

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

The Exchange neither solicited nor received comments on the proposal.

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

Because the foregoing rule 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, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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,¹¹ the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

Under Rule 19b-4(f)(6) of the Act,¹⁴ a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date so that the pilot may continue without interruption while the Exchange considers whether to seek permanent approval of the temporary procedures. The Exchange believes that acceleration of the operative date will continue to allow for the orderly closing of option positions that are worthless or not actively traded. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and thus designates the proposal as operative upon filing.¹⁵

At any time within 60 days of the filing of such 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 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-CBOE-2009-034 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-CBOE-2009-034. 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 inspection and copying 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 the CBOE. 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-CBOE-2009-034 and should be submitted on or before June 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60019; File No. SR-BATS-2009-018]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Criteria for Becoming a Member of the Nominating Committee

June 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 28, 2009, BATS Exchange, Inc. ("BATS" or the "Exchange") 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 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 proposes to amend Article VI, Section 2 of the Amended and Restated By-Laws of BATS Exchange, Inc. (the "By-Laws").

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

¹⁶ 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).

¹¹ The Exchange has fulfilled this requirement.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ *Id.*

¹⁵ For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also 17 CFR 200.30-3(a)(59).

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 proposes to amend the Exchange's By-Laws, specifically Article VI, Section 2, for the purpose of allowing additional Directors to serve on the Nominating Committee. As currently written, the By-Laws allow only one Director in his or her final year of service on the Board to serve on the Nominating Committee, and that Director must be a Non-Industry Director. The Exchange proposes an amendment to Article VI, Section 2 to allow any Director whose class⁵ is not being considered for nomination and election in the coming year to serve on the Nominating Committee. The proposed amendment would expand the number of current Directors eligible for participation on the Nominating Committee, and allow more Directors to participate in the Nominating Committee and thereby be more closely involved in the process of identifying candidates to serve as Directors.⁶

The Exchange believes that more than one Director, including Industry Directors, should be permitted to serve on the Nominating Committee and that the current By-Laws, which allow only a single Non-Industry Director to serve on the Nominating Committee in his or her last year of service, is unduly restrictive. The Exchange is proposing to retain the requirement that the number of Non-Industry members of the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee and believes that this requirement is sufficient to ensure adequate representation of Industry and Non-Industry interests.

In addition, as proposed, the Exchange would prohibit any Director from serving on the Nominating

Committee if that Director's class is up for reelection, unless that Director is in his or her final year of service and is not standing for reelection. The Exchange believes that this prohibition would sufficiently prevent a Director from participating in nominating himself or herself to the Board. At the same time, the Exchange's proposal is less restrictive than the current prohibition and would, therefore, enable a larger number of current Directors to consider participation on the Nominating Committee.

The Exchange has proposed these changes because it believes that Directors are particularly well-suited to nominate Director candidates due to the first-hand knowledge they gain through service on the Board. In particular, Directors serving on the Nominating Committee will be qualified to evaluate the strengths and weaknesses of the Board and find other candidates for Director that best fit the needs of the Board. Additionally, the experience brought by Directors to the Nominating Committee will be an asset to any non-Director members of the Nominating Committee through the sharing of knowledge and information about the operations of the Exchange and the Board.

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: (1) Section 6(b)(1) of the Act,⁸ which requires a national securities exchange to be so organized and have the capacity to carry out purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; (2) Section 6(b)(3) of the Act,⁹ which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer (the "fair representation requirement"); and Section 6(b)(5) of the Act,¹⁰ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

system, and, in general, to protect investors and the public interest.

Specifically, Members will continue to be represented on the Board and on key standing committees. Further, the Exchange's proposal does not alter the existing compositional requirements of the Board, which provide a balance between Industry, Member, Non-Industry, and Independent representatives, nor does the proposal alter the existing compositional balance between Industry and Non-Industry representatives on the Nominating Committee.

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

No written comments were solicited or received.

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

Because the foregoing proposed rule change is non-controversial and 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, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

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

⁵ As described in Article III, Section 3(b) of the By-Laws, Directors are divided into three classes and serve staggered terms.

⁶ The proposed rule change would have no effect on the process of selecting Member Representative Directors as described in Article III, Section 4 and Article VI, Sections 1 and 3 of the By-Laws.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78(b)(1).

⁹ 15 U.S.C. 78(b)(3).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide 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 of the proposed rule change, or such shorter time as designated by the Commission. BATS has met this requirement.

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 No. SR-BATS-2009-018 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-2009-018. 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 inspection and copying 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 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-2009-018 and should be submitted on or before June 29, 2009.

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. 34-60014; File No. SR-ISE-2009-27]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Adopt Rules To Implement the Options Order Protection and Locked/Crossed Market Plan

June 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 11, 2009, the International Securities Exchange, LLC ("ISE" or "Exchange") 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 prepared by the Exchange. 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 ISE proposes to adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan (the "Plan"). The text of the proposed rule change is available on the ISE's Web site (<http://www.ise.com>), at the principal office of the ISE, 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 self-regulatory organization 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 those 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 proposes to adopt rules to implement the Plan. These rules will replace current Chapter 19 of the ISE's

rules in their entirety. The proposed rules also will amend various other rules to accommodate the Plan.

Background to the Plan and the Implementing Rules

The ISE filed the current version of the Plan on November 7, 2008.³ The Plan would replace the current Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Old Plan"). The Old Plan requires its participant exchanges to operate a stand-alone system or "Linkage" for sending order-flow between exchanges to limit trade-throughs. The Options Clearing Corporation ("OCC") operates the Linkage system. The Linkage rules provide for unique types of Linkage orders, with a complicated set of requirements as to who may send such orders and under what conditions.

While the Linkage largely has operated satisfactorily, it is under significant strain. When the Commission approved the Linkage Plan in 2000, average daily volume ("ADV") in the options market was approximately 2.6 million contracts across all exchanges. Now the ADV has increased to more than 10 million contracts, putting added strain on the ability of market makers to comply with the complex Linkage rules. At the same time, the options markets have been moving towards quoting in pennies, and are quoting in pennies options representing over half the total industry volume. This greatly increases the number of price changes in an option, giving rise to greater chances of trade-throughs and missing markets as market makers send Linkage orders and have to wait for a response.

Experience in the equities markets shows that there is a more efficient way to provide price protection in options. When first implemented, the Linkage represented a vast improvement over the then-current equities price-protection system, which depended on the operation of the Intermarket Trading System ("ITS"). The plan governing ITS imposed long waiting times for filling ITS commitments and a cumbersome method for satisfying trade-throughs. Learning from the shortcomings of ITS, the options Linkage has shorter waiting periods and more efficient trade-through protections.

The equity price-protection mechanisms have now leapfrogged the options Linkage. By adopting Regulation NMS in 2005 the Commission

³ The November 7th filing was Amendment No. 3 to the Plan. The ISE initially filed the Plan on September 12, 2007, filed Amendment No. 1 on December 10, 2007, and filed Amendment No. 2 on April 16, 2008.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.