

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65965; File No. SR-BATS-2011-050)

December 15, 2011

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Penny Pilot Program

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 December 2, 2011, 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 BATS. 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 filed a proposal for the BATS Options Market (“BATS Options”) to extend through June 30, 2012, the Penny Pilot Program (“Penny Pilot”) in options classes in certain issues (“Pilot Program”) previously approved by the Commission.³

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The rules of BATS Options, including rules applicable to BATS Options’ participation in the Penny Pilot, were approved on January 26, 2010. See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031). BATS Options commenced operations on February 26, 2010. The Penny Pilot was extended for BATS Options through December 31, 2011. See Securities Exchange Act Release No. 63385 (November 29, 2010), 75 FR 75526 (December 3, 2010) (SR-BATS-2010-035).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend through June 30, 2012, the Penny Pilot in options classes in the Pilot Program as previously approved by the Commission, and to provide a revised date for adding replacement issues to the Pilot Program. The Exchange proposes that any Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2012. The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2011, and ending November 30, 2011.

In the Exchange's filing to propose the rules to govern BATS Options,⁴ the Exchange proposed commencing operations for BATS Options by trading all options classes that were, as of such date, traded by other options exchanges pursuant to the Penny Pilot and then expanding the Penny Pilot on a quarterly basis, 75 classes at a time, through August 2010. Consistent with this proposal, since it commenced operations the Exchange has twice expanded the options

⁴ See Securities Exchange Act Release No. 61097 (December 2, 2009), 74 FR 64788 (December 8, 2009) (SR-BATS-2009-031) (Notice of Filing of Proposed Rule Change to Establish Rules Governing the Trading of Options on the BATS Options Exchange).

classes subject to the Penny Pilot.⁵ The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Penny Pilot.

The Exchange agrees to provide reports that will analyze the impact of the Pilot Program on market quality and options capacity. These reports will include: (1) data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

In addition to the proposed extension of the Pilot Program, the Exchange proposes to modify Interpretation and Policy .01 to make clear the date on which the Pilot Program is set to expire and to specify that options subject to the Pilot Program will be identified in Exchange Information Circulars that are distributed to members of the Exchange and posted on the Exchange's web site.

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

⁵ See Securities Exchange Act Release No. 62595 (July 29, 2010), 75 FR 47043 (August 4, 2010) (SR-BATS-2010-019); Securities Exchange Act Release No. 62033 (May 4, 2010), 75 FR 26301 (May 11, 2010) (SR-BATS-2010-009).

particular, with the requirements of Section 6(b) of the Act.⁶ In particular, the proposal is consistent with Section 6(b)(5) of the Act,⁷ 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. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

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: (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, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6)(iii) thereunder.⁹

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 notes that the

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 No. SR-BATS-2011-050 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-2011-050. 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

Exchange has satisfied this requirement.

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 available publicly. All submissions should refer to File No. SR-BATS-2011-050 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).