

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58807; File No. 4-568)

October 17, 2008

Self-Regulatory Organizations; Order Approving Minor Rule Violation Plan for BATS Exchange, Inc.

On August 29, 2008, the BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) a proposed minor rule violation plan (“MRVP”) pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19d-1(c)(2) thereunder.² The proposed MRVP was published for public comment on September 16, 2008.³ The Commission received no comments on the proposal. This order approves BATS’s proposed MRVP.

BATS’s MRVP specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) under the Act⁴ requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.⁵ In accordance with Rule 19d-1(c)(2), the Exchange proposed to designate certain rule violations as minor rule

¹ 15 U.S.C. 78s(d)(1).

² 17 CFR 240.19d-1(c)(2).

³ See Securities Exchange Act Release No. 58485 (September 8, 2008), 73 FR 53468.

⁴ 17 CFR 240.19d-1(c)(1).

⁵ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations (“SROs”) to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan shall not be considered “final” for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

violations, and requested that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. BATS included in its proposed MRVP the policies and procedures currently included in BATS Exchange Rule 8.15 (“Imposition of Fines for Minor Violation(s) of Rules”) and the rule violations included in BATS Exchange Rule 8.15.01, Interpretations and Policies.⁶

Pursuant to the Exchange’s proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed \$2,500) on a member, an associated person of a member, or a registered or non-registered employee of a member, with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules allegedly violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person’s right to a disciplinary proceeding and any review of the matter under Exchange rules. Any person against whom a fine is imposed may contest the Exchange’s determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

⁶ On August 18, 2008, the Commission approved BATS’s application for registration as a national securities exchange, including the rules governing the Exchange. See Securities Exchange Act Release No. 58375, 73 FR 49498 (August 21, 2008). In the approval order, the Commission noted that BATS Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that, as a condition to the operation of the Exchange, it must file a minor rule violation plan with the Commission. BATS represented that modifications may be made to Rule 8.15.01 in the future. BATS proposed that, when amendments to Rule 8.15.01 are made pursuant to a rule filing submitted pursuant to Rule 19b-4 under the Act, such filing would automatically be deemed a request by BATS for Commission approval of a modification to its MRVP.

Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.⁷

The Commission finds that the proposed MRVP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁸ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act⁹ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. In addition, because the MRVP offers procedural rights to a person sanctioned under Rule 8.15, the Commission believes that Rule 8.15 provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.¹⁰

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by

⁷ BATS attached a sample form of the quarterly report with its submission to the Commission.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

¹⁰ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

Rule 19d-1(c)(2) under the Act,¹¹ because the MRVP strengthens BATS's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Rule 8.15. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Rule 8.15 provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that BATS will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

¹¹ 17 CFR 240.19d-1(c)(2).

IT IS THEREFORE ORDERED, pursuant to Rule 19d-1(c)(2) under the Act,¹² that the proposed MRVP for BATS, File No. 4-568, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Acting Secretary

¹² Id.

¹³ 17 CFR 200.30-3(a)(44).