹

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.

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-2012-012 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-2012-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

⁸ See *id.* See also Securities Exchange Act Release Nos. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-77) and 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120).

⁹ 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).

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 publicly available. All submissions should refer to File Number SR-BATS-2012-012 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).