

SECURITIES AND EXCHANGE COMMISSION
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May 25, 2011

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to Adopt Rules for the Qualification, Listing and Delisting of Companies on the Exchange

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 May 12, 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 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 proposes to adopt rules for the qualification, listing and delisting of companies on the Exchange.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange is proposing rules to adopt a program for the qualification, listing and delisting of companies on the Exchange (“Listing Rules”). The Exchange proposes to eliminate the Exchange’s current rules related to securities traded on BATS pursuant to unlisted trading privileges, and to replace such rules with the Listing Rules, which are primarily based on and substantially similar to the rules of the NASDAQ Stock Market LLC (“Nasdaq”). The Exchange is not proposing any changes to the Rules of the Exchange’s options market (“BATS Options”).

The Exchange proposes adoption of two distinct tiers of securities to be listed on the Exchange, Tier I and Tier II. The proposed standards for a security’s initial and continued listing on Tier I are nearly identical to the existing standards applicable to listing on the Nasdaq Global Market (“NGM”). The proposed standards for a security’s initial and continued listing on Tier II are nearly identical to the existing standards applicable to listing on the Nasdaq Capital Market (“NCM”). While the quantitative standards for Tier I and II differ, the qualitative standards for both tiers are the same, and are based on Nasdaq’s existing qualitative standards, as described in further detail below. The Exchange notes that it has not proposed adoption of a tier equivalent to the Nasdaq Global Select Market tier, which is governed by the Rule 5300 Series of Nasdaq rules.

In addition to deletion of the Exchange’s current Chapter XIV and adoption of the Rules described below, the Exchange proposes to modify a cross-reference in Rule 3.21 to align such reference to the new location of the defined term “UTP Derivative Securities.”

Organization

As proposed, Rule 14.1 contains definitions for the rules related to the qualification, listing and delisting of Companies on the Exchange;³ Rule 14.2 discusses the Exchange's general regulatory authority; Rule 14.3 sets forth the procedures and prerequisites for gaining a listing on the Exchange; Rules 14.4 and 14.5 contain the listing requirements for units; Rule 14.6 sets forth the disclosure obligations of listed Companies; Rule 14.7 describes Direct Registration Program requirements; Rules 14.8 and 14.9 contain the specific and quantitative listing requirements for listing on the Exchange in Tiers I and II, respectively; Rule 14.10 contains the corporate governance requirements applicable to all Companies; Rule 14.11 contains special listing requirements for securities other than common or preferred stock and warrants; Rule 14.12 contains the consequences of a failure to meet the Exchange's listing standards; and Rule 14.13 contains Exchange listing fees.

General Regulatory Authority of the Exchange

As proposed, Rule 14.2 makes clear that the Exchange, in addition to applying the enumerated criteria set forth in Chapter XIV, has broad discretionary authority over the initial and continued listing of securities on the Exchange in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial

³ For purposes of the proposed rules, any issuer of a security listed or applying to list on the Exchange, including an issuer that is not incorporated (e.g., a limited partnership) will be defined as a "Company."

or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

Rule 14.2 provides Companies with guidance regarding the circumstances in which the Exchange's use of discretionary authority is invoked and the types of factors considered by the Exchange when making determinations pursuant to such authority. In addition, Rule 14.2 sets forth the Exchange's use of discretionary authority as it relates to a Company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time. The Exchange will permit the listing of such a Company if the Company meets all applicable initial listing requirements, as well as the conditions described in Rule 14.2. In addition, Rule 14.2 addresses the Exchange's use of authority when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws.

General Procedures and Prerequisites for Listing

Proposed Rule 14.3 describes the application process that a Company must complete in order to be listed on the Exchange. To apply for listing on the Exchange, a Company shall execute a Listing Agreement and a Listing Application on forms made available by the Exchange in order to provide the information required by Section 12(b) of the Act.⁴ A Company's qualifications will be determined on the basis of financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; or (ii) reconciled to U.S. generally accepted accounting principles as required by the Commission's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International

⁴ 15 U.S.C. 781(b).

Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the Commission’s rules.

Rule 14.3 also sets forth the prerequisites for an applicant Company to become listed on the Exchange: (1) the security must be registered pursuant to Section 12(b) of the Act⁵ or subject to an applicable exemption; (2) the Company must be audited by a registered independent public accountant; (3) the securities must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act,⁶ subject to certain exceptions; (4) the Company must pay fees required by Rule 14.13; (5) the securities must be in good standing with the Commission or Other Regulatory Authority;⁷ (6) the Exchange shall certify to the Commission, and the securities must become effective, pursuant to the Section 12(d) of the Act;⁸ and (7) the securities must be depository eligible pursuant to the rules and procedures of a securities depository registered as a clearing agency under Section 17A of the Act⁹ (“Securities Depository”).

To foster competition among markets and further the development of the national market system, pursuant to Rule 14.13, the Exchange shall permit Companies whose securities are listed on another national securities exchange to apply also to list those securities on the Exchange. The Exchange shall make an independent determination of whether such Companies satisfy all applicable listing requirements and shall require Companies to enter into a dual listing agreement with the Exchange.

⁵ 15 U.S.C. 78l(b).

⁶ 15 U.S.C. 78q-1.

⁷ As defined in proposed Rule 14.1(t).

⁸ 15 U.S.C. 78l(d).

⁹ 15 U.S.C. 78q-1.

While the Exchange shall certify such dually listed securities for listing on the Exchange, the Exchange shall not exercise its authority under Rule 14.3(d) separately to designate or register such dually listed securities as Exchange national market system securities within the meaning of Section 11A of the Act or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service (“CQS”) and Consolidated Tape Association national market system plans (“CQ and CTA Plans”) or the Nasdaq Unlisted Trading Privileges national market system plan (“UTP Plan”), as applicable, shall remain subject to those plans. For purposes of the national market system, such securities shall continue to trade under their current ticker symbol. The Exchange shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan or UTP Plan, as applicable.

Disclosure Obligations

Proposed Rule 14.6 in order to set forth the requirements of a Company to provide information to the Exchange, file financial reports and other documentation required pursuant to the Securities Act of 1933 and the rules and regulations thereunder, and make public disclosures, including disclosures required pursuant to Regulation FD.¹⁰ Such requirements include providing the Exchange’s Surveillance Department with notification prior to public release of material information. In addition, Rule 14.6 sets forth obligations regarding notification to the Exchange of an administrative nature and also regarding corporate actions, such as reverse stock splits and changes to the Company’s state of incorporation. The Exchange has also proposed two Interpretations and Policies to provide Companies with additional guidance due to the

¹⁰ 17 CFR 243.100 et seq.

importance that Companies provide prompt and complete notifications. Such notice is critical to the proper functioning of the capital markets and to investor confidence.

Quantitative Listing Requirements and Standards for Tier I Securities

The Exchange has proposed to divide the quantitative listing standards into two subcategories in the proposed rules: listing requirements and listing standards. Under the proposed rules, listing requirements are quantitative metrics, all of which a Company must meet for initial or continued listing on a particular tier. Listing standards consist of bundles of quantitative metrics; however, unlike listing requirements, a Company must meet at least one listing standard to become listed or to continue listing.

The specific quantitative listing standards for both Tier I and Tier II securities proposed by the Exchange are described below.

Primary Equity Securities – Initial Listing Requirements and Standards

BATS proposes to adopt quantitative initial listing requirements pertaining to the public float, distribution of shares, and trading volume of the security identical to the requirements of NGM. Specifically, as set forth in proposed Rule 14.8(b), a Company must have at a minimum a bid price of at least \$4 per share, a minimum of 1.1 million publicly held shares, and at least 400 round lot holders.

BATS also proposes to require that the issuer of the security meet at least one of the following standards – income, equity, market value, or total assets/total revenue. Each of these standards, described below, is identical to the comparable NGM standard set forth in Nasdaq Rule 5405(b).

The income standard of Rule 14.8(b)(2)(A) would require that the issuer have annual pre-tax income from continuing operations of at least \$1 million in the most recently completed

fiscal year or in two of the three most recently completed fiscal years, \$15 million in stockholders' equity, \$8 million in market value of publicly held shares, and at least three registered and active Market Makers.¹¹

The equity standard of Rule 14.8(b)(2)(B) would require that stockholder's equity be at least \$30 million, the issuer have a two year operating history, that the market value of publicly held shares be at least \$18 million, and at least three registered and active Market Makers.

The market value standard of Rule 14.8(b)(2)(C), for currently publicly traded companies, would require that the market value of listed securities be at least \$75 million, that the market value of publicly held shares be at least \$20 million, and at least four registered and active Market Makers.

Finally, the total assets/total revenue standard of Rule 14.8(b)(2)(D) would require that total assets and total revenue for the most recent fiscal year and two of the three most recently completed fiscal years be at least \$75 million, that the market value of publicly held shares be at least \$20 million, and at least four registered and active Market Makers.

Rights and Warrants, Preferred Stock and Secondary Classes of Common Stock – Initial Listing Requirements and Standards

As is true for primary equity securities, BATS proposes to adopt requirements and standards nearly identical to those of NGM as the Tier I quantitative initial listing requirements and standards for rights and warrants and preferred stock and secondary classes of common stock, as further described below.¹²

¹¹ The term Market Maker means a Member that acts as a Market Maker on BATS pursuant to Chapter XI of the Exchange's rules.

¹² See Nasdaq Rules 5410 and 5415.

BATS proposes to require through Rule 14.8(c)(1) that for initial listing at least 450,000 rights or warrants be issued and that the underlying security be listed on the respective exchange or be a covered security. BATS would also require that for warrants there must be at least 400 round lot holders. Finally, BATS would require at least three registered and active Market Makers.

Pursuant to Rule 14.8(d)(1), BATS would require that when the primary equity security of an issuer is listed on the respective exchange or is a covered security, the preferred stock or secondary classes of common stock meet certain similar requirements. Rule 14.8(d)(1) would also require that there be at least 200,000 publicly held shares with a market value of at least \$4 million, a minimum bid price of at least \$4 per share, at least 100 round lot holders, and at least three registered and active Market Makers.

In the event the Company's Primary Equity Security is not listed on the Exchange as a Tier I security or is not a Covered Security, the Exchange proposes that the preferred stock and/or secondary class of common stock be listed on the Exchange as a Tier I security so long as the security has met the initial listing criteria for Primary Equity Securities as set forth in Rule 14.8(b).

Units – Initial Listing and Maintenance Requirements

In addition, the Exchange has proposed a stand-alone rule applicable to the listing of units as Tier I securities, Rule 14.4. Pursuant to Rule 14.4, all units shall have at least one equity component. All components of such units shall satisfy the requirements for initial and continued listing as Tier I securities, or, in the case of debt components, satisfy the requirements described below.

All debt components of a unit, if any, shall meet the following requirements: (A) the debt issue must have an aggregate market value or principal amount of at least \$5 million; (B) the issuer of the debt security must have equity securities listed on the Exchange as a Tier I security; and (C) in the case of convertible debt, the equity into which the debt is convertible must itself be subject to real-time last sale reporting in the United States, and the convertible debt must not contain a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect. Finally, all components of the unit shall be issued by the same issuer. All units and issuers of such units shall comply with the initial and continued listing requirements of Tier I.

For initial inclusion, a unit shall have at least three registered and active Market Makers. For continued listing, a unit shall have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

Primary Equity Securities – Maintenance Requirements and Standards

As with initial listing requirements and standards, BATS has proposed quantitative maintenance requirements based on the maintenance requirements and standards applicable to NGM listed issues.¹³ For continued approval of a primary equity security listing, BATS Rule 14.8(e)(1) would require that there be a minimum bid price of \$1 per share and at least 400 total holders. BATS would also require, under 14.8(e)(2) that issuers meet at least one of the following standards – equity, market value, or total assets/total revenue. The equity standard would require that stockholders' equity be at least \$10 million, that there be at least 750,000 publicly held shares with a market value of at least \$5 million, and that there be at least two

¹³ See Nasdaq Rule 5450(b).

registered and active Market Makers. The market value standard would require that the market value of listed securities be at least \$50 million, that there be at least 1.1 million publicly held shares with a market value of at least \$15 million, and that there be at least two registered and active Market Makers. The total assets/total revenue standards would require that there be total assets and total revenue of at least \$50 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years, at least 1.1 million publicly held shares with market value of at least \$15 million, and at least four registered and active Market Makers.

Rights and Warrants, Preferred Stock and Secondary Classes of Common Stock – Maintenance Requirements

The Exchange proposes to adopt, as Rules 14.8(f) through (g), continued listing requirements nearly identical to those set forth in Nasdaq rules 5455 through 5460 for rights and warrants, and for preferred stock and secondary classes of common stock. The Exchange proposes to require that for continued listing, the rights or warrants continue to be listed on the Exchange as a Tier I security or be a Covered Security; and that there be at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid. The Exchange also proposes as Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock that the Company's Primary Equity Security of the Company be listed on the Exchange as a Tier I security or as a Covered Security. The Exchange proposes that the preferred stock or secondary class of common stock have at least 100,000 Publicly Held Shares, a Market Value of Publicly Held Shares of at least \$1,000,000; a minimum bid price of at least \$1 per share; at least 100 Public Holders; and at least two registered and active Market Makers.

In the event the Company's Primary Equity Security is not listed on the Exchange as a Tier I security or is not a Covered Security, the Exchange proposes that the preferred stock and/or secondary class of common stock may continue to be listed on the Exchange as a Tier I

security so long as the security has met the continued listing criteria for Primary Equity Securities as set forth in Rule 14.8(e).

Quantitative Listing Requirements and Standards for Tier II Securities

Primary Equity Securities – Initial Listing Requirements and Standards

BATS proposes to adopt quantitative initial listing requirements pertaining to the public float, distribution of shares, and trading volume of the security identical to the requirements of NCM.¹⁴ Specifically, as set forth in proposed Rule 14.9(b)(1), a Company must have at a minimum bid price of at least \$4 per share, a minimum of one million publicly held shares, at least 300 round lot holders, and at least three registered and active Market Makers. BATS would also require that in the case of ADRs there be at least 400,000 issued.

The Exchange would require in Rule 14.9(b)(2) that the issuer of the security meets at least one of the following identical standards – equity, market value, or net income.

The proposed equity standard would require stockholders' equity of at least \$5 million, that the market value of publicly held shares be at least \$15 million, and a two year operating history. The proposed market value standard would require that the market value of listed securities be at least \$50 million, that stockholders' equity be at least \$4 million, and that the market value of publicly held shares be at least \$15 million. The proposed net income standard requires that the net income from continuing operations be at least \$750,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years, that stockholders' equity be at least \$4 million, and that the market value of publicly held shares be at least \$5 million.

¹⁴ See Nasdaq Rule 5505.

Preferred Stock and Secondary Classes of Common Stock; Rights, Warrants, and Convertible Debt – Initial Listing Requirements

As is true for primary equity securities, BATS proposes to adopt requirements nearly identical to those of NCM as Tier II quantitative initial listing requirements for preferred stock and secondary classes of common stock as well as for rights, warrants, and convertible debt, as further described below.¹⁵

Pursuant to Rule 14.9(c), BATS would require that when the primary equity security of an issuer is listed on the respective exchange or is a covered security, the preferred stock or secondary classes of common stock meet certain similar requirements. Rule 14.9(c)(1) would also require that there be at least 200,000 publicly held shares with a market value of at least \$3.5 million, a minimum bid price of at least \$4 per share, at least 100 round lot holders, and at least three registered and active Market Makers.¹⁶

In the event the Company's Primary Equity Security is not listed on the Exchange as a Tier II security or is not a Covered Security, the Exchange proposes that the preferred stock and/or secondary class of common stock be listed on the Exchange as a Tier II security so long as the security has met the initial listing criteria for Primary Equity Securities as set forth in Rule 14.9(b).

BATS proposes to require through Rule 14.9(d)(1) that for initial listing, rights, warrants, and put warrants meet certain similar requirements. BATS would also require that there be at least 400,000 issued and that the underlying security be listed on the Exchange or be a covered

¹⁵ See Nasdaq Rules 5510 and 5515.

¹⁶ See Nasdaq Rule 5510(a).

security. In the case of warrants, Rule 14.9(d)(1) would require there be at least 400 round lot holders, and at least three registered and active Market Makers.¹⁷

For initial listing of convertible debt securities, BATS Rule 14.9(d)(2)(A) would require that the principal amount outstanding be at least \$10 million, that the current last sale information be available in the United States with respect to the underlying security into which the bond or debenture is convertible, and at least three registered and active Market Makers.¹⁸ In addition to these conditions, the Exchange proposes to require that issuers also meet one of the following conditions: (i) that the issuer of the debt have an equity security that is listed on BATS, Nasdaq, Amex, or the NYSE, or (ii) that an issuer whose equity security is listed on BATS, Nasdaq, Amex, or the NYSE directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security, or has guaranteed the debt security, or (iii) a nationally recognized securities rating organization (an “NRSRO”) has assigned a current rating to the debt security that is no lower than an S&P Corporation “B” rating or equivalent rating by another NRSRO; or (iv) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned: (a) an investment grade rating to an immediately senior issue; or (b) a rating that is no lower than an S&P Corporation “B” rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.¹⁹

For initial listing of index warrants, Rule 14.9(d)(3) would require that the minimum public distribution be at least 1 million warrants, that there be a minimum of 400 public holders, that the market value of the index warrants be at least \$4 million, and that the issuer have a

¹⁷ See Nasdaq Rule 5515(a).

¹⁸ See Nasdaq Rule 5515(b).

¹⁹ See Nasdaq Rule 5515(b)(4).

minimum tangible net worth in excess of \$150 million. This requirement is nearly identical to the corollary NCM requirement.²⁰

Units – Initial Listing and Maintenance Requirements and Standards

In addition, the Exchange has proposed a stand-alone rule applicable to the listing of units as Tier II securities, Rule 14.5. Pursuant to Rule 14.5, all component parts of units shall meet the Tier II requirements for initial and continued listing. Further, the minimum period for listing of the units shall be 30 days from the first day of listing, except the period may be shortened if the units are suspended or withdrawn for regulatory purposes. Companies and underwriters seeking to withdraw units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal.

For initial inclusion, a unit shall have at least three registered and active Market Makers. For continued listing, a unit shall have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

Primary Equity Securities - Maintenance Requirements and Standards

As with initial listing standards, BATS has proposed quantitative maintenance requirements based on the maintenance requirements applicable to NCM listed issues. For continued approval of a primary equity security listing, BATS Rule 14.9(e)(2) would require a minimum bid price of \$1 per share, at least 300 public holders, at least 500,000 publicly held shares with a market value of at least \$1 million, and at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.²¹

Pursuant to Rule 14.9(e)(2), BATS would require that issuers meet at least one of the following standards – equity, market value, or net income. Under the equity standard, BATS

²⁰ See Nasdaq Rule 5515(c).

²¹ See Nasdaq Rule 5550(b).

would require that stockholders' equity be at least \$2.5 million. The market value standard would require that the market value of listed securities be at least \$35 million. The net income standard would require net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years.

Preferred Stock and Secondary Classes of Common Stock; Rights, Warrants, and Convertible Debt – Maintenance Requirements

The Exchange proposes to adopt, as Rules 14.9(f) through (g), continued listing requirements nearly identical to those set forth in Nasdaq rules 5455 through 5460 for Preferred Stock and Secondary Classes of Common Stock; Rights, Warrants, and Convertible Debt.

The Exchange proposes Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock require that when the Primary Equity Security is listed on the Exchange as a Tier II security or is a Covered Security, a Company's preferred stock or secondary class of common stock have a minimum bid price of at least \$1 per share; at least 100 Public Holders; at least 100,000 Publicly Held Shares; a Market Value of Publicly Held Shares of at least \$1 million; and at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

In the event the Company's Primary Equity Security is not listed on the Exchange as a Tier II security or is not a Covered Security, the Exchange proposes that the preferred stock and/or secondary class of common stock be listed on the Exchange as a Tier II security so long as the security has met the criteria of the continued listing of Primary Equity Securities as set forth in Rule 14.9(e).

The Exchange also proposes for Continued Listing Requirements for Rights, Warrants, and Convertible Debt to require that for rights, warrants, and put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the

Company's common stock, at a specified price until a specified period of time), the underlying security remain listed on the Exchange or be a Covered Security, and there be at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

For Continued Listing Requirements and Convertible Debt Securities the Exchange proposes a principal amount outstanding of at least \$5 million; at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid; and current last sale information available in the United States with respect to the underlying security into which the bond or debenture is convertible.

Corporate Governance Standards

In addition to having quantitative listing criteria based on the standards applicable to Nasdaq listed companies, particularly those designated as NGM or NCM securities, BATS has proposed nearly identical qualitative requirements. Specifically, the Exchange proposes to adopt in Rule 14.10 corporate governance requirements and related interpretations that are nearly identical to the Rule 5600 Series of Nasdaq. Such requirements relate to a Company's board of directors, audit committee requirements, Independent Director oversight of executive compensation, the director nomination process, a mandatory code of conduct, shareholder meetings, including proxy solicitation and quorum, review of related party transactions, and shareholder approval, including voting rights. In addition to the proposed Rule 14.10, the Exchange proposes to adopt interpretations and policies equivalent to Nasdaq interpretive material. Such interpretations and policies provide guidance regarding definitions other matters set forth in Rule 14.10. Exemptions to the proposed corporate governance requirements, including phase-in schedules, are set forth in paragraph (e) of proposed Rule 14.10. The

Exchange believes that preliminarily adopting uniform corporate governance standards to those of Nasdaq will assist issuers and their advisors in determining the Exchange's requirements.

Listing Standards for Other Securities

In addition, the Exchange has proposed Rule 14.11 as a stand-alone section for listing standards applicable to "other securities," which includes listing requirements for Exchange Traded Funds, Index-Linked Securities, Selected Equity-linked Debt Securities, Trust Issued Receipts, and Index Warrants. The proposed standards for Rule 14.11 are both similar to BATS' current standards, applicable to securities traded on the Exchange pursuant to unlisted trading privileges, as well as Nasdaq Rules 4700 through 4730.

Failure to Meet Listing Standards

Securities of a Company that does not meet the listing standards set forth in proposed Chapter XIV are subject to delisting from, or denial of initial listing on the Exchange. Proposed Rule 14.12 sets forth procedures for the independent review, suspension, and delisting of Companies that fail to satisfy one or more standards for initial or continued listing, and thus are "deficient" with respect to the listing standards.

The Listings Qualifications Department will be responsible for identifying deficiencies that may lead to delisting or denial of a listing application; notifying the Company of the deficiency or denial; and issuing Staff Delisting Determinations and Public Reprimand Letters. Rule 14.12(c) contains provisions regarding the Listing Qualifications Department's process for notifying Companies of different types of deficiencies and their corresponding consequences. The proposed rule also sets forth the various responsibilities when in receipt of notice of a deficiency, including public notification responsibilities.

The Hearings Panel, upon timely request by a Company, will review a Staff Delisting Determination, denial of a listing application, or Public Reprimand Letter at an oral or written hearing, and issue a Decision that may, among other things, grant an “exception” to the Exchange’s listing standards or affirm a delisting. The Exchange Listing and Hearings Review Council, upon timely appeal by a Company or on its own initiative, may review the Decisions of the Hearings Panel. Rule 14.12(e) contains provisions relating to the Listing Council appeal process. Finally, the Exchange Board of Directors may exercise discretion to call for review a Listing Council Decision.

Rule 14.12 also sets forth the procedures related to SEC notification of the Exchange’s final Delisting Determinations, rules applicable to Adjudicators and Advisors, and general information relating to the adjudicatory process.

A Company’s failure to maintain compliance with the applicable provisions of Chapter XIV will result in the termination of the listing unless an exception is granted to the Company. The termination of the Company’s listing will become effective in accordance with the procedures set forth herein, including Rule 14.12(g).

Listing Fees

The Exchange proposes to commence its listings business by charging Initial Listing Fees of \$100,000 and \$50,000 for Tiers I and II, respectively. The initial primary listing fee for both Tiers will include a \$25,000 non-refundable application fee. The Exchange also proposes to charge annual fees of \$35,000 and \$20,000 for Tiers I and II, respectively, on a pro-rated basis.

The Exchange proposes to waive the entry fee for any Company that is listed on another national securities exchange if such Company transfers its listing to the Exchange, is dually-listed on the Exchange and another national securities exchange but ceases to maintain its listing

on that other national securities exchange or is listed on another national securities exchange but not listed on the Exchange, if the issuer of such securities is acquired by an unlisted company and, in connection with the acquisition, the unlisted company lists exclusively on the Exchange. Annual dual listing fees will be \$15,000 for both tiers and will be pro-rated.

At this time, the Exchange has not proposed to charge for ministerial changes implemented by a Company (e.g., name changes and symbol changes), nor has the Exchange proposed to charge a fee for necessary work related to corporate actions of a Company (e.g., a reverse stock split, re-incorporation, etc.).

2. Statutory Basis

Approval of the rule changes 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.²² In particular, the proposed change is consistent with Section 6(b)(5) of the Act,²³ 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.

The Exchange's proposal comes at a time when there are two dominant primary listing venues, the New York Stock Exchange and Nasdaq. Further, there have recently been reports of a potential combination of these two listing venues under one corporate umbrella. Whether or not such combination occurs (and particularly if it does), the Exchange believes that the proposed change would increase competition by providing an alternative to Nasdaq and the New

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

York Stock Exchange for a company seeking to list its securities. Accordingly, the Exchange believes that the proposal will provide companies with another option for raising capital in the public markets, thereby promoting the aforementioned principles discussed in Section 6(b)(5) of the Act.²⁴

The Exchange also believes the proposal is consistent with Section 6(b)(9) of the Act,²⁵ because Rule 14.3(b)(8) of the proposal would adopt rules prohibiting the listing of any security issued in a limited partnership rollup transaction (as defined in Section 14(h) of the Act), unless such transaction satisfies the criteria of Section 6(b)(9) and a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

Finally, the Exchange believes the proposal is consistent with Section 6(b)(4) of the Act,²⁶ as it provides for the equitable allocation of reasonable dues, fees and other charges among issuers. Specifically, as proposed, the Exchange is establishing a clear-cut and simple pricing structure, that is not variable based on the number of shares or other metrics. Thus, the proposed fees are equitable in that they will be the same amongst issuers seeking to list Tier I securities and the same amongst issuers seeking to list Tier II securities. Further, the Exchange believes its proposed pricing is reasonable, as the Exchange has not proposed additional fees that issuers incur at other exchanges, including fees for issuance of additional shares, name changes and other corporate actions. Finally, the Exchange notes that its proposed pricing, while not necessarily cheaper for all issuers at all other markets, is roughly equivalent or less than issuers would pay at other exchanges. For instance, issuers listing on the Nasdaq Global Market pay

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b)(9).

²⁶ 15 U.S.C. 78f(b)(9) [sic].

between \$125,000 and \$225,000 initially (depending on the number of shares) and between \$35,000 and \$99,500 annually, compared to proposed Tier I fees of \$100,000 initially and \$35,000 annually.²⁷ Similarly, issuers listing on the Nasdaq Capital Market pay either \$50,000 or \$75,000 initially (depending on the number of shares) and between \$17,500 and \$75,000 annually,²⁸ compared to proposed Tier II fees of \$50,000 initially and \$20,000 annually. Also, as noted above, Nasdaq and NYSE charge multiple other fees applicable to additional shares issued by listed companies, corporate actions and related activities of issuers, whereas the Exchange's proposed fees do not include such additional fees.

(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 Changes and Timing for Commission Action

Within 45 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 Exchange consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

²⁷ See Nasdaq Rule 5910(a) and (c).

²⁸ See Nasdaq Rule 5920(a) and (c).

- (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 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-2011-018 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-2011-018. 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 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 will also 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-2011-018 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.²⁹

Cathy H. Ahn
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12).