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–NYSEALTR–2009–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEALTR–2009–10. 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 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* 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–NYSEALTR–2009–10 and should be submitted on or before March 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4558 Filed 3–3–09; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59457; File No. SR–BATS–2009–006]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.9, Entitled ''Orders and Modifiers''

February 26, 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 February 20, 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 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 Act[3] 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 BATS Rule 11.9, entitled ''Orders and Modifiers,'' to provide for a new order type, a Partial Post Only at Limit Order. In addition, the Exchange is proposing to eliminate an Exchange order processing behavior described in Rule 11.9(c)(4) and (c)(5) as the ''price sliding process'' due to the fact that this functionality is rarely selected by Users of the Exchange.

The text of the proposed rule change is available at the Exchange's website 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

The purpose of the proposed rule change is to provide a new order type to Users of the Exchange, a Partial Post Only at Limit Order. The Exchange currently allows Users to enter BATS Post Only Orders,[5] which do not remove liquidity from the Exchange. Frequently, Exchange Users utilize BATS Post Only Orders because such Users do not want to be charged the access fee for removing liquidity from the BATS Book.[6] However, if such Users could receive a price better than their limit price (*i.e.*, price improvement), then the Exchange believes that such Users may wish to remove that liquidity and pay the access fee. In addition, regardless of whether any part of the order is executed with price improvement, the Exchange believes that some Users of BATS Post Only Orders would be willing to remove from the BATS Book a certain amount of liquidity at the order's limit price if the residual of the order could then post to the BATS Book at that limit price. Accordingly, as proposed, the new order type will enable Users to: (i) enter an order to the Exchange that will remove liquidity from the Exchange when the order will receive price improvement; and (ii) designate a ''Maximum Remove Percentage,'' instructing the Exchange to execute up to a designated percentage of the order size remaining after any applicable price improvement execution by removing liquidity at the order's limit price if the residual, after executions at the limit price, can be posted on the BATS Book.[7]

If no Maximum Remove Percentage is entered, then a Partial Post Only at Limit Order will only remove liquidity to the extent the order will obtain price improvement from its limit price. If no price improvement on an order is obtained, but a Maximum Remove

[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).

[5] As defined in Exchange Rule 11.9(c)(5).

[6] The Exchange currently charges $0.0025 per share removed from the BATS Book, except for securities priced below $1.00, for which no access fee is charged.

[7] Because the Exchange cannot post a bid or offer with a partial share amount (*e.g.*, 99.9 shares), any Maximum Remove Percentage that would result in such an amount will be rounded down to the next whole share amount (*e.g.*, 99 shares).

Percentage has been entered with the order, then the order would execute at the limit price up to the Maximum Remove Percentage size only if, after removal of the shares set by the Maximum Remove Percentage, the order could then post to the BATS Book. As with BATS Only and BATS Post Only orders, Users may designate Partial Post Only at Limit Orders as being subject to the Exchange's displayed price sliding process or may opt-out of displayed price sliding. Regardless of which setting is selected, an order with a Maximum Remove Percentage will only execute at its limit price if it can be posted to the BATS Book at its limit price after executions permitted by the Maximum Remove Percentage. Thus, if an order's Maximum Remove Percentage would otherwise allow removal of all liquidity from the BATS Book at the order's limit price, but would lock or cross another market if posted to the BATS Book and displayed by the Exchange at that limit price, the order would not remove any liquidity at its limit price, but rather, would be cancelled or price slid, depending on the User's instructions.[8]

The following examples demonstrate how the Partial Post Only at Limit Order will operate on the Exchange. For purposes of these examples, assume that in security ''ABC'' the Exchange has 1,000 shares of liquidity at a $10.00 offer price and also has resting orders on its book to sell 1,000 shares at $10.01 and 1,000 shares at $10.03.

- *Example #1:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 1,000 shares of ABC at $10.01 with no Maximum Remove Percentage. The order would be filled in its entirety at $10.00.
- *Example #2:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 2,500 shares of ABC at $10.01 with no Maximum Remove Percentage. 1,000 shares of the order would be filled at $10.00, and the remaining 1,500 shares would be subject to the Exchange's displayed price sliding process or would be cancelled back to the User because posting such remainder at its limit price would lock the BATS Book and the User did not specify a Maximum Remove Percentage permitting removal of any liquidity at the order's limit price.
- *Example #3:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 2,500 shares of ABC at $10.02 with no Maximum Remove Percentage. 1,000 shares of the order would be filled at $10.00, 1,000 shares of the order would be filled at $10.01 and the remaining 500 shares would be posted as a bid on the BATS Book at $10.02.
- *Example #4:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at $10.01 with a Maximum Remove Percentage of 10 percent. 1,000 shares of the order would be filled at $10.00 but the remainder of the order (4,000 shares) would be subject to the Exchange's displayed price sliding process or would be cancelled back to the User because the order could only remove up to 10% of the remaining order, after price improvement, at its limit price (or 400 shares) and removal of that amount would leave 600 shares of liquidity resting on the BATS Book at the limit price of $10.01. Accordingly, the remainder of the User's order could not be posted because it would lock the BATS Book at $10.01, and the parameters of the designated Maximum Remove Percentage would not permit additional shares to be removed at that price.
- *Example #5:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at $10.01 with a Maximum Remove Percentage of 25 percent. 1,000 shares of the order would be filled at $10.00, 1,000 shares would be filled at $10.01, the order's limit price, based on the designated Maximum Remove Percentage (25% of 4,000 remaining shares would permit maximum removal at the limit price of 1,000 shares), and the remaining 3,000 shares would be posted as a bid on the BATS Book at $10.01.
- *Example #6:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at $10.00 with a Maximum Remove Percentage of 25 percent. Although the order would not receive any price improvement, 1,000 shares of the order would be filled at $10.00, the order's limit price, based on the designated Maximum Remove Percentage (25% of the 5,000 share order would permit maximum removal at the limit price of up to 1,250 shares), and the remaining 4,000 shares would be posted as a bid on the BATS Book at $10.00.

The Exchange believes that the proposed order type benefits its Users by providing additional flexibility, in a single order type, to meet the true trading interests of market participants.

The Exchange is also proposing to eliminate references to the ''price sliding process,'' from the Exchange Rule 11.9. Very few Exchange Users currently utilize the price sliding process, and in fact, on certain trading days, the Exchange does not receive any orders where a User has selected this process. Instead, most Users either submit orders with the default ''displayed price sliding'' option selected or opt-out of displayed price sliding. Accordingly, the proposed rule change deleting the price sliding process and adopting Partial Post Only at Limit Orders without reference to the price sliding process would simplify the Exchange's Rules by eliminating an option seldom used by Users of the Exchange.

In addition to the proposed changes above, the Exchange is proposing to make certain non-substantive changes to Exchange Rule 11.12 to update and correct cross-references to other Exchange Rules.

2. Statutory Basis

The rule change proposed in this submission 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.[9] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by allowing Users to enter a modified form of ''post only'' order that will execute to the extent such order will receive price improvement or remove a designated portion of the remaining order, after price improvement, at its limit price if such order could then post to the BATS Book. In addition, removal of the references to the price sliding process will simplify the Exchange's Rules by deleting a functionality offered by the Exchange but not frequently used by market participants that submit orders to the Exchange.

The Exchange believes that Users that submit BATS Post Only Orders to the Exchange are primarily seeking to avoid access fees charged for removing liquidity, but that such Users would be willing to pay an access fee to the extent their order could obtain price improvement. Because of this price improvement, the Exchange believes that the order proposed in this rule filing will help Users obtain better

[8] As set forth in Exchange Rule 11.9(c)(4), the displayed price sliding process is the default but Users can elect instead to opt-out of displayed price sliding, in which case, any remainder of the order would be cancelled back to the User.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

prices for their orders submitted to the Exchange, even if such orders are subject to an access fee. In addition, the Exchange believes that some Users would like the added efficiency of being able to submit one order to the Exchange that will remove a certain amount of liquidity at the order's limit price (based on the size of the order following price improvement), and then, provided all liquidity has been removed at its limit price, post to the BATS Book, rather than first submitting an order to remove liquidity at a certain price level and then submitting a BATS Post Only Order.

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:

(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 public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

Normally, a proposed rule change filed under 19b–4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that immediate implementation of the new proposed order type will permit the Exchange to remain competitive with another market center that has recently adopted a similar order type pursuant to an immediately effective rule filing.[14] In addition, with respect to the Exchange's proposal to eliminate the price sliding process, the Exchange represents that very few Exchange Users currently utilize the price sliding process, and in fact, on certain trading days, the Exchange does not receive any orders where a User has selected this process. Further, the Exchange represents that it has communicated with the limited number of Users that have utilized the price sliding process over the past several months to inform such Users of the Exchange's intent to eliminate this functionality, and such Users have indicated that they have no objection to the elimination of this functionality.[15] On this basis, the Commission has determined that waiving the 30-day operative date is consistent with the protection of investors and the public interest and designates the proposal as operative upon filing.[16]

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 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–2009–006 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–2009–006. 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 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 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–2009–006 and should be submitted on or before March 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4560 Filed 3–3–09; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

[14] *See* Securities Exchange Act Release No. 59259 (January 15, 2009), 74 FR 4491 (January 26, 2009) (notice of immediate effectiveness of rule change to establish a Post Only Order for NASDAQ OMX BX, Inc.).

[15] Telephone conversation between Anders Franzon, Associate General Counsel, BATS Exchange, Inc., and Rebekah Liu, Special Counsel, Division of Trading and Markets, Commission, on February 19, 2009.

[16] 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).

[17] 17 CFR 200.30–3(a)(12).