

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63359; File No. SR-BATS-2010-033)

November 22, 2010

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. to Modify the Minor Rule Violation Plan for BATS Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 18, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it 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 25.3, entitled “Penalty for Minor Rule Violations”, to expand the list of violations eligible for disposition under the Exchange’s Minor Rule Violation Plan (“MRVP”) as it relates to the equity options platform operated by the Exchange (“BATS Options”).

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)(iii).

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, on the Commission's website at <http://www.sec.gov>, 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 25.3, entitled "Penalty for Minor Rule Violations", to expand the list of violations eligible for disposition under the Exchange's Minor Rule Violation Plan ("MRVP") as it relates to options in order to improve the consistency of the Exchange's MRVP with other options exchanges. All options exchanges have entered into a plan pursuant to Rule 17d-2 of the Act (the "Plan") under which the exchanges have agreed to allocate regulatory responsibility for certain rules common to all options exchanges, which Plan is administered by a committee known as the Options Surveillance Group (the "OSG"). Adding the proposed rules to the MRVP makes the Exchange's MRVP more consistent with the minor rule violation plans of other self-regulatory organizations, including with respect to rules that are classified as common rules pursuant to the Plan (the "OSG 17d-2"). The Exchange believes that its MRVP with respect to violations of rules that are common rules

pursuant to the OSG 17d-2 should be consistent with the other options exchanges that are parties to the OSG 17d-2.

Consistent with the goal of improved consistency between the Exchange's MRVP and the MRVP's of other options exchanges, the proposed additions include Rules 18.9, 18.10, 23.1(a) through (k), 23.1 (l), and 24.4, each of which is described below.

- Rule 18.9 provides that no Options Member may directly or indirectly exceed exercise limits established by the Chicago Board Options Exchange, BATS Options, or another exchange, as the limits apply to options trading on BATS Options.
- Rule 18.10 provides the requirements for accurately reporting position and account information to the Exchange.
- Rule 23.1(a) through (k) relates to expiring exercise declarations and the timely submission of "Advice Cancel" or exercise instruction relating to the exercise or non-exercise of non-cash-settled equity options.
- Rule 23.1(l) relates to the failure to submit an Exercise Advice; the submission of an advice and no subsequent exercise; the submission of an Exercise Advice after the designated cut-off time; the submission of an Exercise Advice for an amount different than the amount exercised; and the time-stamping of an advice or exercise instruction memorandum prior to purchasing contracts.
- Lastly, Rule 24.4 covers requests by the Exchange for submission of trade data.

The proposed changes would allow the Exchange to impose a fine of at least \$500 per violation of the above-listed rules, with a maximum fine amount of \$5,000. 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 these rules. 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 the additional rules. The Exchange will continue to conduct surveillance with due diligence and make its determination, on a case by case basis, whether a violation of these additional rules should be subject to formal disciplinary proceedings.

In addition to the changes proposed above, the Exchange proposes to modify its MRVP sanction for a violation of Exchange position limit rules (Rule 18.7) in order to conform to the sanctions imposed by a majority of other options exchanges. The Exchange's current MRVP sanction for violations of position limits differs depending on whether a violation occurs in an Options Member's account or a customer account, a distinction not present in the rules of most other options exchanges. Furthermore, the Exchange's current MRVP sanction for violations of position limits is based on a per contract amount, whereas most options exchanges would impose a flat amount as the fine. Consistent with the other changes proposed above, the Exchange believes that conforming changes are appropriate, especially due to the fact that position limit rules are subject to the OSG 17d-2.

Finally, the Exchange also proposes modifying the headings of the sub-parts in its existing Rule 25.3 to correct typographical errors. Specifically, in each heading the "Number of

Cumulative Violations Within One Period” and “Fine Amount” language is currently commingled into one heading.

2. Statutory Basis

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. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning enforcement of common rules contained in the OSG 17d-2.

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.

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)(iii) thereunder.⁸

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 proposal 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-2010-033 on the subject line.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 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 Exchange satisfied this five-day pre-filing requirement.

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-2010-033. 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 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-2010-033 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.⁹

Elizabeth M. Murphy
Secretary

⁹ 17 CFR 200.30-3(a)(12).