disclosures to monitor agency cross transactions that affect their advisory account. The Commission also uses the information required by Rule 206(3)–2 in connection with its investment adviser inspection program to ensure that advisers are in compliance with the rule. Without the information collected under the rule, advisory clients would not have information necessary for monitoring their adviser's handling of their accounts and the Commission would be less efficient and effective in its inspection program.

The information requirements of the rule consist of the following: (1) Prior to obtaining the client's consent appropriate disclosure must be made to the client as to the practice of, and the conflicts of interest involved in, agency cross transactions; (2) at or before the completion of any such transaction the client must be furnished with a written confirmation containing specified information and offering to furnish upon request certain additional information; and (3) at least annually, the client must be furnished with a written statement or summary as to the total number of transactions during the period covered by the consent and the total amount of commissions received by the adviser or its affiliated broker-dealer attributable to such transactions.

The Commission estimates that approximately 631 respondents use the rule annually, necessitating about 32 responses per respondent each year, for a total of 20,192 responses. Each response requires an estimated 0.5 hours, for a total of 10,096 hours. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the cost of Commission rules and forms.

This collection of information is found at (17 CFR 275.206(3)–2) and is necessary in order for the investment adviser to obtain the benefits of Rule 206(3)–2. The collection of information requirements under the rule is mandatory. Information subject to the disclosure requirements of Rule 206(3)–2 does not require submission to the Commission; and, accordingly, the disclosure pursuant to the rule is not kept confidential. Commission-registered investment advisers are required to maintain and preserve certain information required under Rule 206(3)–2 for five (5) years. The long-term retention of these records is necessary for the Commission's inspection program to ascertain compliance with the Act.

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 are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 60 days of this notice.

Dated: July 9, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16712 Filed 7–14–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60266; File No. SR–BATS–2009–022]

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

July 9, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 6, 2009, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (the ''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 [4] and Rule 19b–4(f)(6)(iii) thereunder,[5] 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 make modifications to the existing technology that it provides to a User that wishes to avoid trading against orders from that same User (''Member Match Trade Prevention'' or ''MMTP''). The text of the proposed rule change is available from the Exchange's Web site at *http://www.batstrading.com*, at the Exchange's principal office, 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 Exchange proposes to offer Member Match Trade Prevention, or MMTP, to Exchange Users pursuant to proposed Rule 11.9(f).[6]

Background

The proposed MMTP modifiers are designed to prevent two orders with the same Unique Identifier (as defined below) from executing against each other. The Exchange proposes adding four MMTP modifiers that will be implemented and can be set at the market participant identifier (''MPID''), the Exchange Member identifier or the Exchange Sponsored Participant identifier level (any such identifier, a ''Unique Identifier'').[7] With one

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] The Exchange currently offers a basic form of match prevention by allowing a User to request a setting for their connections that prevents incoming orders from interacting with resting orders if both orders originate from the same MPID. The proposed rule expands the functionality offered to Users by providing additional options for match prevention.

[7] Any Exchange Member that has an MPID issued by FINRA is identified in the Exchange's internal

exception, described below, the MMTP modifier on the incoming order controls the interaction between two orders marked with MMTP modifiers from the same Unique Identifier. The four new MMTP modifiers are discussed more thoroughly below.

MMTP Cancel Newest (''MCN'')

An incoming order marked with the MCN modifier will not execute against opposite side resting interest marked with any MMTP modifier originating from the same Unique Identifier. The incoming order marked with the MCN modifier will be cancelled back to the originating User. The resting order marked with an MMTP modifier, which otherwise would have interacted with the incoming order from the same Unique Identifier, will remain on the BATS Book.

MCN Example 1: An order to buy 500 shares @ $22.00 is marked with any of the four MMTP modifiers and becomes a resting order on the BATS Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same Unique Identifier and marked with the MCN modifier.

MCN Result 1: The incoming sell order for 500 shares @ $22.00 marked with the MCN modifier is cancelled back to the originating User. The resting buy order for 500 shares at $22.00 marked with one of the four MMTP modifiers remains on the BATS Book.

MCN Example 2: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order on the BATS Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same Unique Identifier and marked with the MCN modifier.

MCN Result 2: The incoming sell order for 700 shares @ $22.00 marked with the MCN modifier is cancelled back to the originating User. The resting buy order for 500 shares at $22.00 marked with one of the four MMTP modifiers remains on the BATS Book.

MCN Example 3: An order to buy 500 shares @ $22.00 is marked with any of the four MMTP modifiers and becomes a resting order on the BATS Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same Unique Identifier and marked with the MCN modifier.

MCN Result 3: The incoming sell order for 400 shares @ $22.00 marked with the MCN modifier is cancelled back to the originating User. The resting buy order for 500 shares at $22.00 marked one of the four MMTP modifiers remains on the BATS Book.

MMTP Cancel Oldest (''MCO'')

An incoming order marked with the MCO modifier will not execute against opposite side resting interest marked with any MMTP modifier originating from the same Unique Identifier. The resting order marked with the MMTP modifier, which otherwise would have interacted with the incoming order by the same Unique Identifier, will be cancelled back to the originating User. The incoming order marked with the MCO modifier will remain on the BATS Book.

MCO Example 1: An order to buy 500 shares @ $22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same Unique Identifier and marked with the MCO modifier.

MCO Result 1: The resting buy order for 500 shares at $22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming sell order for 500 shares @ $22.00 marked with the MCO modifier is entered in the BATS Book.

MCO Example 2: An order to buy 500 shares @ $22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same Unique Identifier and marked with the MCO modifier.

MCO Result 2: The resting buy order for 500 shares at $22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming sell order for 700 shares @ $22.00 marked with the MCO modifier is entered on the BATS Book.

MCO Example 3: An order to buy 500 shares @ $22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same Unique Identifier and marked with the MCO modifier.

MCO Result 3: The resting buy order for 500 shares at $22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming sell order for 400 shares @ $22.00 marked with the MCO modifier is entered on the BATS Book.

MMTP Decrement and Cancel (''MDC'')

An incoming order marked with the MDC modifier will not execute against opposite side resting interest marked with any MMTP modifier originating from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled back to the originating User. If the orders are not equivalent in size, the equivalent size will be cancelled back to the originating User and the larger order will be decremented by the size of the smaller order, with the balance remaining on the BATS Book; provided, however, that if the resting order is marked with any MMTP modifier other than MDC, and the incoming order is smaller in size than the resting order, then both orders will be cancelled back to the originating User.

MDC Example 1: An order to buy 500 shares @ $22.00 is marked with any of the four MMTP modifiers and becomes a resting order on the BATS Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same Unique Identifier and marked with the MDC modifier.

MDC Result 1: The resting buy order for 500 shares at $22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming sell order for 500 shares @ $22.00 marked with the MDC modifier is cancelled back to the originating User.

MDC Example 2: An order to buy 500 shares @ $22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same Unique Identifier and marked with the MDC modifier.

MDC Result 2: The resting buy order for 500 shares at $22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The equivalent portion, 500 shares, of the incoming sell order marked with the MDC modifier is cancelled back to the originating User. The remaining portion, 200 shares, is entered on the BATS Book.

MDC Example 3: An order to buy 500 shares @ $22.00 is marked with an MDC modifier and becomes a resting order in the BATS Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same Unique Identifier and marked with the MDC modifier.

MDC Result 3: 400 of the 500 shares on the resting buy order at $22.00 marked with one of the four MMTP modifiers are cancelled back to the originating User. The outstanding 100 shares remain on the BATS Book. The incoming sell order for 400 shares @ $22.00 marked with the MDC modifier is cancelled back to the originating User.

MDC Example 4: An order to buy 500 shares @ $22.00 is marked with any MMTP modifier other than MDC and

systems by that MPID. Each Exchange Member that does not already have an MPID and each Sponsored Participant is issued an identifier that is specific to the Exchange and allows the Exchange to determine the User for each order and trade.

becomes a resting order in the BATS Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same Unique Identifier and marked with the MDC modifier.

MDC Result 4: The resting buy order for 500 shares at $22.00 marked with a MMTP modifier other than MDC is cancelled back to the originating User. The incoming sell order for 400 shares @ $22.00 marked with the MDC modifier is cancelled back to the originating User.

MMTP Cancel Both (''MCB'')

An incoming order marked with the MCB modifier will not execute against opposite side resting interest marked with any MMTP modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User.

MCB Example 1: An order to buy 500 shares @ $22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same Unique Identifier and marked with the MCB modifier.

MCB Result 1: The resting buy order for 500 shares at $22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming sell order for 500 shares @ $22.00 marked with the MCB modifier is cancelled back to the originating User.

MCB Example 2: An order to buy 500 shares @ $22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same Unique Identifier and marked with the MCB modifier.

MCB Result 2: The resting buy order for 500 shares at $22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming order to sell 700 shares @ $22.00 marked with the MCB modifier is cancelled back to the originating User.

MCB Example 3: An order to buy 500 shares @ $22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same Unique Identifier and marked with the MCB modifier.

MCB Result 3: The resting buy order for 500 shares at $22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming order to sell 400 shares @ $22.00 marked with the MCB modifier is cancelled back to the originating User.

Additional Discussion

MMTP modifiers are intended to prevent interaction between the same Unique Identifier. MMTP modifiers must be present on both the buy and the sell order in order to prevent a trade from occurring and to effect a cancel instruction. MMTP modifiers are available for orders entered in either an agency or principal capacity. An incoming MMTP order cannot cancel through resting orders that have price and/or time priority. When an order with an MMTP modifier is entered it will first interact with all available interest in accordance with the execution process described in Exchange Rules 11.12 and 11.13. If there is a remaining balance on the order after trading with all orders with higher priority, it may then interact with an opposite side MMTP order in accordance with the rules established above. Incoming MMTP orders that are priced through the price of a resting MMTP order may cancel the resting order as long as no other non-MMTP orders have priority.

The Exchange believes that adding this functionality will allow Exchange Users to better manage order flow and prevent undesirable executions with themselves or the potential for (or the appearance of) ''wash sales'' that may occur as a result of the velocity of trading in today's high speed marketplace. Many Exchange Users have multiple connections into the Exchange due to capacity and speed related demands. Orders routed by the same User via different connections may, in certain circumstances, trade against each other. The new MMTP modifiers provide Users the opportunity to prevent these potentially undesirable trades occurring under the same Unique Identifier on both the buy and sell side of the execution. The Exchange also believes that this functionality will allow firms to better internalize agency order flow which in turn may decrease the costs to its customers. The Exchange notes that the MMTP modifiers do not alleviate, or otherwise exempt, broker-dealers from their best execution obligations. As such, broker-dealers using the MMTP modifiers will be obligated to internally cross agency orders at the same price, or a better price than they would have received had the orders been executed on the Exchange. Additionally, the MMTP modifiers will assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. Finally, the Exchange notes that offering the MMTP modifiers will streamline certain regulatory functions by reducing false positive results that may occur on Exchange generated wash trading surveillance reports when orders are executed under the same Unique Identifier. For these reasons, the Exchange believes the MMTP modifiers offer users enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker-dealer best execution obligations.

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.[8] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[9] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. This functionality will allow firms to better manage order flow and prevent undesirable executions against themselves.

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 of Comments on the Proposed Rule Changes Received From Members, Participants, or Others

The Exchange has neither solicited nor received 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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. 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. 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 Exchange requests that the Commission waive the 30-day operative delay as well as the five business-day pre-filing requirement so that the benefits of this functionality to BATS market participants expected from the rule change will not be delayed. The Commission believes that waiving the 30-day operative delay[12] to make this functionality available without delay is consistent with the protection of investors and the public interest.[13] Therefore, the Commission designates the proposal operative upon filing.

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–2009–022 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–2009–022. 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 5552, 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 the 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–2009–022 and should be submitted on or before August 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16713 Filed 7–14–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 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).

[13] The Commission is also waiving the five business-day pre-filing requirement.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60262; File No. SR–NYSEArca–2009–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rules 7.31(x) and 7.31(kk)

July 8, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 2, 2009, NYSE Arca, Inc. (''NYSE Arca'' 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 self-regulatory organization. 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 NYSE Arca Equities Rule 7.31(x) and 7.31(kk) in order to amend the functionality of Primary Only Orders and Primary Sweep Orders (collectively ''PO and PSO orders'') routed to the New York Stock Exchange LLC (''NYSE'') [sic] The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.