

Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will further these purposes by restricting certain members and new member applicants from being able to associate with statutorily disqualified persons in light of the concerns to investor protection raised by such associations.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Within 45 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 or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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. Please include File Number SR-FINRA-2010-056 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 Number SR-FINRA-2010-056. 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 change 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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 Number SR-FINRA-2010-056 and should be submitted on or before December 13, 2010.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63322; File No. SR-BATS-2010-032]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a \$0.50 Strike Program

November 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on November 10, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("SEC" or "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 Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ 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 Rule 19.6 (Series of Options Contracts Open for Trading) to adopt a \$0.50 Strike Program consistent with analogous programs offered by other options exchanges.

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, on the Commission's Web site at <http://www.sec.gov>, 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

¹² 15 U.S.C. 78o-3(b)(6).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

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 purpose of this proposed rule change is to adopt a \$0.50 Strike Program for BATS Options in order to provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price. In addition to adoption of a \$0.50 Strike Program, the Exchange proposes to make minor modifications to its \$1 Strike Program.

The Exchange is proposing to establish strike price intervals of \$0.50, beginning at \$0.50 for certain options classes where the strike price is \$5.50 or less and whose underlying security closed at or below \$5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The Exchange also proposes to limit the listing of \$0.50 strike prices to options classes overlying no more than 20 individual stocks as specifically designated by the Exchange. In addition, the Exchange proposes to list \$0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$0.50 Strike Program under their respective rules.

The Exchange does not currently offer a \$0.50 Strike Program, but does offer a \$1 Strike Program. The proposal would provide \$0.50 strike offerings to market participants, such as traders and retail investors, and thereby enhance their ability to tailor investing and hedging strategies and opportunities in a volatile market place.

By way of example, if an investor wants to invest in 5,000 shares of Sirius Satellite ("SIRI") at \$ 0.9678,⁵ the only choice the investor would have today would be to buy out-of-the-money calls, at the \$1.00 strike, or to invest in the underlying stock with a total outlay of \$.96 per share or \$4,800. However, if a \$0.50 strike series were available, an investor may be able to invest in 5,000 shares by purchasing an exercisable in-the-money \$0.50 strike call option. It is reasonable to assume that with SIRI trading at \$.96, the \$0.50 strike call option would trade at an estimated price

of \$.46 to \$.48 under normal circumstances. This would allow the investor to manage 5,000 shares with the same upside potential return for a cost of only \$2,350 (assuming \$.47 as a call price).

Similarly, if an investor wanted to spend \$4,800 for 5,000 shares of SIRI, a \$0.50 put option that would trade for \$.01 to \$.05 would provide protection against a declining stock price in the event that SIRI dropped below \$0.50 per share. In a down market, where high volume widely held shares drop below \$1.00, investors deserve the opportunity to hedge downside risk in the same manner as investors have with stocks greater than \$1.00.

The proposal to allow \$0.50 strikes in stocks under \$5.00 will aid investors by offering opportunities to manage risk and execute a variety of option strategies to improve returns. For example, today an investor can enhance their yield by selling an out-of-the-money call. Using an example of an investor who wants to hedge Citigroup ("C") which is trading at \$4.24,⁶ that investor would be able to choose the \$4.50 strike which is 6% out-of-the-money or they would be able to choose the \$5.00 strike which is 17.92% out-of-the-money, under this proposal. Today, this investor only has the latter choice. Beyond that, this investor today may choose the \$6.00 strike which is 41% out-of-the-money and offers significantly less premium. Pursuant to this proposal if this investor had a choice to hedge with a \$5.50 strike option, the investor would have the opportunity to sell the option at only 29% out-of-the-money and would improve their return by gaining more premium, while also benefitting from 29% of upside return in the underlying equity.

Based on its experience with \$1 strike prices, the Exchange does not believe that \$0.50 strikes will have any impact on capacity. Further, the Exchange has observed the popularity of \$0.50 strikes on other exchanges. The open interest in the \$2.50 August strike series for Synovus Financial Corp. ("SNV"), which closed at \$2.71 on July 13, 2010, was 12,743 options; whereas open interest in the \$2 and \$3 August strike series was a combined 318 options. The open interest in the August \$1.50 strike series for Ambac Financial Group, Inc. ("ABK"), which closed at \$0.7490 on July 13, 2010, was 15,879 options compared to 8,174 options for the \$2 strike series. The August \$2.50 strike series had open interest of 22,280

options, also more than the traditional \$2 strike series.

By adopting a \$0.50 Strike Program investors would be able to better enhance returns and manage risk by providing investors with significantly greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment, trading and risk.

The Exchange also proposes making a corresponding amendment to Rule 19.6, Interpretation and Policy .02(b), which addresses listing series with \$1 intervals within \$0.50 of an existing strike price in the same series. Specifically, to account for the overlap with the \$0.50 Strike Program, the Exchange proposes to exclude the following series from this prohibition: Strike prices of \$2, \$3, \$4, \$5 and \$6 to account for the proposed \$0.50 Strike Program, which will allow strike prices of \$5.50.

Finally, the Exchange proposes making an amendment to Rule 19.6, Interpretation and Policy .02(a), to expand the Exchange's \$1 Strike Program. The \$1 Strike Program currently allows the Exchange to select a total of 55 individual stocks on which option series may be listed at \$1 strike price intervals. In order to be eligible for selection into the \$1 Strike Program, the underlying stock must close below \$50 in its primary market on the previous trading day. If selected for the \$1 Strike Program, the Exchange may list strike prices at \$1 intervals from \$1 to \$50, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list \$1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules. The Exchange now proposes to expand the \$1 Strike Program to allow the Exchange to select a total of 150 individual stocks on which option series may be listed at \$1 strike price intervals. The existing restrictions on listing \$1 strikes would continue, *i.e.*, no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day, and the Exchange is restricted from listing any series that would result in strike prices being \$0.50 apart (unless an option class is selected to participate in both the \$1 Strike Program and the \$0.50 Strike Program).

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and OPRA have the

⁵ SIRI was trading at \$0.9678 on July 13, 2010.

⁶ C was trading at \$4.24 on July 14, 2010.

necessary systems capacity to handle the potential additional traffic associated with the listing and trading of an expanded number of series in the \$1 Strike Program. The Exchange believes that the \$1 Strike Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, the Exchange requests an expansion of the current \$1 Strike Program and the opportunity to provide investors with additional strikes for investment, trading, and risk management purposes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that adopting the \$0.50 Strike Program will result in a benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. Investors would be provided with an opportunity to minimize losses associated with declining stock prices that do not exist today. With the increase in active, low-prices securities, the Exchange believes that adopting the \$0.50 Strike Program to allow a \$0.50 strike interval below \$1 for strike prices of \$5.50 or less is necessary to provide investor additional opportunity to minimize and manage risk. In addition, the Exchange believes that expanding the current \$1 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities.

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 significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.¹¹ Therefore, the Commission designates the proposal operative upon filing.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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,

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement in this case.

¹¹ See Securities Exchange Act Release No. 63132 (October 19, 2010), 75 FR 65541 (October 25, 2010) (SR-Phlx-2010-118) (order approving expansion of \$0.50 Strike Price Program). See also Securities Exchange Act Release No. 62420 (June 30, 2010), 75 FR 39593 (July 9, 2010) (SR-Phlx-2010-72) (order approving expansion of \$1 Strike Price Program).

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

including whether the proposed rule change 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. Please include File Number SR-BATS-2010-032 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 Number SR-BATS-2010-032. 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 change 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will 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 Number SR-BATS-2010-032 and should be submitted on or before December 13, 2010.

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

Florence E. Harmon,
Deputy Secretary.

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¹³ 17 CFR 200.30-3(a)(12).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).