



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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**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” or the “Exchange 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 rule change to amend BATS Rule 19.5, entitled “Minimum Participation Requirement for Opening Trading of Option Series.” The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>3</sup> The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>4</sup> If such waiver is granted by the Commission, the Exchange shall implement this rule proposal immediately.

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

\* \* \* \* \*

CHAPTER XIX. SECURITIES TRADED ON BATS OPTIONS

\* \* \* \* \*

Rule 19.5. (Reserved.)[Minimum Participation Requirement for Opening Trading of Option Series

(a) After a particular class of options has been approved for listing on BATS Options by the Exchange, the Exchange will open trading in series of options in that class only if there is at least one Options Market Maker registered for trading that particular series.

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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> 17 CFR 240.19b-4(f)(6)(iii).

<sup>4</sup> Id.

(b) If a particular class of options has been approved for listing on BATS Options and there is not at least one series of options in that class open for trading, the listing shall be placed in a non-regulatory suspension until such time as a series of options in that class may be opened. In such circumstances, BATS Options will not execute orders on the BATS Options Book, and will not accept inbound orders from away markets. BATS Options will continue to accept and route member orders that are designated for routing and execution at the best price in away markets.

(c) If after the Exchange opened trading in a series of options, the sole Options Market Maker withdraws its registration, the Exchange will place that options series in a nonregulatory execution suspension until such time as a BATS Options Member registers to make markets in that series. In such circumstances, BATS Options will not execute orders on the BATS Options Book, and will not accept inbound orders from away markets. BATS Options will continue to accept and route member orders that are designated for routing and execution at the best price in away markets.]

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on November 10, 2009. Exchange staff will advise the BATS Exchange Board of Directors of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

The Exchange is proposing the elimination of a requirement that at least one Options Market Maker be registered for trading a particular series before it may be opened for trading on BATS Options.

An Options Market Maker is an Options Member<sup>5</sup> registered with the Exchange as a Market Maker.<sup>6</sup> Options Market Makers on BATS Options have certain obligations such as maintaining two-sided markets and participating in transactions that are “reasonably calculated to contribute to the maintenance of a fair and orderly market.”<sup>7</sup> To register as an Options Market Maker, an Options Member must file a written application with the Exchange, which will consider an applicant’s market making ability and other factors it deems appropriate in determining whether to approve an applicant’s registration.<sup>8</sup> All Options Market Makers are designated as specialists on BATS Options for all purposes under the Act or rules thereunder.<sup>9</sup> The BATS Options Rules place no limit on the number of qualifying entities that may become Options Market Makers.<sup>10</sup> The good standing of an Options Market Maker may be suspended, terminated, or withdrawn if the conditions for approval cease to be maintained or the Options Market Maker violates any of its agreements with the Exchange or any provisions of the BATS

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<sup>5</sup> The term “Options Member” means a firm, or organization that is registered with the Exchange pursuant to Chapter XVII of the Exchange’s rules for purposes of participating in options trading on BATS Options as an “Options Order Entry Firm” or “Options Market Maker.”

<sup>6</sup> See Exchange Rule 22.2.

<sup>7</sup> See Exchange Rule 22.5(a).

<sup>8</sup> See Exchange Rule 22.2(a).

<sup>9</sup> See Exchange Rule 22.2.

<sup>10</sup> See Exchange Rule 22.2(c).

Options Rules.<sup>11</sup> An Options Member that has qualified as an Options Market Maker may register to make markets in individual series of options.<sup>12</sup>

Currently Exchange Rule 19.5 provides in relevant part that after a particular class of options has been approved for listing on BATS Options, the Exchange will allow trading in series of options in that class only if there is at least one Options Market Maker registered for trading that particular series. The Exchange is proposing to eliminate this requirement in order to expand the number of series available to investors for trading and for hedging risks associated with securities underlying those options, as well as to enhance markets in products which are likely to receive customer order flow. The Exchange believes that eliminating the listing requirement to have an Options Market Maker in every series would permit Options Market Makers, who currently may choose to serve as Options Market Makers solely to permit an options to trade on BATS Options, to focus their expertise on the products that are more consistent with their business objectives or more likely to receive customer order flow.

Eliminating the Options Market Maker listing requirement would provide the Exchange the opportunity to trade options that may have occasional interest but that do not necessarily require a two-sided market at all times. The lack of a two-sided market would not cause customer orders to receive prices inferior to the best prices available across all exchanges. BATS Options is designed to systematically avoid trading through protected quotations on other options exchanges, and as such, orders accepted into BATS Options in options that do not have Options Market Makers will not trade at inferior

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<sup>11</sup> See Exchange Rule 22.4(b).

<sup>12</sup> See Exchange Rule 22.3(a).

prices even if there is not a two-sided market on BATS Options. As a result, incoming orders are protected from receiving inferior execution prices simply by the fact that there is robust quote competition in the exchange-listed options business with eight competing options exchanges and a multitude of competing Market Makers and liquidity providers. Additionally, the Options Order Protection and Locked/Crossed Market Plan requires plan participants to “establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that participant’s market in Eligible Options Classes.”<sup>13</sup> With the implementation of this plan, a robust network of private routing has been constructed that ensures routable customer orders can access the best prevailing prices in the market.

Moreover, the Commission recently approved the proposed rule change filing of the NASDAQ Options Market (“NOM”), which has rules that are substantially similar to the Exchange’s, in which NOM eliminated the requirements for having at least one Options Market Maker registered for trading in a particular series before it may be opened for trading on NOM.<sup>14</sup> In its recent approval order for NOM’s identical rule change the Commission cited certain findings that it made in its earlier approval of NOM, including that “the Act does not mandate a particular market model for national securities exchanges” and that “many different types of market models could satisfy the

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<sup>13</sup> See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) (approval order for the Protection and Locked/Crossed Plan); see also Securities Exchange Act Release No 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (File No. SR-BATS-2009-031) (approval order of BATS Options rules, including rules governing participation in Protection and Locked/Crossed Plan).

<sup>14</sup> See Securities Exchange Act Release No. 61735 (March 18, 2010), 75 FR 14227 (March 24, 2010) (File No. SR-NASDAQ-2010-007).

requirements of the Act”.<sup>15</sup> The Commission stated that it does not believe that the Act requires an exchange to have Market Makers.<sup>16</sup> The Commission also noted that in the context of approving NOM, it had previously stated that although Options Market Makers could be an important source of liquidity on NOM, they likely would not be the only source.<sup>17</sup> The Exchange notes that the NOM System operates in a substantially similar manner to the Exchange’s System, and is designed to match buying and selling interest of all participants on the Exchange. The Exchange is proposing simply to remove the Options Market Maker participation requirement as superfluous to the existence of a vibrant options market, nevertheless acknowledging the value Options Market Makers provide to the Exchange.

With regard to the impact on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

The Exchange also proposes to delete paragraph (b) of Rule 19.5, which states that a class of options will be put into a non-regulatory halt if at least one series for that class is not open for trading. Originally, this provision was put in place so that the

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<sup>15</sup> Id. (citing Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521, 14527 (March 18, 2008) (File No. SR-NASDAQ-2007-004) (“NOM Approval Order”).

<sup>16</sup> As the Commission noted in its approval order for the NOM filing, in its release adopting Regulation ATS, the Commission rejected the suggestion that a guaranteed source of liquidity was a necessary component of an exchange. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (“Regulation ATS Release”).

<sup>17</sup> See NOM Approval Order, supra note 15, at 14527.

Exchange could approve underlying securities for the listing of options but delay the listing if the Options Market Makers on the Exchange were not yet ready to register in any series of options for that class. With the elimination of the other paragraphs in Rule 19.5 requiring an Options Market Maker, the Exchange will no longer need to delay the listings of particular series and thus will no longer need this provision.

Finally, the Exchange proposes to delete paragraph (c) of Rule 19.5, which addresses the situation where a series of options only has one Options Market Maker that then withdraws its registration. Based on the proposed change described above, this provision is no longer necessary.

(b) Statutory Basis

Approval of 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>18</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>19</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. Specifically, the Exchange believes that the proposed amendment would expand the ability of investors to trade options and hedge risks associated with securities underlying options which are not currently listed due to the lack of an Options Market Maker registration in such options series.

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>20</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>21</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.<sup>22</sup>

Lastly, the Exchange's proposed rule change is based on the identical proposed rule

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4.

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

change submitted by NOM, which was approved by the Commission.<sup>23</sup> Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>24</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>25</sup>

The Exchange respectfully requests that the Commission waive the 30-day pre-operative delay so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act<sup>26</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>27</sup> Waiver of this requirement, specified in Rule 19b-4(f)(6),<sup>28</sup> will allow the Exchange to immediately expand the number of series available for trading, and thus, will permit the Exchange to remain competitive with NOM, which as described above has recently eliminated the requirement to maintain at least one market maker in each options series traded on NOM. Expansion of the number of series available for trading will also enable the Exchange to compete with other established options markets. In addition, waiver of the pre-operative delay will expand the ability of investors to hedge risks associated with securities underlying those options, and will enhance markets in products which are likely to receive customer order flow. The Exchange has already put in place technological changes to support the proposed rule change, and believes that benefits to Exchange Users expected from the proposed

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<sup>23</sup> See Securities Exchange Act Release No. 61735 (March 18, 2010), 75 FR 14227 (March 24, 2010) (File No. SR-NASDAQ-2010-007) (order approving NOM's deletion of rule requiring that one market maker be registered for trading a particular series before it is opened for trading).

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4.

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>27</sup> 17 CFR 240.19b-4(f)(6).

<sup>28</sup> Id.

rule change should not be delayed. Waiver of the 30-day pre-operative delay is consistent with the protection of investors and the public interest for the reasons described above.

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

Not applicable.

9. Exhibits

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

Exhibit 2 – 5: Not applicable.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-BATS-2010-013

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 19.5, entitled “Minimum Participation Requirement for Opening Trading of Option Series.”

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 May 13, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 19.5, entitled “Minimum Participation Requirement for Opening Trading of Option Series.”

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.

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

The Exchange is proposing the elimination of a requirement that at least one Options Market Maker be registered for trading a particular series before it may be opened for trading on BATS Options.

An Options Market Maker is an Options Member<sup>5</sup> registered with the Exchange as a Market Maker.<sup>6</sup> Options Market Makers on BATS Options have certain obligations such as maintaining two-sided markets and participating in transactions that are “reasonably calculated to contribute to the maintenance of a fair and orderly market.”<sup>7</sup> To register as an Options Market Maker, an Options Member must file a written application with the Exchange, which will consider an applicant's market making ability and other factors it deems appropriate in determining whether to approve an applicant's

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<sup>5</sup> The term “Options Member” means a firm, or organization that is registered with the Exchange pursuant to Chapter XVII of the Exchange's rules for purposes of participating in options trading on BATS Options as an “Options Order Entry Firm” or “Options Market Maker.”

<sup>6</sup> See Exchange Rule 22.2.

<sup>7</sup> See Exchange Rule 22.5(a).

registration.<sup>8</sup> All Options Market Makers are designated as specialists on BATS Options for all purposes under the Act or rules thereunder.<sup>9</sup> The BATS Options Rules place no limit on the number of qualifying entities that may become Options Market Makers.<sup>10</sup> The good standing of an Options Market Maker may be suspended, terminated, or withdrawn if the conditions for approval cease to be maintained or the Options Market Maker violates any of its agreements with the Exchange or any provisions of the BATS Options Rules.<sup>11</sup> An Options Member that has qualified as an Options Market Maker may register to make markets in individual series of options.<sup>12</sup>

Currently Exchange Rule 19.5 provides in relevant part that after a particular class of options has been approved for listing on BATS Options, the Exchange will allow trading in series of options in that class only if there is at least one Options Market Maker registered for trading that particular series. The Exchange is proposing to eliminate this requirement in order to expand the number of series available to investors for trading and for hedging risks associated with securities underlying those options, as well as to enhance markets in products which are likely to receive customer order flow. The Exchange believes that eliminating the listing requirement to have an Options Market Maker in every series would permit Options Market Makers, who currently may choose to serve as Options Market Makers solely to permit an options to trade on BATS Options,

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<sup>8</sup> See Exchange Rule 22.2(a).

<sup>9</sup> See Exchange Rule 22.2.

<sup>10</sup> See Exchange Rule 22.2(c).

<sup>11</sup> See Exchange Rule 22.4(b).

<sup>12</sup> See Exchange Rule 22.3(a).

to focus their expertise on the products that are more consistent with their business objectives or more likely to receive customer order flow.

Eliminating the Options Market Maker listing requirement would provide the Exchange the opportunity to trade options that may have occasional interest but that do not necessarily require a two-sided market at all times. The lack of a two-sided market would not cause customer orders to receive prices inferior to the best prices available across all exchanges. BATS Options is designed to systematically avoid trading through protected quotations on other options exchanges, and as such, orders accepted into BATS Options in options that do not have Options Market Makers will not trade at inferior prices even if there is not a two-sided market on BATS Options. As a result, incoming orders are protected from receiving inferior execution prices simply by the fact that there is robust quote competition in the exchange-listed options business with eight competing options exchanges and a multitude of competing Market Makers and liquidity providers. Additionally, the Options Order Protection and Locked/Crossed Market Plan requires plan participants to “establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that participant’s market in Eligible Options Classes.”<sup>13</sup> With the implementation of this plan, a robust network of private routing has been constructed that ensures routable customer orders can access the best prevailing prices in the market.

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<sup>13</sup> See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) (approval order for the Protection and Locked/Crossed Plan); see also Securities Exchange Act Release No 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (File No. SR-BATS-2009-031) (approval order of BATS Options rules, including rules governing participation in Protection and Locked/Crossed Plan).

Moreover, the Commission recently approved the proposed rule change filing of the NASDAQ Options Market (“NOM”), which has rules that are substantially similar to the Exchange’s, in which NOM eliminated the requirements for having at least one Options Market Maker registered for trading in a particular series before it may be opened for trading on NOM.<sup>14</sup> In its recent approval order for NOM’s identical rule change the Commission cited certain findings that it made in its earlier approval of NOM, including that “the Act does not mandate a particular market model for national securities exchanges” and that “many different types of market models could satisfy the requirements of the Act”.<sup>15</sup> The Commission stated that it does not believe that the Act requires an exchange to have Market Makers.<sup>16</sup> The Commission also noted that in the context of approving NOM, it had previously stated that although Options Market Makers could be an important source of liquidity on NOM, they likely would not be the only source.<sup>17</sup> The Exchange notes that the NOM System operates in a substantially similar manner to the Exchange’s System, and is designed to match buying and selling interest of all participants on the Exchange. The Exchange is proposing simply to remove the Options Market Maker participation requirement as superfluous to the

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<sup>14</sup> See Securities Exchange Act Release No. 61735 (March 18, 2010), 75 FR 14227 (March 24, 2010) (File No. SR-NASDAQ-2010-007).

<sup>15</sup> Id. (citing Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521, 14527 (March 18, 2008) (File No. SR-NASDAQ-2007-004) (“NOM Approval Order”).

<sup>16</sup> As the Commission noted in its approval order for the NOM filing, in its release adopting Regulation ATS, the Commission rejected the suggestion that a guaranteed source of liquidity was a necessary component of an exchange. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (“Regulation ATS Release”).

<sup>17</sup> See NOM Approval Order, supra note 15, at 14527.

existence of a vibrant options market, nevertheless acknowledging the value Options Market Makers provide to the Exchange.

With regard to the impact on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

The Exchange also proposes to delete paragraph (b) of Rule 19.5, which states that a class of options will be put into a non-regulatory halt if at least one series for that class is not open for trading. Originally, this provision was put in place so that the Exchange could approve underlying securities for the listing of options but delay the listing if the Options Market Makers on the Exchange were not yet ready to register in any series of options for that class. With the elimination of the other paragraphs in Rule 19.5 requiring an Options Market Maker, the Exchange will no longer need to delay the listings of particular series and thus will no longer need this provision.

Finally, the Exchange proposes to delete paragraph (c) of Rule 19.5, which addresses the situation where a series of options only has one Options Market Maker that then withdraws its registration. Based on the proposed change described above, this provision is no longer necessary.

## 2. Statutory Basis

Approval of 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>18</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>19</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. Specifically, the Exchange believes that the proposed amendment would expand the ability of investors to trade options and hedge risks associated with securities underlying options which are not currently listed due to the lack of an Options Market Maker registration in such options series.

(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.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed,

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>20</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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-2010-013 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-2010-013. 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

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

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 Web site viewing and printing 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-2010-013 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>22</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).