

of Mr. William Horvitz's son, such step-children's spouses and their children, one of Mr. William Horvitz's brothers, such brother's spouse, his two children and four grandchildren, and the spouses of these children and grandchildren (collectively, the "Horvitz Family" or "Family").

2. Applicant provides services exclusively to: (i) The members of the Horvitz Family; (ii) private charitable foundations established exclusively by members of the Horvitz Family ("Private Foundations"); (iii) trusts that exist exclusively for the benefit of members of the Horvitz Family and Private Foundations ("Family Trusts"); (iv) pooled investment vehicles that have been created exclusively for the benefit of, and are wholly owned by, Family members, Family Trusts, or Private Foundations ("Family Investment Entities"), except that certain key employees, as described below, are permitted to invest in these Family Investment Entities; and (v) solely for the purpose of investing in the Family Investment Entities, several executive level employees of the Applicant who have significant involvement with the investment advisory process ("Key Employees") or revocable trusts established for the benefit of Key Employees ("Key Employee Trusts"). The members of the Horvitz Family, the Private Foundations, the Family Trusts, the Family Investment Entities, and solely with respect to investments in Family Investment Entities, the Key Employees and the Key Employee Trusts, are referred to collectively as the "Family Clients."

3. Applicant provides both advisory services and non-advisory services to Family Clients, which include asset allocation advice, investment due diligence, recordkeeping assistance, federal and state tax advice, and coordination of professional relationships with accountants, attorneys and unaffiliated investment advisers. Applicant provides advisory services to Family Clients directly, or indirectly through persons that manage Family Investment Entities or Family Trusts ("Pool Advisory Entities"). All Pool Advisory Entities are wholly owned and controlled by the Applicant, the Horvitz Family, or Family Trusts.

4. Applicant represents that it does not hold itself out to the public as an investment adviser. Applicant further represents that it is not listed in any phone book as an investment adviser and does not (i) have a publicly accessible Web site, (ii) engage in any advertising, (iii) attend investment management-related conferences as a

vendor, and (iv) conduct any marketing activities.

5. Applicant represents that it and the Pool Advisory Entities do not and will not solicit or accept investment advisory clients from the public.

6. Applicant represents that it does not operate with the purpose of generating a profit. It charges fees only to pay its operating expenses and the salaries of the professionals it employs.

7. Applicant represents that it has provided each member of the Family who is not a lineal descendant (including by adoption) of Mr. William Horvitz and his wife Norma Horvitz or such lineal descendant's spouse written disclosure describing the material terms of this Application and the material legal effects associated with a Commission Order as a result of this Application, and has received written consent from these Family members.

8. Applicant acknowledges that the Order, if granted, would not affect any legal obligation (other than those under the Advisers Act) relating to the services it and the Pool Advisory Entities provide to their clients, including without limitation any applicable state fiduciary obligation.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. * * *

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides several exemptions from this registration requirement.

3. Applicant represents that it currently relies on the registration exemption provided in section 203(b)(3) of the Advisers Act for advisers that have less than 15 clients. The Applicant anticipates that this exemption will soon be unavailable to it as the number of Family Clients grows. Applicant also represents that it is not prohibited from registering with the Commission under section 203A(a) because it has assets under management of \$25,000,000 or more.

4. Applicant requests that the SEC declare it, the existing and future Pool Advisory Entities, and their respective employees acting within the scope of their employment, to be persons not

within the intent of section 202(a)(11). Applicant states that there is no public interest in requiring that it, the Pool Advisory Entities, or their respective employees acting within the scope of their employment be registered under the Advisers Act because they offer and provide investment advisory services only to Family Clients.

Applicant's Conditions

1. The Applicant and all the existing and future Pool Advisory Entities will offer and provide advisory services only to Family Clients and will not hold themselves out to the public as investment advisers.

2. Members of the Horvitz Family will at all times comprise a majority of the Board of Directors of the Applicant.

3. The Applicant and all the existing and future Pool Advisory Entities will at all times be owned, directly or indirectly, exclusively by one or more members of the Horvitz Family.

4. All the existing and future Family Investment Entities: (a) Are excepted from the definition of "investment company" under section 3(c)(1) or section 3(c)(7) of the Investment Company Act of 1940, and (b) are owned and controlled exclusively by the Applicant, the Pool Advisory Entities, or the Family Clients.

5. If any Key Employee who owns an interest in any Family Investment Entity, directly or through a Key Employee Trust, is no longer employed by the Applicant or a Pool Advisory Entity or is no longer a Key Employee, his interest in such Family Investment Entity and/or Key Employee Trust will be limited to his investment at the time of termination (or at the time that he no longer is a Key Employee) together with reinvestment of accretions or distributions on that interest.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58807; File No. 4-568]

Self-Regulatory Organizations; Order Approving Minor Rule Violation Plan for BATS Exchange, Inc.

October 17, 2008.

On August 29, 2008, the BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities

and Exchange Commission (the "Commission") a proposed minor rule violation plan ("MRVP") pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19d-1(c)(2) thereunder.² The proposed MRVP was published for public comment on September 16, 2008.³ The Commission received no comments on the proposal. This order approves BATS's proposed

BATS's MRVP specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) under the Act⁴ requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.⁵ In accordance with Rule 19d-1(c)(2), the Exchange proposed to designate certain rule violations as minor rule violations, and requested that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. BATS included in its proposed MRVP the policies and procedures currently included in BATS Exchange Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules") and the rule violations included in BATS Exchange Rule 8.15.01, Interpretations and Policies.⁶

¹ 15 U.S.C. 78s(d)(1).

² 17 CFR 240.19d-1(c)(2).

³ See Securities Exchange Act Release No. 58485 (September 8, 2008), 73 FR 53468.

⁴ 17 CFR 240.19d-1(c)(1).

⁵ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

⁶ On August 18, 2008, the Commission approved BATS's application for registration as a national securities exchange, including the rules governing the Exchange. See Securities Exchange Act Release No. 58375, 73 FR 49498 (August 21, 2008). In the approval order, the Commission noted that BATS Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that, as a condition to the operation of the Exchange, it must file a minor rule violation plan with the Commission. BATS represented that modifications may be made to Rule 8.15.01 in the future. BATS proposed that, when amendments to Rule 8.15.01 are made pursuant to a rule filing submitted pursuant to Rule 19b-4 under the Act, such filing would automatically be deemed a

Pursuant to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed \$2,500) on a member, an associated person of a member, or a registered or non-registered employee of a member, with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules allegedly violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.⁷

The Commission finds that the proposed MRVP is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁸ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act⁹ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. In addition, because the MRVP offers

request by BATS for Commission approval of a modification to its MRVP.

⁷ BATS attached a sample form of the quarterly report with its submission to the Commission.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

procedural rights to a person sanctioned under Rule 8.15, the Commission believes that Rule 8.15 provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.¹⁰

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹¹ because the MRVP strengthens BATS's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposal, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of sanctions under Rule 8.15. The Commission believes that the violation of an SRO's rules, as well as Commission rules, is a serious matter. However, Rule 8.15 provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that BATS will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, whether a sanction under the MRVP is appropriate, or whether a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Rule 19d-1(c)(2) under the Act,¹² that the proposed MRVP for BATS, File No. 4-568, be, and hereby is, approved and declared effective.

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

J. Lynn Taylor,

Assistant Secretary.

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¹⁰ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

¹¹ 17 CFR 240.19d-1(c)(2).

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(44).