

schedules, which must be filed annually; and (4) a facing page, which must be filed with the annual audited report of financial statements. Under the Rule, a broker or dealer that computes certain of its capital charges in accordance with Appendix E to Exchange Act Rule 15c3-1 (17 CFR 240.15c3-1) must file additional monthly, quarterly, and annual reports with the Commission.

The variation in the size and complexity of brokers and dealers subject to Rule 17a-5 and the differences in the FOCUS Report forms that must be filed under the Rule make it difficult to calculate the cost of compliance. However, we estimate that, on average, each report will require approximately 12 hours. At year-end 2008, the Commission estimates that there were approximately 5,190 brokers or dealers, and that of those firms there were approximately 530 brokers or dealers that clear transactions or carry customer securities. In addition, approximately 220 firms filed annual reports. The Commission therefore estimates that approximately 530 firms filed monthly reports, approximately 4,400 firms filed quarterly reports, and approximately 220 firms filed annual reports. In addition, approximately 5,190 firms filed annual audited reports. As a result, there were approximately 29,530 total annual responses ( $(530 \times 12) + (4,400 \times 4) + 220 + 5,190 = 29,370$ ). This results in an estimated annual burden of 354,360 hours ( $29,530$  annual responses  $\times 12$  hours = 354,360).

In addition, we estimate that approximately 11 brokers or dealers will elect to use Appendix E to Rule 15c3-1 to compute certain of their capital charges (as of October 2009, seven brokers or dealers have elected to use Appendix E). We estimate that the average amount of time necessary to prepare and file the additional monthly reports that must be filed by these firms is about 4 hours per month, or approximately 48 hours per year; the average amount of time necessary to prepare and file the additional quarterly reports is about 8 hours per quarter, or approximately 32 hours per year; and the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required is approximately 40 hours per year. Consequently, we estimate that the total additional annual burden for these 11 brokers or dealers is approximately 1,320 hours ( $(48 + 32 + 40) \times 11 = 1,320$ ).

The Commission therefore estimates that the total annual burden under Rule 17a-5 is approximately 353,800 hours

( $352,440 + 1,320 = 353,760$ , rounded to 353,800).

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: (i) [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: February 17, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

#### *Upon Written Request, Copies Available*

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

#### Extension:

Schedule 14D-9F; OMB Control No. 3235-0382; SEC File No. 270-339.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Schedule 14D-9F is used (17 CFR 240.14d-103) by any foreign private issuer incorporated or organized under the laws of Canada or any Canadian province or territory or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of securities filed on Schedule 14D-1F. The information required to be filed with the Commission is intended to permit verification of compliance with the securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. Schedule 14D-9F takes approximately 2 hours per response to

prepare and is filed by approximately 6 respondents annually for a total reporting burden of 12 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: February 18, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61534]

### Order Granting Application for Exemption Pursuant to Section 36(a) of the Exchange Act by BATS Exchange, Inc. From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

February 18, 2010.

BATS Exchange, Inc. ("BATS Exchange") has filed with the Securities and Exchange Commission ("Commission") an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> from the rule filing requirements of Section 19(b) of the Exchange Act<sup>2</sup> with respect to certain rules of another self-regulatory organization ("SRO") that BATS Exchange seeks to incorporate by reference. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or

<sup>1</sup> 15 U.S.C. 78mm(a)(1).

<sup>2</sup> 15 U.S.C. 78s(b).

rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

On January 26, 2010, the Commission approved new rules governing the trading of options on the BATS Exchange Options Market ("Options Rules").<sup>3</sup> Certain of the Options Rules incorporate by reference existing rules of the Chicago Board Options Exchange, Incorporated ("CBOE"), Financial Industry Regulatory Authority, Inc. ("FINRA"), formerly known as the National Association of Securities Dealers, Inc. ("NASD"),<sup>4</sup> and NYSE. Thus, for certain Options Rules, BATS Exchange members will comply with a BATS Exchange rule by complying with the CBOE, FINRA, or NYSE rule referenced therein.

BATS Exchange has requested, pursuant to Rule 0–12 under the Exchange Act,<sup>5</sup> that the Commission grant it an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Options Rules that are effected solely by virtue of a change to a cross-referenced CBOE, FINRA, or NYSE rule. Specifically, BATS Exchange requests that it be permitted to incorporate by reference changes made to each CBOE, FINRA, or NYSE rule (or series of rules) that is cross-referenced in BATS Exchange Rules 2.12, 18.7, 18.9, 26.16, 28.3, 29.5, and 29.7 without the need for BATS Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.<sup>6</sup> BATS Exchange proposes to incorporate by reference (1) CBOE rules governing position and exercise limits for equity and index options; (2) the margin rules of CBOE and the NYSE; (3) FINRA's rules governing communications with the public; and (4) FINRA's rule governing fidelity bonds, for members for which BATS Exchange is the Designated Examining Authority. BATS Exchange represents that the rules it has incorporated by reference into the Options Rules are categories of CBOE,

FINRA, or NYSE rules (rather than individual rules within a category) that are not trading rules. The Exchange has agreed to provide written notice to its members whenever CBOE, FINRA, or NYSE proposes a change to a cross-referenced CBOE, FINRA, or NYSE rule.<sup>7</sup>

The Commission has issued exemptions to other exchanges similar to BATS Exchange's request.<sup>8</sup> The Commission stated in 2004, when granting one such exemption, that it would consider similar future exemption requests from other SROs, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act;<sup>9</sup>

- An incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and

<sup>7</sup> *Id.* BATS Exchange states that it will provide this notice on its Web site where it posts its own proposed rule change filings within the same time frame required of its own filings pursuant to Rule 19b–4(l), 17 CFR 240.19b–4(l). *Id.* at note 8. In addition, BATS Exchange states that the posting will include a link to the location on CBOE, FINRA, or NYSE's Web site where the proposed rule change is posted. *Id.*

<sup>8</sup> For example, NYSE Amex LLC (formerly NYSE Alternext U.S., LLC), the International Securities Exchange, LLC ("ISE"), the Municipal Securities Rulemaking Board, and NASDAQ OMX PHLX, Inc. (formerly the Philadelphia Stock Exchange, Inc.) incorporate the FINRA Code of Arbitration Procedure, while the ISE, NYSE Arca, Inc., and the Boston Options Exchange, a facility of NASDAQ OMX BX, Inc. (formerly Boston Stock Exchange, Inc.), incorporate by reference the margin rules of NYSE and CBOE. See Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004). See also Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521, 14539–40 (March 18, 2008) (order approving SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) and 53128 (January 13, 2006), 71 FR 3550, 3565–66 (January 23, 2006) (File No. 10–131) (approving The NASDAQ Stock Market LLC's exchange application).

<sup>9</sup> See 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule).

- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.<sup>10</sup>

The Commission believes that BATS Exchange has satisfied each of these conditions.

The Commission also believes that granting BATS Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and BATS Exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.<sup>11</sup> The Commission therefore finds that it is necessary and appropriate in the public interest and consistent with the protection of investors to exempt BATS Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the rules it has incorporated by reference. This exemption is conditioned upon BATS Exchange providing written notice to its members whenever CBOE, FINRA, or NYSE proposes to change a rule that BATS Exchange has incorporated by reference.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act,<sup>12</sup> that BATS Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in its request that incorporate by reference certain rules of CBOE, FINRA, and NYSE,<sup>13</sup> provided that BATS Exchange provides written notice to its members whenever CBOE, FINRA, or NYSE proposes to change a rule that BATS Exchange has incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>3</sup> See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031).

<sup>4</sup> Although NASD is now known as FINRA, some rules in the FINRA rule book are still referred to as "NASD rules." FINRA is in the process of consolidating the member rules of the New York Stock Exchange, LLC ("NYSE") and NASD rules into a single rule book. For purposes of the FINRA rule book, harmonized rules are referred to as FINRA rules, while rules that originally were NASD rules, but have yet to be harmonized, are referred to as NASD rules.

<sup>5</sup> 17 CFR 240.0–12.

<sup>6</sup> See Letter from Eric Swanson, SVP, General Counsel, BATS Exchange, to Elizabeth M. Murphy, Secretary, Commission, dated January 20, 2010 ("BATS Exemptive Request").

<sup>10</sup> See Securities Exchange Act Release No. 49260, *supra* note 8.

<sup>11</sup> See *id.*, 69 FR at 8502.

<sup>12</sup> 15 U.S.C. 78mm.

<sup>13</sup> See BATS Exemptive Request, *supra* note 6.

<sup>14</sup> 17 CFR 200.30–3(a)(76).