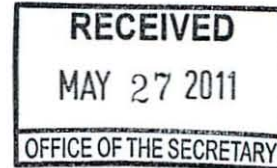




4-632



FEDERAL EXPRESS

May 26, 2011

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549

RE: Petition to Amend Rule 146(b)

Dear Ms. Murphy:

BATS Exchange, Inc. (“BATS” or “Exchange”) hereby petitions the U.S. Securities and Exchange Commission (“Commission”) to amend Rule 146(b) under Section 18(b)(1)(B) of the Securities Act of 1933, as amended (“Securities Act”), to designate securities listed on BATS as covered securities for the purpose of Section 18 of the Securities Act.¹

BACKGROUND

On October 11, 1996, the National Securities Markets Improvement Act of 1996 (“NSMIA”) was signed into law. Among other changes made to the federal securities laws, NSMIA amended Section 18 of the Securities Act to provide for exclusive federal registration of securities listed (or authorized for listing) on the New York Stock Exchange (“NYSE”), listed (or authorized for listing) on the American Stock Exchange (“Amex”),² quoted (or authorized for quoting) on the National Market System of the Nasdaq Stock Market³ (“Nasdaq/NMS”; NYSE, Amex and Nasdaq/NMS collectively, “Named Markets”), or listed (or authorized for listing) on any other national securities exchange designated by the Commission to have substantially similar listing standards to those markets. More specifically, Section 18(a) provides that “no law, rule, regulation, or order, or other administrative action of any State . . . requiring, or with respect to, registration or qualification of securities . . . shall directly or indirectly apply to a security that -- (A) is a covered security” Covered securities are defined in Section 18(b)(1) to include those securities specified above.

¹ BATS has filed a proposal to adopt rules applicable to the qualification, listing and delisting of companies on BATS Exchange, Inc. See Securities Exchange Act Release No. 64546 (May 25, 2011) (SR-BATS-2011-018).

² Amex is now known as NYSE Amex.

³ Nasdaq/NMS is now known as NASDAQ Global Markets.

Since 1998, the Commission has exercised its discretionary authority to designate in Rule 146(b) as covered securities, for the purposes of Section 18 of the Securities Act, the securities listed on: (i) Tier I of the NYSE Arca, Inc. (“NYSE Arca”); (ii) Tier I of the Philadelphia Stock Exchange, Inc. (“Phlx”)⁴; (iii) the Chicago Board Options Exchange, Incorporated (“CBOE”); (iv) options listed on the International Securities Exchange, LLC (“ISE”); and (v) the Nasdaq Capital Market (“NCM”; all of which, together with the Named Markets, are referred to herein as the “Designated Markets”).

BATS believes that the listing standards applicable to securities listed on BATS are substantially similar⁵ to the listing standards applicable to the Designated Markets, and particularly Amex, NASDAQ Global Markets (“NGM”) and NCM⁶, and it is therefore appropriate for the Commission to amend Rule 146(b) to designate securities listed on BATS as covered securities for the purpose of Section 18 of the Securities Act. Moreover, the failure to designate BATS issues as “covered securities” would be inconsistent with the Commission’s mandate under Section 11A of the Securities and Exchange Act of 1934 (the “Exchange Act”) to “assure . . . fair competition . . . among exchange markets.”⁷

DISCUSSION

BATS listing standards provide for the listing of primary equity securities, rights and warrants, preferred and secondary classes of common stock, and convertible debt, rights and warrants in one of two tiers – Tier I and Tier II. The listing standards for Tier I securities are substantially similar to those of NGM’s, and the listing standards for Tier II securities are substantially similar to Amex’s and are in most instances more stringent than the Amex standards. Further, the Tier II securities listing standards are substantially similar to NCM’s standards, which have been designated as covered securities by the Commission.⁸

⁴ Phlx is now known as NASDAQ OMX PHLX.

⁵ The Commission has interpreted the “substantially similar” standard to require listing standards at least as comprehensive as those of the named markets, and has noted that differences in language or approach do not necessarily lead to a determination that the listing standards of the petitioner are not substantially similar to those of a named market. See Securities Act Release No. 8442, 69 FR 43295 (January 20, 2004) (order adopting Rule 146 amendment to designate options listed on ISE as covered securities).

⁶ While NGM and NCM, which are separate markets on Nasdaq, have differing quantitative criteria for listing of securities on the respective markets, the qualitative rules governing the companies listed on Nasdaq are the same for both NGM and NCM. Similarly, the qualitative standards for BATS are the same for both Tier I and Tier II.

⁷ 15 U.S.C. 78k-1(a)(1)(c)(ii).

⁸ See Securities Act Release No. 8791 (April 18, 2007), 72 FR 20410 (April 24, 2007) (final rule amending Rule 146(b) to designate securities listed, or authorized for listing, on the Nasdaq Capital Market tier of the NASDAQ Stock Market LLC as covered securities).

Initial Listing Requirements for Tier I Securities

Primary Equity Securities

NGM and BATS have virtually identical quantitative initial listing requirements pertaining to the public float, distribution of shares, and trading volume of the security. Both markets require 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.⁹

Both NGM and BATS require that the issuer of the security meet at least one of the following standards – income, equity, market value, or total assets/total revenue. The income standard is nearly identical for both markets, requiring 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.¹⁰

The equity standard is also virtually identical. Both markets require under the equity standard 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.¹¹

The market value standard, for currently publicly traded companies, is also substantially similar. Both markets 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.¹²

Finally, the total assets/total revenue standard is also similar. Both markets 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.¹³

As is true for primary equity securities, both BATS and NGM have nearly identical quantitative initial listing standards for rights and warrants and preferred stock and secondary classes of common stock, as further described below.¹⁴

⁹ Compare NGM Rule 5405(a) with BATS Rule 14.8(b).

¹⁰ Compare NGM Rule 5405(b)(1) with BATS Rule 14.8(b)(2)(A).

¹¹ Compare NGM Rule 5405(b)(2) with BATS Rule 14.8(b)(2)(B).

¹² Compare NGM Rule 5405(b)(3) with BATS Rule 14.8(b)(2)(C).

¹³ Compare NGM Rule 5405(b)(4) with BATS Rule 14.8(b)(2)(D).

¹⁴ Compare NGM Rules 5410 and 5415 with BATS Rules 14.8(c) and (d).

Rights and Warrants

Both NGM and BATS require 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.¹⁵ Both markets also require that for warrants there must be at least 400 round lot holders.¹⁶ Both markets also require at least three registered and active market makers.¹⁷

Preferred Stock and Secondary Classes of Common Stock

Both NGM and BATS 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. Both 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, and at least 100 round lot holders.¹⁸ Both markets also require at least three registered and active market makers.¹⁹

Maintenance Requirements for Tier I Securities

As with initial listing standards, BATS and NGM have virtually identical quantitative maintenance requirements. For continued approval of a primary equity security listing, both require that there be a minimum bid price of \$1 per share and at least 400 total holders.²⁰ Both also require that issuers meet at least one of the following standards – equity, market value, or total assets/total revenue. The equity standard for both markets requires 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 registered and active market makers.²¹ The market value standards are nearly identical, requiring 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.²² The total assets/total revenue standards are also virtually identical, requiring 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.²³

¹⁵ Compare NGM Rules 5410(a) and (b) with BATS Rules 14.8(c)(1) and (2).

¹⁶ Compare NGM Rule 5410(d) with BATS Rule 14.8(c)(4).

¹⁷ Compare NGM Rule 5410(c) with BATS Rule 14.8(c)(3).

¹⁸ Compare NGM Rules 5415(a)(1) – (4) with BATS Rules 14.8(d)(1)(A) – (D).

¹⁹ Compare NGM Rule 5415(a)(5) with BATS Rule 14.8(d)(1)(E).

²⁰ Compare NGM Rule 5450(a) with BATS Rule 14.8(e)(1).

²¹ Compare NGM Rule 5450(b)(1) with BATS Rule 14.8(e)(2)(A).

²² Compare NGM Rule 5450(b)(2) with BATS Rule 14.8(e)(2)(B).

²³ Compare NGM Rule 5450(b)(3) with BATS Rule 14.8(e)(2)(C).

Both markets have identical continued listing requirements for rights and warrants, and for preferred stock and secondary classes of common stock.²⁴

Initial Listing Requirements for Tier II Securities

Primary Equity Securities

Similarities with Amex

The BATS listing standards for Tier II securities are based on substantially similar quantitative criteria as Amex's listing standards, however BATS listing standards for Tier II are almost universally more stringent than Amex's. While BATS requires a minimum bid price of at least \$4 per share, Amex only requires a bid price of \$3 per share, and for certain issuers only requires a bid price of \$2 per share.²⁵ While BATS requires a minimum of one million publicly held shares, Amex only requires a minimum of 500,000 with a minimum of 800 public shareholders or a minimum public distribution of one million shares together with a minimum of 400 public shareholders.²⁶ BATS listing criteria do not provide for any exceptions to these minimum standards, but Amex rules allow the exchange to consider listing a company's securities if it does not meet these minimum criteria.²⁷

Both BATS and Amex have a number of additional standards, at least one of which an issuer must meet. Again, BATS standards are more stringent. Amex's "Standard 1" 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, and that the market value of publicly held shares be at least \$4 million.²⁸ BATS's net income standard is identical, except that it requires that the market value of publicly held shares be at least \$5 million.²⁹

Amex's "Standard 2" requires that the market value of publicly held shares be at least \$15 million, that stockholders' equity be at least \$4 million, and a two year operating history.³⁰ BATS's equity standard is identical, except that it requires that stockholders' equity be at least \$5 million.³¹

²⁴ Compare NGM Rules 5455 – 5460 with BATS Rules 14.8(f) – (g).

²⁵ Compare Amex Rule 102(b) with BATS Rule 14.9(b)(1)(A).

²⁶ Compare Amex Rule 102(a) with BATS Rule 14.9(b)(1)(B).

²⁷ Compare Amex Rule 102(a) with BATS Rule 14.9(b)(1).

²⁸ Amex Rule 101(a).

²⁹ BATS Rule 14.9(b)(2)(C).

³⁰ Amex Rule 101(b).

³¹ BATS Rule 14.9(b)(2)(A).

Amex's "Standard 3" requires that the market value of listed securities be at least \$50 million, that stockholders' equity be at least \$4 million, that the market value of publicly held shares be at least \$15 million, and that the minimum bid price be at least \$2 per share.³² BATS's market value standard is identical, except that it requires a minimum bid price of at least \$4 per share.³³

Amex does not have specific requirements for American Depositary Receipts ("ADRs") in addition to the standards set forth above. In contrast, in addition to its standard initial listing requirements (which are at least stringent or more stringent than Amex listing standards, as described above) BATS requires for ADRs that there be at least 400,000 issued.³⁴

As is true for primary equity securities, both markets have nearly identical quantitative initial listing standards for preferred stock, warrants, and convertible debt, as further described below.

Similarities with NCM

The BATS listing standards for Tier II securities have virtually identical quantitative initial listing requirements as NCM securities pertaining to the public float, distribution of shares, and trading volume of the security. Both markets require 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.³⁵ Both require that, in addition to these requirements, in the case of ADRs there be at least 400,000 issued.³⁶

Both NCM and BATS require that the issuer of the security meets at least one of the following identical standards – equity, market value, or net income. The equity standard requires 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.³⁷ The market value standard requires 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.³⁸ The 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

³² Amex Rules 101(c) and 102(b).

³³ BATS Rule 14.9(b)(1)(A) and (2)(B).

³⁴ Compare NCM Rule 5505(a)(5) with BATS Rule 14.9(b)(1)(E).

³⁵ Compare NCM Rule 5505(a)(1) – (4) with BATS Rule 14.9(b)(1)(A) – (D).

³⁶ Compare NCM Rule 5505(a)(5) with BATS Rule 14.9(b)(1)(E).

³⁷ Compare NCM Rule 5505(b)(1) with BATS Rule 14.9(b)(2)(A).

³⁸ Compare NCM Rule 5505(b)(2) with BATS Rule 14.9(b)(2)(B).

years, that stockholders' equity be at least \$4 million, and that the market value of publicly held shares be at least \$5 million.³⁹

As is true for primary equity securities, both markets have nearly identical quantitative initial listing standards for preferred stock and secondary classes of common stock as well as for rights, warrants, and convertible debt, as further described below.⁴⁰

Preferred Stock and Secondary Classes of Common Stock

Similarities with Amex

The BATS requirements for initial listing of preferred stock are, while based on substantially similar criteria, more stringent than Amex's requirements. In particular, Amex requires that for a primary equity security that is listed on the exchange, there be 100,000 shares publicly held, and an aggregate public market value/price of \$2,000,000/\$10.⁴¹ In contrast, BATS requires that there be at least 200,000 publicly held shares with a market value of at least \$3.5 million, with a minimum bid price of at least \$4 per share, and at least 100 round lot orders.⁴²

Similarities with NCM

Both markets 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. Both 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.⁴³

Rights, Warrants, and Convertible Debt

Similarities with Amex

The BATS requirements for initial listing of warrants and convertible debt are, while based on substantially similar criteria, more stringent than Amex's requirements. In particular, Amex requires that there be at least 200,000 warrants publicly held by not less than 100 public

³⁹ Compare NCM Rule 5505(b)(3) with BATS Rule 14.9(b)(2)(C).

⁴⁰ Compare NCM Rules 5510 and 5515 with BATS Rule 14.9(c) – (d).

⁴¹ Amex Rule 103(b)

⁴² BATS 14.9(c)(1)(A) – (D).

⁴³ Compare NCM Rule 5510(a)(1) – (5) with BATS Rule 14.9(c)(1)(A) – (E).

warrant holders.⁴⁴ In contrast, BATS requires that there be at least 400,000 warrants issued and there be at least 400 round lot holders.⁴⁵

Similarly, the BATS requirements for initial listing of convertible debt are substantially similar to but more stringent than Amex's requirements. In particular, for initial listing of bond and debenture issues, Amex requires that the debt issue have an aggregate market value or principal amount of at least \$5 million.⁴⁶ In contrast, BATS requires for the initial listing of convertible debt securities that there be a principal amount outstanding of at least \$10 million.⁴⁷ The other requirements that an issuer must meet with regards to the issuer or bond rating status are substantially identical for both markets.⁴⁸

Similarities with NCM

Both markets require that for initial listing, rights, warrants, and put warrants meet certain similar requirements. Both require that there be at least 400,000 issued, that the underlying security be listed on the exchange or be a covered security, and that there be at least three registered and active market makers.⁴⁹ Both require that in the case of warrants, there be at least 400 round lot holders.⁵⁰

For initial listing of convertible debt securities, both markets require that the principal amount outstanding be at least \$10 million and 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.⁵¹ The only difference is that, similar to Amex, BATS does not have a specific number of market makers required to meet initial listing standards.⁵² In addition to these conditions, both markets 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

⁴⁴ Amex Rule 105.

⁴⁵ BATS Rule 14.9(d)(1)(A) and (D).

⁴⁶ Amex Rule 104.

⁴⁷ BATS Rule 14.9(d)(2)(A).

⁴⁸ Compare Amex Rule 104(A) – (E) with BATS Rule 14.9(d)(2)(D).

⁴⁹ Compare NCM Rule 5515(a)(1) – (3) with BATS Rule 14.9(d)(1)(A) – (C).

⁵⁰ Compare NCM Rule 5515(a)(4) with BATS Rule 14.9(d)(1)(D).

⁵¹ Compare NCM Rule 5515(b)(1) – (2) with BATS Rule 14.9(d)(2)(A) – (B).

⁵² Compare NCM Rule 5515(b) with BATS Rule 14.9(d)(2).

(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.⁵³

For initial listing of index warrants, both markets 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 minimum tangible net worth in excess of \$150 million.⁵⁴

Maintenance Requirements for Tier II Securities

Similarities with Amex

Amex's rules regarding de-listing of securities are also less stringent than BATS's maintenance standards. For common stock, Amex would consider suspending or de-listing a security if the number of shares publicly held is less than 200,000, or if the total number of public shareholders is less than 300, or if the aggregate market value of shares publicly held is less than \$1 million for more than 90 consecutive days.⁵⁵ In contrast, BATS requires, among other things, at least 500,000 publicly held shares, and a minimum bid price of \$1 per share.⁵⁶ BATS also requires that issuers meet either the equity, market value, or net income standard (as described above), none of which are required by Amex.⁵⁷

For preferred stock Amex would consider delisting if the number of shares publicly held is less than 50,000 or if the aggregate market value is less than \$1 million.⁵⁸ In contrast, BATS requires a minimum bid price of \$1 a share, at least 100 public holders, and at least 100,000 publicly held shares with a market value of at least \$1 million.⁵⁹

For warrants Amex would consider delisting if the number of warrants publicly held is less than 50,000,⁶⁰ whereas BATS requires that the underlying security must remain listed on the Exchange, or be a covered security.⁶¹ For bonds, Amex would consider delisting if the number

⁵³ Compare NCM Rule 5515(b)(4) with BATS Rule 14.9(d)(2)(D).

⁵⁴ Compare NCM Rule 5515(c) with BATS Rule 14.9(d)(3).

⁵⁵ Amex Rule 1003(b)(i).

⁵⁶ BATS Rule 14.9(e)(1).

⁵⁷ Compare Amex Rule 1003(b)(i) with BATS Rule 14.9(e)(2).

⁵⁸ Amex Rule 1003(b)(iii)

⁵⁹ BATS Rule 14.9(f)(1).

⁶⁰ Amex 1003(b)(ii).

⁶¹ BATS Rule 14.9(g)(1).

of shares publicly held is less than 50,000, or if the aggregate market value of shares publicly held is less than \$1 million.⁶² In contrast, BATS requires that the principal amount outstanding be at least \$5 million.⁶³

Similarities with NCM

As with initial listing standards, BATS and NCM have virtually identical quantitative maintenance requirements. For continued approval of a primary equity security listing, both require at least two registered and active market makers, one of which may be a market maker entering a stabilizing bid, a minimum bid price of \$1 per share, at least 300 public holders, and at least 500,000 publicly held shares with a market value of at least \$1 million.⁶⁴

Both BATS and NCM require that issuers meet at least one of the following standards – equity, market value, or net income. The equity standard for both markets requires that stockholders' equity be at least \$2.5 million.⁶⁵ The market value standard for both markets requires that the market value of listed securities be at least \$35 million.⁶⁶ The net income standard for both markets requires 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.⁶⁷ Both markets have identical continued listing requirements for preferred stock and secondary classes of common stock, and for rights, warrants, and convertible debt.⁶⁸

Listing Standards for Other Securities

The BATS listing standards, maintenance and other requirements for other securities, including portfolio depository receipts, index fund shares, securities linked to the performance of indexes and commodities, selected equity-linked debt securities, trust issued receipts, and managed fund shares are identical to the requirements of Nasdaq.⁶⁹

BATS believes there are no differences in the way securities may be considered for and initially listed or maintained on BATS, NGM, and NCM that have any bearing on whether the listing standards of the two markets are substantially similar.

⁶² Amex 1003(b)(ii).

⁶³ BATS Rule 14.9(g)(2).

⁶⁴ Compare NCM Rule 5550(a) with BATS Rule 14.9(e)(1).

⁶⁵ Compare NCM Rule 5550(b)(1) with BATS Rule 14.9(e)(2)(A).

⁶⁶ Compare NCM Rule 5550(b)(2) with BATS Rule 14.9(e)(2)(B).

⁶⁷ Compare NCM Rule 5550(b)(3) with BATS Rule 14.9(e)(2)(C).

⁶⁸ Compare NCM Rules 5555 and 5560 with BATS Rule 14.9(f) and (g).

⁶⁹ Compare Nasdaq Rules 5700 - 5730 with BATS Rule 14.11(a) – (i).

Other Requirements are Virtually Identical As Well

In addition to having substantially similar and in some instances more stringent quantitative listing criteria than NGM, NCM, and Amex, BATS has almost identical qualitative requirements as Nasdaq. BATS has articulated its broad discretionary authority over the initial and continued listing of securities on the Exchange using the same language as Nasdaq.⁷⁰ BATS has the same general procedures and prerequisites for initial and continued listing, including the requirements for the application and qualifications process for issuers and the prerequisites for applying to list on the Exchange, as Nasdaq.⁷¹ Also similar to Nasdaq's requirements are the obligations for companies listed on the Exchange to provide information, make public disclosures, file and distribute various reports, and inform the Exchange of certain corporate events.⁷²

BATS has the same corporate governance requirements for issuers as Nasdaq, including the same requirements with regards to an issuer's board of directors, committees, code of conduct, shareholder meetings, review of related party transactions, and shareholder approvals.⁷³ Also identical are the available exemptions from the corporate governance requirements.⁷⁴

BATS has the same rules and procedures as Nasdaq for the independent review, suspension, and delisting of issuers that fail to satisfy one or more standards for initial or continued listing and are thus deficient with respect to the listing standards.⁷⁵

CONCLUSION

As described above, BATS and Nasdaq have nearly identical qualitative listing requirements. Further, BATS Tier I quantitative listing criteria are virtually identical to NGM quantitative listing criteria and BATS Tier II quantitative listing criteria are similar and in most instances more stringent Amex criteria. Finally, BATS notes that its Tier II quantitative listing criteria are similar to quantitative listing criteria of NCM, where listed securities have been designated covered securities under Rule 146(b). Based on the foregoing, it is appropriate for the Commission to amend Rule 146(b) to designate securities listed on BATS as covered securities for the purpose of Section 18 of the Securities Act.

* * * * *

⁷⁰ Compare Nasdaq Rule 5101 with BATS Rule 14.2.

⁷¹ Compare Nasdaq Rule 5200 with BATS Rules 14.3(a) and 14.3(b).

⁷² Compare Nasdaq Rule 5250 with BATS Rules 14.6.

⁷³ Compare Nasdaq Rules 5600 – 5640 with BATS Rules 14.10.

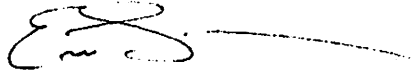
⁷⁴ Compare Nasdaq Rules 5615 with BATS Rules 14.10(e).

⁷⁵ Compare Nasdaq Rules 5801 – 5840 with BATS Rule 14.12 (a) – (m).

Ms. Elizabeth M. Murphy
May 26, 2011
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Please contact the undersigned at 913-815-7000 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric Swanson', with a long horizontal flourish extending to the right.

Eric Swanson
SVP & General Counsel