

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58485; File No. 4-568)

September 8, 2008

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Minor Rule Violation Plan

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19d-1(c)(2) thereunder,² notice is hereby given that on August 29, 2008, the BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) copies of proposed minor rule violations with sanctions not exceeding \$2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) of the Act³ requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.⁴ In accordance with paragraph (c)(2) of Rule 19d-1 of the Act, the Exchange proposed to designate certain specified rule violations as minor rule violations, and requests that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. BATS Exchange proposes to include in its proposed MRVP the policies and procedures

¹ 15 U.S.C. 78s(d)(1).

² 17 CFR 240.19d-1(c)(2).

³ 17 CFR 240.19d-1(c)(1).

⁴ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations (“SROs”) to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with the Commission shall not be considered “final” for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

currently included in BATS Exchange Rule 8.15 (“Imposition of Fines for Minor Violation(s) of Rules”).⁵

According to the Exchange’s proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed \$2,500) on a member or an associated person with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person’s right to a disciplinary proceeding and any review of the matter under BATS Exchange rules. Any person against whom a fine is imposed may contest the Exchange’s determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Under Rule 8.15.01, violations of the following rules would be appropriate for disposition under the minor rule violations plan: Rule 4.2 and Interpretations thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period; Rule 4.2 and Interpretations thereunder, related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information; Rule 11.15, requirement to identify short sale orders as such; and Rule 11.16, requirement to comply with locked and crossed market rules.

⁵ On August 18, 2008, the Commission approved BATS Exchange’s application for registration as a national securities exchange, including the rules governing the BATS Exchange. See Securities Exchange Act Release No. 58375, 73 FR 49498 (August 21, 2008). In the approval order, the Commission noted that BATS Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that as a condition to the operation of the BATS Exchange, the Exchange must file a minor rule violation plan with the Commission.

BATS Exchange proposed to include the rule violations listed in Rule 8.15.01 in its minor rule violation plan. Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.⁶

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning BATS Exchange's proposed Minor Rule Violation Plan, including whether the proposed plan 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/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. 4-568 on the subject line.

Paper Comments:

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

All submissions should refer to File No. 4-568. 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/other.shtml>). Copies of the

⁶ BATS Exchange attached a sample form of the quarterly report with its submission to the Commission.

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 changes 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 20549-1090. 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. 4-568 and should be submitted on or before October 16, 2008.

II. Date of Effectiveness of the Proposed Minor Rule Violation Plan and Timing for Commission Action

Pursuant to Section 19d-1 of the Act and Rule 19d-1(c)(2) thereunder,⁷ after [insert date 30 days from publication in the Federal Register], the Commission may, by order, declare BATS Exchange's proposed Minor Rule Violation Plan effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule

⁷ 15 U.S.C. 78s(d)(1) and 17 CFR 240.19d-1(c)(2).

violations and may impose any other terms or conditions to the proposed Minor Rule Violation Plan, File No. 4-568, and to the period of its effectiveness which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of this Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon
Acting Secretary

⁸ 17 CFR 200.30-3(a)(44).