

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59029; File No. SR-BATS-2008-011)

December 1, 2008

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Certain Market Maker Quoting Violations Punishable Under its Minor Rule Violation Plan

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 November 25, 2008, 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. BATS has designated the proposed rule change as “non-controversial” under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal 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 8.15.01, entitled “List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15” to expand the list of violations eligible for disposition under the Exchange’s Minor Rule Violation Plan (“MRVP”) by adding Rule 11.8(a)(1).

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).

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

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 the proposed rule change is to amend Rule 8.15, entitled "Imposition of Fines for Minor Violation(s) of Rules" to add Rule 11.8(a)(1) to the list of rules which would be appropriate for disposition under the Exchange's MRVP. The proposed addition of Rule 11.8(a)(1), which provides that a Market Maker must maintain continuous limit orders to buy and sell for round lots in those securities in which the Market Maker is registered to trade, would allow the Exchange to impose a \$100 per violation fine for each violation of this rule. By promptly imposing a meaningful financial penalty for such violations, the MRVP focuses on correcting conduct before it gives rise to more serious enforcement action. The MRVP provides a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal disciplinary proceedings, while also providing a greater flexibility in handling certain violations. Adopting a provision that would allow the Exchange to sanction violators

under the MRVP by no means minimizes the importance of compliance with Exchange Rule 11.8. The Exchange believes that the violation of any of its rules is a serious matter. The addition of a sanction under the MRVP simply serves to add an additional method for disciplining violators of Exchange Rule 11.8. The Exchange will continue to conduct surveillance with due diligence and make its determination, on a case by case basis, whether a violation of Exchange Rule 11.8 should be subject to formal disciplinary proceedings.

2. Statutory Basis

The 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.⁵ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,⁶ 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, by giving the Exchange the ability to promptly impose a meaningful financial penalty for such violations before there is a need for more serious enforcement action.

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.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change 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 if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

BATS has asked the Commission to waive the 30-day operative delay. The Commission hereby grants the Exchange's request and believes that such waiver is consistent with the protection of investors and the public interest. The proposed rule change is based on the rules of other exchanges that were previously approved by the Commission,⁹ and does not raise any novel or significant regulatory issues. The proposed rule change will provide the Exchange with a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal disciplinary proceedings. For these reasons, the Commission designates the proposed rule change as operative upon filing.¹⁰

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

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). The Commission notes that BATS has satisfied the five-day pre-filing notice requirement.

⁹ See, e.g., Securities Exchange Act Release No. 41366 (May 4, 1999), 64 FR 25939 (May 13, 1999) (SR-CSE-99-04); Securities Exchange Act Release No. 57697 (April 22, 2008), 73 FR 23287 (April 29, 2008) (SR-NYSEArca-2008-32).

¹⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's effect on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2008-011 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2008-011. 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 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 10:00 a.m. and 3:00

p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-011 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.¹¹

Florence E. Harmon
Acting Secretary

¹¹ 17 CFR 200.30-3(a)(12).