

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59361, File No. 4-518)

February 5, 2009

Joint Industry Plan; Order Approving Amendment to Add the BATS Exchange, Inc. as Participant to National Market System Plan Establishing Procedures under Rule 605 of Regulation NMS

I. Introduction

On September 19, 2008, the BATS Exchange, Inc. (“BATS” or “BATS Exchange”) submitted to the Securities and Exchange Commission (“SEC” or “Commission”) in accordance with Section 11A of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 608 of Regulation NMS,<sup>2</sup> a proposed amendment to the national market system plan establishing procedures under Rule 605 of Regulation NMS (“Joint-SRO Plan” or “Plan”).<sup>3</sup> Under the proposed amendment, BATS would be added as a participant to the Joint-SRO Plan. Notice of filing and an order granting temporary effectiveness of the proposal through February 5, 2009 were published in the Federal Register on October 8, 2008.<sup>4</sup> The Commission did not receive any comments on the proposed amendment. This order approves the amendment on a permanent basis.

II. Discussion

The Joint-SRO Plan establishes 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 current participants to the Joint-

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<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> 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 Rule 605 of Regulation NMS). See Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

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 Exchange<sup>SM</sup>), International Securities Exchange LLC, The NASDAQ Stock Market LLC, National Association of Securities Dealers, Inc., 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. The proposed amendment would add BATS as a participant to the Joint-SRO Plan.

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 II(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. BATS 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.

The Commission finds that the amendment to the Joint-SRO Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment is consistent with the requirements of Section 11A of the Act,<sup>5</sup> and Rule 608 of Regulation NMS.<sup>6</sup> The Plan established appropriate procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of

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<sup>4</sup> See Securities Exchange Act Release No. 58695 (September 30, 2008), 73 FR 58993.

<sup>5</sup> 15 U.S.C. 78k-1.

<sup>6</sup> 17 CFR 242.608.

Regulation NMS available to the public in a uniform, readily accessible, and usable electronic format. The amendment to include BATS as a participant in the Joint-SRO Plan should 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 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. The Commission finds, therefore, that approving the amendment to the Joint-SRO Plan is appropriate and consistent with Section 11A of the Act.<sup>7</sup>

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<sup>7</sup> 15 U.S.C. 78k-1.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 11A(a)(3)(B) of the Act<sup>8</sup> and Rule 608 of Regulation NMS,<sup>9</sup> that the amendment to the Joint-SRO Plan to add BATS as a participant is approved and BATS is authorized to act jointly with the other participants to the Joint-SRO Plan in planning, developing, operating, or regulating the Plan as a means of facilitating a national market system.

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

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>9</sup> 17 CFR 242.608.

<sup>10</sup> 17 CFR 200.30-3(a)(29).