

All submissions should refer to File Number SR-BATS-2008-004. 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 inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 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 Number SR-BATS-2008-004 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58644; File No. SR-BATS-2008-005]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rulebook Chapter XI To Add Four New Rules Regarding the Registration and Obligations of Market Makers and Amend Rule 1.5 To Add Definitions of "Market Maker" and "Market Maker Authorized Trader"

September 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 19, 2008, BATS Exchange, Inc. ("BATS" or the "Exchange") 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. BATS has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal 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 Chapter XI of the BATS Rulebook to add four new rules which would provide for the registration and obligations of market makers, as well as amending Rule 1.5 to add the definitions of "Market Maker" and "Market Maker Authorized Trader."

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 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 provide Members the ability to register as Market Makers and to provide for the regulation of Market Makers. The process for registration as a Market Maker is contained in

Proposed Rule 11.5, which provides that applicants must file applications in such form as the Exchange may prescribe. Applicants will be reviewed by the Exchange, which will consider factors including the capital, operations, personnel, technical resources, and disciplinary history of the applicant. Each Market Maker must have and maintain the minimum net capital of at least the amount required by Rule 15c3-1 of the Exchange Act.<sup>4</sup> Pursuant to the Proposed Rule, an applicant's registration as a Market Maker will become effective upon receipt by the Member of the Exchange's notice of approval of registration. The Proposed Rule also provides that the registration of a Market Maker may be suspended or terminated by the Exchange if the Exchange determines that the Market Maker substantially or continually failed to engage in dealings in accordance with Exchange Rules, if the Market Maker fails to meet the minimum net capital conditions, or the Market Maker fails to maintain fair and orderly markets.

Proposed Rule 11.6 provides for the registration and obligations of Market Maker Authorized Traders ("MMATs"). The Exchange can register a person as a MMAT upon receiving an application in the form prescribed, and MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered. MMATs may be officers, partners, employees or other associated persons of Members who are registered as Market Makers. To be eligible for registration as a MMAT, a person must complete the training and other programs required by the Exchange and successfully complete the General Securities Representative Examination (Series 7). Market Makers must ensure that their MMATs are properly qualified to perform market making activities. The Exchange may suspend or withdraw the registration of a MMAT if the Exchange determines that the person has caused the Market Maker to fail to comply with the securities laws or rules of the Exchange, if the person fails to perform his or her responsibilities properly, or fails to maintain fair and orderly markets. If a MMAT is suspended, the Market Maker may not allow the person to submit orders. In addition, the registration of a MMAT may be withdrawn upon the written request of the Member for which the MMAT is registered.

Proposed Rule 11.7 provides for the registration of Market Makers in a security. A Market Maker may become registered in a newly authorized

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 17 CFR 240.15c3-1.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

security or in a security already admitted to dealings on the Exchange by filing a security registration form with the Exchange. In considering the approval of the registration of the Market Maker in a security, the Exchange may consider the financial resources available to the Market Maker, the Market Maker's experience in making markets, the Market Maker's operational capability, the maintenance and enhancement of competition among Market Makers in each security in which they are registered, the existence of clearing arrangements for the Market Maker's transactions, and the character of the market for the security. The Proposed Rule also provides that a Market Maker may voluntarily terminate its registration in a security by providing the Exchange with a written notice of such termination. The Exchange may require a certain minimum prior notice period for such termination and may place other conditions on withdrawal and re-registration following withdrawal. The Exchange may suspend or terminate any registration of a Market Maker in a security whenever it determines that the Market Maker has not met any of its obligations or has failed to maintain fair and orderly markets.

Finally, Proposed Rule 11.8 sets out the obligations of Market Makers. In general, Market Makers must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange. The responsibilities of Market Makers include, among other things, maintaining continuous limit orders to buy and to sell for round lots in those securities in which the Market Maker is registered to trade. Market Makers will be responsible for the acts and omissions of its MMATs. If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealing as specified in this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of its registration. A Market Maker may apply to withdraw temporarily from its Market Maker status in the securities for which it is registered and must base this request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal.<sup>5</sup>

These proposed rules will benefit all Exchange participants, because Market Makers will assist in the maintenance of

fair and orderly markets, provide additional liquidity to the Exchange, and assist in preventing excess volatility.

## 2. Statutory Basis

The Exchange believes the 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 particular, with the requirements of Section 6(b).<sup>6</sup> In particular, the proposed changes are consistent with Section 6(b)(5) of the Act,<sup>7</sup> because they 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 creating greater liquidity in the Exchange market.

### 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

No written comments were solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rules are based on the approved rules of another self-regulatory organization.<sup>8</sup> In addition, the Exchange believes that the proposed rules will benefit all Exchange participants, because Market Makers will assist in the maintenance of fair and orderly markets, provide additional liquidity to the Exchange, and assist in preventing excess volatility.

Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>9</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup> In accordance with Rule 19b-4(f)(6)(iii),<sup>11</sup> the Exchange submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

Because the foregoing proposed rule change is non-controversial and 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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

## III. 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 Number SR-BATS-2008-005 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2008-005. 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 inspection and copying in the Commission's Public Reference

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

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

<sup>8</sup> See NSX Rules 1.5 and 11.5 through 11.8.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See electronic mail from Anders Franzon, Associate General Counsel, BATS Trading, Inc., to Sarah Albertson, Attorney, Division of Trading and Markets, Commission, dated September 23, 2008.

Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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 Number SR-BATS-2008-005 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58643; File Nos. SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Adoption of NASD Rules 4000 Through 10000 Series and the 12000 Through 14000 Series as FINRA Rules in the New Consolidated FINRA Rulebook; Order Approving Proposed Rule Change Relating to the Membership Waive-In Process for Certain New York Stock Exchange Members; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Adopt the FINRA Rule 0100 Series (General Standards) in the Consolidated FINRA Rulebook; Order Approving Proposed Rule Change To Adopt FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), and FINRA Rule 5150 (Fairness Opinions) in the Consolidated FINRA Rulebook; and Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Repeal NASD Rule 1130 and Incorporated Rules 405A, 440F, 440G and 447 as Part of the Process of Developing the Consolidated FINRA Rulebook**

September 25, 2008.

### I. Introduction

On May 23, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")), filed with the Securities and Exchange Commission ("Commission" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt the following NASD rules (which are part of the existing FINRA rulebook) as FINRA rules into a new consolidated rulebook ("Consolidated FINRA Rulebook"): The 4000 through 10000 Series and the 12000 through 14000 Series (collectively, the "Marketplace and Procedural Rules Proposal"). The Marketplace and Procedural Rules Proposal, as modified by Amendment No. 1, was published for comment in

the **Federal Register** on July 23, 2008.<sup>3</sup> The Commission received no comments on the Marketplace and Procedural Rules Proposal. This order approves the Marketplace and Procedural Rules Proposal, as modified by Amendment No. 1.

On May 23, 2008, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, a proposed rule change relating to the membership waive-in process for certain New York Stock Exchange LLC ("NYSE") members ("Waive-In Firms Proposal"). The Waive-In Firms Proposal was published for comment in the **Federal Register** on July 28, 2008.<sup>4</sup> The Commission received no comments on the Waive-In Firms Proposal. This order approves the Waive-In Firms Proposal.

On June 13, 2008, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, a proposed rule change to adopt FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), and FINRA Rule 5150 (Fairness Opinions) in the Consolidated FINRA Rulebook (collectively, the "Ethical Conduct and Fairness Opinion Rules Proposal"). The Ethical Conduct and Fairness Opinion Rules Proposal was published for comment in the **Federal Register** on July 10, 2008.<sup>5</sup> The Commission received no comments on this proposed rule change. This order approves the Ethical Conduct and Fairness Opinion Rules Proposal.

On June 16, 2008, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, a proposed rule change to adopt the FINRA Rule 0100 Series (General Standards) in the Consolidated FINRA Rulebook ("General Standards Proposal"). The General Standards Proposal, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 7, 2008.<sup>6</sup> The Commission received no comments on the General Standards Proposal. This order approves the General Standards Proposal as modified by Amendment No. 1.

<sup>3</sup> See Securities Exchange Act Release No. 58176 (July 16, 2008), 73 FR 42844 (July 23, 2008) (SR-FINRA-2008-021) ("Release No. 34-58176").

<sup>4</sup> See Securities Exchange Act Release No. 58206 (July 22, 2008), 73 FR 43808 (July 28, 2008) (SR-FINRA-2008-022).

<sup>5</sup> See Securities Exchange Act Release No. 58095 (July 3, 2008), 73 FR 39751 (July 10, 2008) (SR-FINRA-2008-028).

<sup>6</sup> See Securities Exchange Act Release No. 58245 (July 29, 2008), 73 FR 46106 (August 7, 2008) (SR-FINRA-2008-026).

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

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).