

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58695, File No. 4-518)

September 30, 2008

Joint Industry Plan; Notice of Filing and Order Granting Temporary Effectiveness of
Amendment to Plan Establishing Procedures under Rule 605 of Regulation NMS

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 608 of Regulation NMS,² notice is hereby given that on September 19, 2008, the BATS Exchange, Inc. (“BATS” or “BATS Exchange”) submitted to the Securities and Exchange Commission (“SEC” or “Commission”) an amendment to the national market system plan that establishes procedures under Rule 605 of Regulation NMS (“Joint-SRO Plan” or “Plan”).³ The amendment proposes to add BATS as a participant to the Joint-SRO Plan. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Joint-SRO Plan amendment, and to grant temporary effectiveness to the proposed amendment through [insert date 120 days from date of publication in the Federal Register].

I. Description and Purpose of the Amendment

The current participants to the Joint-SRO Plan are the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc. (n/k/a National Stock ExchangeSM), International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.),

¹ 15 U.S.C. 78k-1(a)(3).

² 17 CFR 242.608.

³ 17 CFR 242.605. On April 12, 2001, the Commission approved a national market system plan for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Rule 11Ac1-5 under the Act (n/k/a

New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC), Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.). The proposed amendment would add BATS as a participant to the Joint-SRO Plan.

BATS has submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set forth in the Plan regarding new participants. Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a party to the Plan by: (i) executing a copy of the Plan, as then in effect (with the only changes being the addition of the new participant's name in Section 11(a) of the Plan and the new participant's single-digit code in Section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Joint-SRO Plan amendment 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 Number 4-518 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission,

Rule 605 of Regulation NMS). See Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-518. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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 Number 4-518 and should be submitted on or before [insert date 30 days from publication in the Federal Register].

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

The Commission finds that the proposed Joint-SRO Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.⁴ Specifically, the Commission believes that the proposed amendment, which permits BATS to become a

participant to the Joint-SRO Plan, is consistent with the requirements of Section 11A of the Act, and Rule 608 of Regulation NMS. The Plan establishes appropriate procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS, available to the public in a uniform, readily accessible, and usable electronic format. The proposed amendment to include BATS as a participant in the Joint-SRO Plan will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by facilitating the uniform public disclosure of order execution information by all market centers.

The Commission finds good cause to grant temporary effectiveness to the proposed Joint-SRO Plan amendment, for 120 days, until [insert date 120 days from date of publication in the Federal Register]. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow BATS to become a participant in the Joint-SRO Plan. On August 18, 2008, the Commission granted the application of BATS for registration as a national securities exchange.⁵ One of the conditions to operation of the BATS Exchange is participation in national market system plans, including the Joint-SRO Plan.⁶ As a Plan participant, BATS would have timely information on the Plan procedures as they are formulated and modified by the participants. The Commission finds, therefore, that granting

⁴ In approving this proposed Joint-SRO Plan amendment, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ See Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008).

⁶ Id. at 49507.

temporary effectiveness of the proposed Joint-SRO Plan amendment is appropriate and consistent with Section 11A of the Act.⁷

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act⁸ and Rule 608 of Regulation NMS,⁹ that the proposed Joint-SRO Plan amendment is approved for 120 days, through [insert date 120 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Acting Secretary

⁷ 15 U.S.C. 78k-1.

⁸ 15 U.S.C. 78k-1.

⁹ 17 CFR 242.608.

¹⁰ 17 CFR 200.30-3(a)(29).