

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61960; File No. SR-BATS-2010-008)

April 22, 2010

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend BATS Rules 2.5 and 17.2 applicable to Registration Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 9, 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, II and III 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 proposing to amend BATS Rule 2.5, entitled “Restrictions,” to require each Exchange Member to register with the Exchange: (i) at least two principals to supervise Authorized Traders of the Member (subject to certain exceptions), and (ii) at least one financial and operations principal. The Exchange also proposes a technical amendment to BATS Rule 17.2(g)(4) to eliminate language that becomes unnecessary due to the changes to BATS Rule 2.5.

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.<sup>3</sup>

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

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

<sup>3</sup> The text is attached as Attachment A to this filing.

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

Exchange Rule 2.5 states that the Series 7 is required for registration with the Exchange as an Authorized Trader. The term "Authorized Trader" means "a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange's trading facilities on behalf of his or her Member or Sponsored Participant. Accordingly, all traders that participate in the routing of orders to the Exchange, including proprietary traders, are required to be registered with the Exchange and Series 7 qualified. Further, the term Authorized Trader includes a trader that submits orders, or supervises a routing engine that automatically submits orders, to either the Exchange's equities platform, options platform, or both.

The purpose of the proposed rule change is to expand the representative registration requirements applicable to each Member of the Exchange to ensure that Authorized Traders of Members are appropriately supervised and that the Exchange does not, through its rules, generate any gaps that permit a Member to operate differently than such Member would have to operate under the registration rules of other self-regulatory organizations. Specifically, the Exchange proposes to require each Member to register as representatives with the Exchange at least two

Series 24 qualified Principals (subject to certain exceptions) to supervise such Member's Authorized Traders and one Series 27 qualified principal to supervise the financial and operational activities of such Member. The Exchange believes that the proposed rule change will help to make the Exchange's registration requirements more consistent with the registration requirements of other self-regulatory organizations. The Exchange understands that other self-regulatory organizations that do not require registered principals to supervise certain activities are currently undertaking a similar rulemaking effort.

The Exchange has proposed certain exceptions to the general requirements that a Member register two Series 24 qualified Principals and one Series 27 qualified Financial/Operations Principal. With respect to the two Principal requirement, the Exchange proposes to exempt any Member that meets the proposed definition of a "proprietary trading firm" and has 25 or fewer Authorized Traders. Such Members, defined as Limited Size Proprietary Firms for purposes of the proposed Interpretation and Policy, are only required to maintain one Series 24 registered Principal. In addition, under the proposed Rule the Exchange may waive the requirement to register two Series 24 qualified Principals if the Member can demonstrate that such waiver is warranted under the circumstances. The Exchange has proposed to define a proprietary trading firm as "a Member that trades its own capital, that does not have customers, and that is not a member of the Financial Industry Regulatory Authority."<sup>4</sup> In addition, as proposed, the Rule states that funds used by a proprietary trading firm must be exclusively firm funds, that all trading must be in the firm's accounts, and that traders must be owners of, employees of, or contractors to the firm. The Exchange has also proposed to exclude brokers or dealers from the

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<sup>4</sup> See proposed BATS Rule 2.5, Interpretation and Policy .01(g).

definition of customer for purposes of the proprietary trading firm definition.<sup>5</sup> With respect to the Financial/Operations Principal requirement, the Exchange may waive the requirement to register a Series 27 qualified Financial/Operations Principal if such registration is not required by the Member's designated examining authority. Finally, any Member that conducts business on the Exchange as an Options Member is required by BATS Rules 17.1(b) and 17.2(g) to register an Options Principal with the Exchange who is responsible for that Member's options related activities on the Exchange. Accordingly, the proposed rule makes clear that a Member that solely conducts business on the Exchange as an Options Member is not also required to register Series 24 qualified Principals with the Exchange.

In addition to adopting the principal registration requirements described above, the Exchange proposes modifications to Interpretation and Policy .02, which currently requires Authorized Traders to complete continuing education requirements similar to those required by other national securities exchanges. Due to the addition of the principal registration requirements described above and the recent addition of an Options Principal requirement, the Exchange proposes to modify its continuing education rule to make clear that all Authorized Traders, Principals, Financial/Operations Principals and Options Principals (collectively "Registered Representatives") are subject to continuing education requirements in order to maintain their registrations with the Exchange. Because the text would then become unnecessary, the Exchange also proposes to delete language from BATS Rule 17.2(g)(4) that currently makes clear that an Options Principal is subject to continuing education requirements.

Although the Exchange believes that most of its Members will be in position to quickly register Principals and Financial/Operations Principals with the Exchange due to the rules of

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<sup>5</sup> See proposed BATS Rule 2.5, Interpretation and Policy .01(h).

other self-regulatory organizations to which such Members belong, it has proposed a compliance date of September 30, 2010. The Exchange believes that such date will provide its Members with adequate time to the extent additional personnel must pass qualification examinations in order for their Member firms to be compliant with the proposed Rules.

2. Statutory Basis

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.<sup>6</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> 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 adopting rules requiring supervisory principals to pass qualification examinations and maintain their registrations in a manner consistent with the requirements of other self-regulatory organizations.

The proposed change is also consistent with Section 6(c)(3)(B) of the Act,<sup>8</sup> since under that section it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange Members. In addition, the Exchange has authority under Section 6(c)(3)(B) of the Act,<sup>9</sup> to bar a natural person from becoming a Member

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>9</sup> 15 U.S.C. 78f(c)(3)(B).

or person associated with a Member, if the person does not meet the standards of training, experience and competence as are prescribed in the rules of 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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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 No. SR-BATS-2010-008 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-2010-008. 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, 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 BATS. 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-2010-008 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).