The proposed SLMMs would provide supplemental liquidity in addition to the liquidity provided by DMMs and SLP–Props, and the Exchange would continue to require that a DMM be registered in every security listed on the Exchange. Because the proposed SLMMs would be required to meet the Two-Sided Obligation applicable to all equities market makers, the Commission believes that the proposed rule change would also remove impediments to and perfect the mechanism of a free and open market and a national market system by increasing the number of market participants that are required to maintain a continuous two-sided quotation a specified percentage away from the NBBO in the securities in which they are registered. Moreover, the proposed SLMM would be subject to other currently existing requirements.

The Commission finds that the proposal is not unfairly discriminatory. Registration as an SLP–Prop or SLMM is available to all Exchange member organizations that satisfy the requirements of proposed Rule 107B(c) or (d). The Commission finds further that the proposal to establish procedures for the registration, withdrawal, and disqualification of SLMM, and the SLMM quoting requirements, are consistent with the requirements of Section 6(b)(5) of the Act. The Exchange’s proposed rules provide an objective process by which a member organization could become a SLMM and for appropriate oversight by the Exchange to monitor for continued compliance with the terms of these provisions. The Commission also notes that these provisions are similar to the existing provisions that apply to the current SLP program.

In addition, the Commission believes that the proposed rule change is consistent with the requirements of the Act because the proposed requirements for the SLMMs are based on existing, approved requirements for registered market makers on other exchanges. In addition to the Two-Sided Obligation, the proposed SLMMs would also be required to assist in the maintenance of a fair and orderly market, as reasonably practicable, and maintain net capital consistent with federal requirements for market makers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,10 that the proposed rule change (SR–NYSEAmex–2012–22) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.11
Kevin M. O’Neill,
Deputy Secretary.

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Exchange Rule 11.19, Entitled “Short Sales”

June 7, 2012.

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 24, 2012, 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 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 filing with the Commission a proposal to amend Exchange Rule 11.19, entitled “Short Sales,” to adopt certain changes related to Regulation SHO in connection with the Exchange’s recent status as the primary listing market for certain securities.

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 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

On February 26, 2010, the Commission adopted amendments to Rules 200(g) and 201 of Regulation SHO.3 Rule 201 of Regulation SHO, as amended, requires trading centers 4 such as the Exchange to establish, maintain, and enforce certain written policies and procedures reasonably designed to comply with the rule.5 The Exchange has proposed and received approval of rule changes6 in connection with the amendments to Rules 201 and 200 of Regulation SHO that were implemented in 2011.7 The Exchange recently began operation as a primary listing market of certain securities, and is thus proposing additional rules in connection with Regulation SHO, as amended.

Proposed Exchange Rule 11.19(b)(1), “Definitions,” defines the terms “covered security,” “listing market,” and “national best bid” as having the same meaning as such terms have in Rule 201 of Regulation SHO.8


Rule 201(a)(9) states the term “trading center” will have the same meaning as in Rule 600(b)(78). 17 CFR 242.201(a)(9). Rule 600(b)(78) of Regulation NMS defines a “trading center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” 17 CFR 242.600(b)(78).

5  See 17 CFR 242.201(b). The amendments to Rule 200(g) of Regulation SHO provide a “short exempt” marking requirement. See 17 CFR 242.200(g).
6  See Securities Exchange Act Release No. 63948 (Feb. 23, 2011); 76 FR 11303 (Mar. 1, 2011) (SR–BATS–2011–002). See Rule 11.9(g)(2), which describes the handling of orders pursuant to Exchange “short sale price sliding” functionality in connection with the short sale price test restriction; see also, Rule 11.13, which codifies in the Exchange’s rules the execution restrictions of Rule 201; see also Rule 11.19, which requires marking of short sale orders as either “short” or “short exempt.”
7  See supra note 3; see also Securities Exchange Act Release No. 63247 (Nov. 4, 2010); 75 FR 68702 (Nov. 9, 2010) (extending the compliance date of the amendments to Rules 201 and 200 of Regulation SHO until February 28, 2011).
8  See Rule 201(a) of Regulation SHO. The System will utilize the national best bid from the systems.
Under Proposed Exchange Rule 11.19(b)(2), Short Sale Price Test, the System will not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more from the security’s closing price on the listing market as of the end of regular trading hours on the prior day ("Trigger Price"). For covered securities for which the Exchange is the listing market, the BATS Official Closing Price for such security is established by the Exchange pursuant to procedures set forth in Exchange Rule 11.23.

Under Proposed Exchange Rule 11.19(b)(3), “Determination of Trigger Price,” the Exchange will continuously compare each execution by the System with the BATS Official Closing Price and alert the single plan processor when a Trigger Price has been reached. The single plan processor will then disseminate a notice to market participants in accordance with procedures established by the single plan processor. When the single plan processor disseminates such notice, the Exchange will systematically apply the short sale price test restriction for short sale orders in the covered security in the manner described in Proposed Exchange Rule 11.19(b)(2).

Under Proposed Exchange Rule 11.19(b)(4), “Duration of Short Sale Price Test,” once triggered, the short sale price test restriction shall remain in effect until the next trading day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effect (sic) national market system (sic), as provided for in Regulation SHO Rule 201(b)(1)(ii) (the "Short Sale Period"). There are two exceptions in the proposed rule. First, if the Exchange determines pursuant to Proposed Exchange Rule 11.19(b)(4)(A) that the short sale price test restriction for a covered security was triggered because of a clearly erroneous execution, the Exchange may lift the short sale price test restriction before the Short Sale Period ends for covered securities for which the Exchange is the listing market. The Exchange also proposes to include language in Exchange Rule 11.19(b)(4)(A) to provide that the Exchange may also lift the short sale price test restrictions before the Short Sale Period ends, for covered securities for which the Exchange is the listing market, if the Exchange has been informed by another exchange or self-regulatory organization ("SRO") that a transaction in the covered security that occurred at the Trigger Price was a clearly erroneous execution, as determined by that exchange or SRO under its rules. Second, if the Exchange determines pursuant to Proposed Exchange Rule 11.19(b)(4)(B) that the prior day’s closing price for a covered security is incorrect in the System and resulted in an incorrect determination of the Trigger Price, the Exchange may correct the prior day’s BATS Official Closing Price and lift the short sale price test restriction before the Short Sale Period ends.

The proposed language for Exchange Rule 11.19(b) is substantively identical to paragraphs (a) through (d) of Rule 4763 of the rules of The NASDAQ Stock Market LLC ("Nasdaq"). paragraphs (a) through (d) of Rule 440B of the rules of the New York Stock Exchange, LLC ("NYSE") and sub-paragraphs (i) through (iv) of Rule 7.16(f) of the rules of NYSE Arca Equities, Inc. ("NYSE Arca"). The Exchange has separately adopted rules implementing other aspects related to the amendments to Regulation SHO, which are described in the remainder of Nasdaq Rule 4763, NYSE Rule 440B and NYSE Arca Rule 7.16.

2. Statutory Basis

The Exchange believes that its proposal 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. In particular, the proposal is consistent with Section 6(b)(5) of the Act, because it would promote just and equitable principles of trade. Regulation SHO, among other purposes, was implemented to help to strengthen investor confidence in the markets and, thus, was intended to enhance and promote capital formation. The Exchange believes that the proposed rule promotes just and equitable principles of trade in that it implements rules adopted by the Commission in

19 The Exchange will only lift the short sale price test restrictions before the Short Sale Period ends under these circumstances when informed by another exchange or SRO that a triggering transaction has been determined to be a clearly erroneous execution under the rules of the exchange or SRO, consistent with the authority of that exchange or SRO for making such determinations.

20 See supra note 6.


23 The Commission notes that Rule 201 of Regulation SHO was adopted to prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline, facilitate the ability of long sellers to sell first upon such a decline and address erosions in investor confidence.
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, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act26 and Rule 19b–4(f)(6)(iii) thereunder.27

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors or the public interest, and based on the rules of other exchange markets.25 The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes uniformity across listing markets concerning the application of Regulation SHO, as amended.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

The Commission notes that waiving the 30-day operative delay is consistent with the protection of investors or the public interest.28 The Commission believes that waiving the 30-day operative delay will help to ensure uniformity across listing markets concerning the application of Rule 201 of Regulation SHO. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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 furthearance 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 email to rule-comments@sec.gov. Please include File No. SR–BATS–2012–019 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–2012–019. This file number should be included on the subject line if email 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 10:00 a.m. and 3:00 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–2012–019 and should be submitted on or before July 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.30

Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change To Adopt Self-Trade Prevention Modifiers on the CBOE Stock Exchange

June 7, 2012.

I. Introduction

On April 12, 2012, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to adopt Self-Trade Prevention modifiers on the CBOE Stock Exchange (“CBX”). The proposed rule change was published for comment in the Federal Register on May 1, 2012.3 The Commission received no comment letters on the proposed rule change.

27 For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(h).
28 See, e.g., Nasdaq Rule 4763(a)–(d); NYSE Rule 4406(a)–(d); NYSE Arca Rule 7.16(f)(i)–(iv).
29 See supra note 3.