



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed Amendment 1 regarding its proposed rule change to amend BATS Rule 2.5, entitled “Restrictions,” to require each Exchange Member to register with the Exchange: (i) at least two principals to supervise Authorized Traders of the Member (subject to certain exceptions), one of whom must be the Member’s Chief Compliance Officer, and (ii) at least one financial and operations principal.<sup>3</sup> The Exchange also proposes a technical amendment to BATS Rule 17.2(g)(4) to eliminate language that becomes unnecessary due to the changes to BATS Rule 2.5. The Exchange proposes to require all Members to be compliant with the proposed rule by September 30, 2010.

(a) The text of the proposed rule change is below. Material proposed to be added is underlined.

\* \* \* \* \*

Rule 2.5. Restrictions

(a) – (e) (No changes.)

*Interpretations and Policies*

.01 Proficiency Examinations:

(a) – (c) (No changes.)

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

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

<sup>3</sup> The proposed rule change was filed on April 9, 2010, and published for notice and comment in the Federal Register on April 29, 2010. See Exchange Act Release No. 61960 (April 22, 2010), 75 FR 22668 (April 29, 2010).

(d) The Exchange requires each Member other than a sole proprietorship or a proprietary trading firm with 25 or fewer Authorized Traders (“Limited Size Proprietary Firm”) to register at least two Principals with the Exchange. A Limited Size Proprietary Firm is required to register at least one Principal with the Exchange. In addition, the Exchange may waive the two Principal requirement in situations that indicate conclusively that only one Principal associated with the Member should be required. For purposes of this paragraph (d), a “Principal” shall be any individual responsible for supervising the activities of a Member’s Authorized Traders and each person designated as a Chief Compliance Officer on Schedule A of Form BD. This paragraph (d) shall not apply to a Member that solely conducts business on the Exchange as an Options Member, however, Options Members must comply with the registration requirements set forth in Rule 17.2(g). Each Principal is required to successfully complete the General Securities Principal Examination (“Series 24”). The Exchange uses Form U4 as part of its procedure for registration and oversight of Member personnel.

(e) Each Member subject to Exchange Act Rule 15c3-1 shall designate a Financial/Operations Principal. The duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the Member complies with applicable financial and operational requirements under Exchange Rules and the Exchange Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. Each Financial/Operations Principal is required to successfully complete the Financial and Operations Principal Examination (“Series 27”). The Exchange uses Form U4 as part of its procedure for registration and oversight of Member personnel. A Financial/Operations Principal of a Member may be a full-time employee of the Member or may be a part-time employee or independent contractor of the Member. The Exchange may waive the requirements of this paragraph (e) if a Member has satisfied the financial and operational requirements of its designated examining authority applicable to registration.

(f) All Members shall be in compliance with paragraphs (d) and (e) of this Interpretation and Policy .01 Rule by September 30, 2010.

(g) For purposes of paragraph (d) above, a “proprietary trading firm” shall mean a Member that trades its own capital, that does not have customers, and that is not a member of the Financial Industry Regulatory Authority. In addition, to qualify for this definition, the funds used by a proprietary trading firm must be exclusively firm funds, all trading must be in the firm’s accounts, and traders must be owners of, employees of, or contractors to the firm.

.02 Continuing Education Requirements [for Authorized Traders of Members]:

(a) No Member shall permit any Authorized Trader, Principal, Financial/Operations Principal or Options Principal (each a “Registered Representative”) to continue to, and no [Authorized Trader] Registered Representative shall continue to, perform duties as [an Authorized Trader] a Registered Representative on behalf of such Member, unless such person has complied with the continuing education requirements of this paragraph (a). Each [Authorized Trader] Registered Representative shall complete

the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the Rule.

(b) Unless otherwise determined by the Exchange, [Authorized Traders] Registered Representatives who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as [an Authorized Trader] a Registered Representative and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and satisfying applicable registration and qualification requirements of the Exchange's Rules. The Exchange may, upon application and a showing of good cause, allow for additional time for [an Authorized Trader] a Registered Representative to satisfy the program requirements.

(c) Unless otherwise determined by the Exchange, [an Authorized Trader] a Registered Representative will be required to retake the Regulatory Element and satisfy all of its requirements in the event such person:

(1) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act,

(2) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding, or

(3) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency or securities self-regulatory organization.

The retaking of the Regulatory Element shall commence with participation within 120 days of the [Authorized Trader] Registered Representative becoming subject to the statutory disqualification, in the case of (1) above, or the disciplinary action becoming final, in the case of (2) or (3) above. The date of the disciplinary action shall be treated as such person's base date for purposes of this Rule.

(d) Any [Authorized Trader] Registered Representative who has terminated association with a registered broker or dealer and who has, within two (2) years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element at such intervals that may apply (second anniversary and every three years thereafter) based on the initial registration anniversary date, rather than based on the date of reassociation in a registered capacity.

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Rule 17.2. Requirements for Options Participation

(a) – (f) (No changes.)

(g) Options Principal.

(1) – (3) (No changes.)

(4) Options Principals must comply with Exchange Rule 2.5, Interpretation and Policy .02, which requires completion of certain continuing education requirements. [Solely for purposes of Rule 2.5, Interpretation and Policy .02, an Options Principal shall be treated as an “Authorized Trader”.]

(5) – (8) (No changes.)

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on March 9, 2010. This action constitutes requisite approval under the Exchange’s By-Laws.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (913) 815-7000.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) Purpose

Exchange Rule 2.5 states that the Series 7 is required for registration with the Exchange as an Authorized Trader. The term “Authorized Trader” means “a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange’s trading facilities on behalf of his or her Member or Sponsored Participant. Accordingly, all traders that participate in the routing of orders to the Exchange, including proprietary traders, are required to be registered with the Exchange and Series 7 qualified. Further, the term Authorized Trader includes a trader that submits orders, or supervises a routing engine that automatically submits orders, to either the Exchange’s equities platform, options platform, or both.

The purpose of the proposed rule change is to expand the representative registration requirements applicable to each Member of the Exchange to ensure that Authorized Traders of Members are appropriately supervised and that the Exchange does not, through its rules, generate any gaps that permit a Member to operate differently than such Member would have to operate under the registration rules of other self-regulatory organizations. Specifically, the Exchange proposes to require each Member to register as representatives with the Exchange at least two Series 24 qualified Principals (subject to certain exceptions) to supervise such Member’s Authorized Traders and one Series 27 qualified principal to supervise the financial and operational activities of such Member. As amended, the proposed rule would require that each person designated as a Chief Compliance Officer on schedule A of Form BD register with the Exchange as a Series 24 qualified Principal.<sup>4</sup> The Exchange believes that requiring each Chief Compliance

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<sup>4</sup> The Exchange amended this portion of its rule following the original proposal in order to more closely mirror the rules of other self-regulatory organizations that

Officer to register with the Exchange as a Series 24 qualified Principal is appropriate based on the heightened level of responsibility inherent in the duty of overseeing compliance by an Exchange Member and because such personnel may supervise others engaged in those duties. The Exchange believes that the proposed rule change will help to make the Exchange's registration requirements more consistent with the registration requirements of other self-regulatory organizations. As noted above, in addition to consistency, the Exchange believes that the proposed rule will help to ensure that Authorized Traders of Members are appropriately supervised. The Exchange understands that other self-regulatory organizations that do not require registered principals to supervise certain activities are currently undertaking a similar rulemaking effort.

The Exchange has proposed certain exceptions to the general requirements that a Member register two Series 24 qualified Principals and one Series 27 qualified Financial/Operations Principal. With respect to the two Principal requirement, the Exchange proposes to exempt any Member that meets the proposed definition of a "proprietary trading firm" and has 25 or fewer Authorized Traders. Such Members, defined as Limited Size Proprietary Firms for purposes of the proposed Interpretation and Policy, are only required to maintain one Series 24 registered Principal. In addition, under the proposed Rule the Exchange may waive the requirement to register two Series

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require the Chief Compliance Officers of their members to be registered. See, e.g., NASDAQ Rule 1022(a); NASDAQ BX Rule 1022(a); FINRA Rule 1022(a); NYSE Arca Equities Rule 6.18(d). The amendment also deleted a definition of "customer" for purposes of proposed paragraph (g) that would have permitted a firm to have broker-dealer customers and still qualify as a "proprietary trading firm" for purpose of the rule.

24 qualified Principals if the Member can demonstrate that such waiver is warranted under the circumstances. The Exchange has proposed to define a proprietary trading firm as “a Member that trades its own capital, that does not have customers, and that is not a member of the Financial Industry Regulatory Authority.”<sup>5</sup> In addition, as proposed, the Rule states that funds used by a proprietary trading firm must be exclusively firm funds, that all trading must be in the firm’s accounts, and that traders must be owners of, employees of, or contractors to the firm. The Exchange believes that the proposed limited exception for a proprietary trading firm from the requirement to have at least two principals reflects the appropriate level of supervision for such a firm due to the fact that such a firm does not have customers and based on the fact that the exception only applies for firms with a relatively small number of traders. Furthermore, Members seeking an exception from the two principal requirement must be able to provide information to the Exchange that indicates conclusively that only one Principal associated with the Member should be required. The Exchange also has proposed the principal supervisory requirement, including this exception, in part, to achieve consistency with the requirements of another exchange with which it has many common members.<sup>6</sup>

With respect to the Financial/Operations Principal requirement, the Exchange may waive the requirement to register a Series 27 qualified Financial/Operations Principal if such registration is not required by the Member’s designated examining authority. The Exchange believes that all self-regulatory organizations require their member firms to employ or contract with a registered Series 27 qualified FINOP

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<sup>5</sup> See proposed BATS Rule 2.5, Interpretation and Policy .01(g).

<sup>6</sup> See NASDAQ Rule 1021(e).

responsible for ensuring compliance with applicable financial and operational requirements. Nonetheless, because a broker-dealer's designated examining authority is responsible for examining such broker-dealer for compliance with applicable financial responsibility rules, the Exchange does not want to create an additional requirement when not required (or waived in a specific circumstance) by a Member's designated examining authority.

Finally, any Member that conducts business on the Exchange as an Options Member is required by BATS Rules 17.1(b) and 17.2(g) to register an Options Principal with the Exchange who is responsible for that Member's options related activities on the Exchange. Accordingly, the proposed rule makes clear that paragraph (d) does not apply to a Member that solely conducts business on the Exchange as an Options Member, and thus, that such a Member is not also required to register Series 24 qualified Principals with the Exchange.

In addition to adopting the principal registration requirements described above, the Exchange proposes modifications to Interpretation and Policy .02, which currently requires Authorized Traders to complete continuing education requirements similar to those required by other national securities exchanges. Due to the addition of the principal registration requirements described above and the recent addition of an Options Principal requirement, the Exchange proposes to modify its continuing education rule to make clear that all Authorized Traders, Principals, Financial/Operations Principals and Options Principals (collectively "Registered Representatives") are subject to continuing education requirements in order to maintain their registrations with the Exchange. Because the text would then become unnecessary, the Exchange also proposes to delete language from

BATS Rule 17.2(g)(4) that currently makes clear that an Options Principal is subject to continuing education requirements.

Although the Exchange believes that most of its Members will be in position to quickly register Principals and Financial/Operations Principals with the Exchange due to the rules of other self-regulatory organizations to which such Members belong, it has proposed a compliance date of September 30, 2010. The Exchange believes that such date will provide its Members with adequate time to the extent additional personnel must pass qualification examinations in order for their Member firms to be compliant with the proposed Rules.

(b) Statutory Basis

The rule change proposed in this submission 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) of the Act.<sup>7</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it 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 adopting rules requiring supervisory principals to pass qualification examinations and maintain their registrations in a manner consistent with the requirements of other self-regulatory organizations.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

The proposed change is also consistent with Section 6(c)(3)(B) of the Act,<sup>9</sup> since under that section it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange Members. In addition, the Exchange has authority under Section 6(c)(3)(B) of the Act,<sup>10</sup> to bar a natural person from becoming a Member or person associated with a Member, if the person does not meet the standards of training, experience and competence as are prescribed in the rules of the Exchange.

4. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has responded separately to the single comment letter that it received on its original proposal.<sup>11</sup> The Exchange, however, believes that the main question raised by the comment letter relates to registration rules that have been part of the Exchange's rules since it was approved to operate as a national securities exchange rather than something germane to the proposed rule change. Accordingly, in the interest of requiring supervisory principals to register with the Exchange for each of the Exchange's members, the Exchange has not modified its proposal based on the comment letter.

6. Extension of Time Period for Commission Action

Not applicable.

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<sup>9</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>10</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>11</sup> See Letter to Elizabeth M. Murphy, Secretary, from Joan C. Conley, Senior Vice President and Corporate Secretary, NASDAQ OMX (May 20, 2010).

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

As noted above, the Exchange has based the proposed rule changes on the rules of other self-regulatory organizations. The basis for each change is described below.

First, Rule 2.5, Interpretation and Policy .01(d) has been based on NASDAQ Rule 1021(e). Proposed BATS Rule 2.5, Interpretation and Policy .01(d) requires each Member to have two registered principals who have passed the Series 24 examination, unless an exception applies. Similarly, NASDAQ Rule 1021(e) requires that each NASDAQ member have two registered principals. Both the proposed BATS Rule and NASDAQ Rule 1021(e) contain exceptions for sole proprietorships and proprietary trading firms with fewer than 25 registered representatives. The proposed definition of “proprietary trading firm” contained in the proposed BATS Rule is also based on a NASDAQ rule, specifically Rule 6951(n). In addition, both the proposed BATS Rule and NASDAQ Rule 1021(e) provide the applicable exchange with the ability to waive the two principal requirement based on the facts of a particular situation. The Exchange has also proposed language in Rule 2.5, Interpretation and Policy .01(d) that mirrors language contained in NASDAQ Rule 1022(a) and requires each person designated as a Chief Compliance Officer on Schedule A of Form BD to register with the Exchange as a Principal.

Second, Rule 2.5, Interpretation and Policy .01(e) and (f) have been based on NYSE Arca Equities Rule 4.5 (“Arca Rule 4.5”). The Exchange has omitted and modified portions of Arca Rule 4.5 in order to make the proposed rule consistent with

other BATS Rules (*e.g.*, Rule 2.5, Interpretation and Policy .01(c)). However, as it relates to the imposition of the requirement to register with the Exchange a Financial/Operations Principal, the Exchange has largely adopted Arca Rule 4.5. The main substantive difference between the Exchange's proposed rule and Arca Rule 4.5 is that the Exchange proposes permitting a Member to register a Financial/Operations Principal with the Exchange who is not a full-time employee of such Member without the approval of the Exchange. This is because the Exchange is not currently the designated examining authority for any of its Members and requires all of its Members to be a member of at least one other national securities association or national securities exchange.<sup>12</sup> As such, the Exchange does not wish to create an additional approval process for a Member if the equivalent Financial/Operations Principal requirement of the Member's designated examining authority has already been satisfied. For the same reason, the Exchange has proposed language that permits the Exchange to waive the requirement to register a Financial/Operations Principal if a Member's designated examining authority does not require such registration.

Finally, the changes to Rule 2.5, Interpretation and Policy .02 have been based on NASDAQ Rule 1120. Specifically, both NASDAQ Rule 1120 and proposed BATS Rule 2.5, Interpretation and Policy .02 apply continuing education requirements to all persons registered with a member, not just one specific class of registered representative as does current BATS Rule 2.5, Interpretation and Policy .02.

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<sup>12</sup> See BATS Rule 2.3.

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 4: Comparison of Rule Language proposed in Amendment 1 with that proposed in the original filing.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BATS-2010-008)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend BATS Rules 2.5 and 17.2 applicable to Registration Requirements.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 30, 2010, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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 substantially prepared by the Exchange. The original proposal was filed on April 9, 2010,<sup>3</sup> and amended on June 30, 2010. 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 BATS Rule 2.5, entitled “Restrictions,” to require each Exchange Member to register with the Exchange: (i) at least two principals to supervise Authorized Traders of the Member (subject to certain exceptions), one of whom must be the Member’s Chief Compliance Officer, and (ii) at least one financial and operations principal. The Exchange also proposes a technical amendment to BATS Rule 17.2(g)(4) to eliminate language that becomes unnecessary due to the changes to BATS Rule 2.5.

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

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

<sup>3</sup>

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

Exchange Rule 2.5 states that the Series 7 is required for registration with the Exchange as an Authorized Trader. The term "Authorized Trader" means "a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange's trading facilities on behalf of his or her Member or Sponsored Participant. Accordingly, all traders that participate in the routing of orders to the Exchange, including proprietary traders, are required to be registered with the Exchange and Series 7 qualified. Further, the term Authorized Trader includes a trader that submits orders, or supervises a routing engine that automatically submits orders, to either the Exchange's equities platform, options platform, or both.

The purpose of the proposed rule change is to expand the representative registration requirements applicable to each Member of the Exchange to ensure that Authorized Traders of Members are appropriately supervised and that the Exchange does

not, through its rules, generate any gaps that permit a Member to operate differently than such Member would have to operate under the registration rules of other self-regulatory organizations. Specifically, the Exchange proposes to require each Member to register as representatives with the Exchange at least two Series 24 qualified Principals (subject to certain exceptions) to supervise such Member's Authorized Traders and one Series 27 qualified principal to supervise the financial and operational activities of such Member. As amended, the proposed rule would require that each person designated as a Chief Compliance Officer on schedule A of Form BD register with the Exchange as a Series 24 qualified Principal.<sup>4</sup> The Exchange believes that requiring each Chief Compliance Officer to register with the Exchange as a Series 24 qualified Principal is appropriate based on the heightened level of responsibility inherent in the duty of overseeing compliance by an Exchange Member and because such personnel may supervise others engaged in those duties. The Exchange believes that the proposed rule change will help to make the Exchange's registration requirements more consistent with the registration requirements of other self-regulatory organizations. As noted above, in addition to consistency, the Exchange believes that the proposed rule will help to ensure that Authorized Traders of Members are appropriately supervised. The Exchange understands that other self-regulatory organizations that do not require registered

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<sup>4</sup> The Exchange amended this portion of its rule following the original proposal in order to more closely mirror the rules of other self-regulatory organizations that require the Chief Compliance Officers of their members to be registered. See, e.g., NASDAQ Rule 1022(a); NASDAQ BX Rule 1022(a); FINRA Rule 1022(a); NYSE Arca Equities Rule 6.18(d). The amendment also deleted a definition of "customer" for purposes of proposed paragraph (g) that would have permitted a firm to have broker-dealer customers and still qualify as a "proprietary trading firm" for purpose of the rule.

principals to supervise certain activities are currently undertaking a similar rulemaking effort.

The Exchange has proposed certain exceptions to the general requirements that a Member register two Series 24 qualified Principals and one Series 27 qualified Financial/Operations Principal. With respect to the two Principal requirement, the Exchange proposes to exempt any Member that meets the proposed definition of a “proprietary trading firm” and has 25 or fewer Authorized Traders. Such Members, defined as Limited Size Proprietary Firms for purposes of the proposed Interpretation and Policy, are only required to maintain one Series 24 registered Principal. In addition, under the proposed Rule the Exchange may waive the requirement to register two Series 24 qualified Principals if the Member can demonstrate that such waiver is warranted under the circumstances. The Exchange has proposed to define a proprietary trading firm as “a Member that trades its own capital, that does not have customers, and that is not a member of the Financial Industry Regulatory Authority.”<sup>5</sup> In addition, as proposed, the Rule states that funds used by a proprietary trading firm must be exclusively firm funds, that all trading must be in the firm’s accounts, and that traders must be owners of, employees of, or contractors to the firm. The Exchange believes that the proposed limited exception for a proprietary trading firm from the requirement to have at least two principals reflects the appropriate level of supervision for such a firm due to the fact that such a firm does not have customers and based on the fact that the exception only applies for firms with a relatively small number of traders. Furthermore, Members seeking an exception from the two principal requirement must be able to provide information to the

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<sup>5</sup> See proposed BATS Rule 2.5, Interpretation and Policy .01(g).

Exchange that indicates conclusively that only one Principal associated with the Member should be required. The Exchange also has proposed the principal supervisory requirement, including this exception, in part, to achieve consistency with the requirements of another exchange with which it has many common members.<sup>6</sup>

With respect to the Financial/Operations Principal requirement, the Exchange may waive the requirement to register a Series 27 qualified Financial/Operations Principal if such registration is not required by the Member's designated examining authority. The Exchange believes that all self-regulatory organizations require their member firms to employ or contract with a registered Series 27 qualified FINOP responsible for ensuring compliance with applicable financial and operational requirements. Nonetheless, because a broker-dealer's designated examining authority is responsible for examining such broker-dealer for compliance with applicable financial responsibility rules, the Exchange does not want to create an additional requirement when not required (or waived in a specific circumstance) by a Member's designated examining authority.

Finally, any Member that conducts business on the Exchange as an Options Member is required by BATS Rules 17.1(b) and 17.2(g) to register an Options Principal with the Exchange who is responsible for that Member's options related activities on the Exchange. Accordingly, the proposed rule makes clear that paragraph (d) does not apply to a Member that solely conducts business on the Exchange as an Options Member, and thus, that such a Member is not also required to register Series 24 qualified Principals with the Exchange.

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<sup>6</sup> See NASDAQ Rule 1021(e).

In addition to adopting the principal registration requirements described above, the Exchange proposes modifications to Interpretation and Policy .02, which currently requires Authorized Traders to complete continuing education requirements similar to those required by other national securities exchanges. Due to the addition of the principal registration requirements described above and the recent addition of an Options Principal requirement, the Exchange proposes to modify its continuing education rule to make clear that all Authorized Traders, Principals, Financial/Operations Principals and Options Principals (collectively “Registered Representatives”) are subject to continuing education requirements in order to maintain their registrations with the Exchange. Because the text would then become unnecessary, the Exchange also proposes to delete language from BATS Rule 17.2(g)(4) that currently makes clear that an Options Principal is subject to continuing education requirements.

Although the Exchange believes that most of its Members will be in position to quickly register Principals and Financial/Operations Principals with the Exchange due to the rules of other self-regulatory organizations to which such Members belong, it has proposed a compliance date of September 30, 2010. The Exchange believes that such date will provide its Members with adequate time to the extent additional personnel must pass qualification examinations in order for their Member firms to be compliant with the proposed Rules.

## 2. Statutory Basis

The rule change proposed in this submission 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) of the Act.<sup>7</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it 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 adopting rules requiring supervisory principals to pass qualification examinations and maintain their registrations in a manner consistent with the requirements of other self-regulatory organizations.

The proposed change is also consistent with Section 6(c)(3)(B) of the Act,<sup>9</sup> since under that section it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange Members. In addition, the Exchange has authority under Section 6(c)(3)(B) of the Act,<sup>10</sup> to bar a natural person from becoming a Member or person associated with a Member, if the person does not meet the standards of training, experience and competence as are prescribed in the rules of the Exchange.

(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.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>10</sup> 15 U.S.C. 78f(c)(3)(B).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has responded separately to the single comment letter that it received on its original proposal.<sup>11</sup> The Exchange, however, believes that the main question raised by the comment letter relates to registration rules that have been part of the Exchange's rules since it was approved to operate as a national securities exchange rather than something germane to the proposed rule change. Accordingly, in the interest of requiring supervisory principals to register with the Exchange for each of the Exchange's members the Exchange has not modified its proposal based on the comment letter.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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<sup>11</sup> See Letter to Elizabeth M. Murphy, Secretary, from Joan C. Conley, Senior Vice President and Corporate Secretary, NASDAQ OMX (May 20, 2010).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR-BATS-2010-008 on the subject line.

##### Paper Comments:

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

All submissions should refer to File No. SR-BATS-2010-008. 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 changes 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. 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 No. SR-BATS-2010-008 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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

**EXHIBIT 4**

This document compares the rule language proposed in the original filing with that proposed in Amendment 1. Deletions from the original text are in ~~strike~~through; additions are double-underlined.

**Rule 2.5. Restrictions**

(a) – (e) (No changes.)

*Interpretations and Policies***.01 Proficiency Examinations:**

(a) – (c) (No changes.)

(d) ~~Unless a Member solely conducts business on the Exchange as an Options Member, the~~The Exchange requires each Member other than a sole proprietorship or a proprietary trading firm with 25 or fewer Authorized Traders (“Limited Size Proprietary Firm”) to register at least two Principals with the Exchange. A Limited Size Proprietary Firm is required to register at least one Principal with the Exchange. In addition, the Exchange may waive the two Principal requirement in situations that indicate conclusively that only one Principal associated with the Member should be required. For purposes of this paragraph (d), a “Principal” shall be any individual responsible for supervising the activities of a Member’s Authorized Traders and each person designated as a Chief Compliance Officer on Schedule A of Form BD. This paragraph (d) shall not apply to a Member that solely conducts business on the Exchange as an Options Member, however, Options Members must comply with the registration requirements set forth in Rule 17.2(g). Each Principal is required to successfully complete the General Securities Principal Examination (“Series 24”). The Exchange uses Form U4 as part of its procedure for registration and oversight of Member personnel.

(e) Each Member subject to Exchange Act Rule 15c3-1 shall designate a Financial/Operations Principal. The duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the Member complies with applicable financial and operational requirements under Exchange Rules and the Exchange Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. Each Financial/Operations Principal is required to successfully complete the Financial and Operations Principal Examination (“Series 27”). The Exchange uses Form U4 as part of its procedure for registration and oversight of Member personnel. A Financial/Operations Principal of a Member may be a full-time employee of the Member or may be a part-time employee or independent contractor of the Member. The Exchange may waive the requirements of this paragraph (e) if a Member has satisfied the financial and operational requirements of its designated examining authority applicable to registration.

(f) All Members shall be in compliance with paragraphs (d) and (e) of this Interpretation and Policy .01 Rule by September 30, 2010.

(g) For purposes of paragraph (d) above, a “proprietary trading firm” shall mean a Member that trades its own capital, that does not have customers, and that is not a member of the Financial Industry Regulatory Authority. In addition, to qualify for this definition, the funds used by a proprietary trading firm must be exclusively firm funds, all trading must be in the firm’s accounts, and traders must be owners of, employees of, or contractors to the firm.

(h) For purposes of paragraph (g) above, a “customer” shall not include a broker or dealer.

.02 Continuing Education Requirements [for Authorized Traders of Members]:

(a) No Member shall permit any Authorized Trader, Principal, Financial/Operations Principal or Options Principal (each a “Registered Representative”) to continue to, and no [Authorized Trader] Registered Representative shall continue to, perform duties as [an Authorized Trader] a Registered Representative on behalf of such Member, unless such person has complied with the continuing education requirements of this paragraph (a). Each [Authorized Trader] Registered Representative shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person’s registration anniversary date. A person’s initial registration date, also known as the “base date,” shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the Rule.

(b) Unless otherwise determined by the Exchange, [Authorized Traders] Registered Representatives who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as [an Authorized Trader] a Registered Representative and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and satisfying applicable registration and qualification requirements of the Exchange’s Rules. The Exchange may, upon application and a showing of good cause, allow for additional time for [an Authorized Trader] a Registered Representative to satisfy the program requirements.

(c) Unless otherwise determined by the Exchange, [an Authorized Trader] a Registered Representative will be required to retake the Regulatory Element and satisfy all of its requirements in the event such person:

(1) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act,

(2) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding, or

(3) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency or securities self-regulatory organization.

The retaking of the Regulatory Element shall commence with participation within 120 days of the [Authorized Trader] Registered Representative becoming subject to the statutory disqualification, in the case of (1) above, or the disciplinary action becoming final, in the case of (2) or (3) above. The date of the disciplinary action shall be treated as such person's base date for purposes of this Rule.

(d) Any [Authorized Trader] Registered Representative who has terminated association with a registered broker or dealer and who has, within two (2) years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element at such intervals that may apply (second anniversary and every three years thereafter) based on the initial registration anniversary date, rather than based on the date of reassociation in a registered capacity.

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#### Rule 17.2. Requirements for Options Participation

(a) – (f) (No changes.)

(g) Options Principal.

(1) – (3) (No changes.)

(4) Options Principals must comply with Exchange Rule 2.5, Interpretation and Policy .02, which requires completion of certain continuing education requirements. [Solely for purposes of Rule 2.5, Interpretation and Policy .02, an Options Principal shall be treated as an "Authorized Trader".]

(5) – (8) (No changes.)

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