

information about the LLP agreements concerning the proposed cross-margining arrangements.

The Commission believes FICC's commitment to provide ongoing information with respect LLP agreements would help to evaluate its efforts to facilitate indirect access and would thereby help to ensure that the proposal would not impose any burden on competition not necessary and appropriate in furtherance of the purposes of the Exchange Act, consistent with Section 17A(b)(3)(I) of the Act.<sup>94</sup> The Commission anticipates that this information will be primarily used for the limited purpose of identifying any instances in which there is potential non-compliance with the terms of this order or the representations made by FICC.

The Commission has considered the concerns presented by commenters and has determined that the benefits of the proposal outweigh any anti-competitive effects of the proposal. The Commission believes that the proposal would not impose any burden on competition not necessary and appropriate in furtherance of the purposes of the Exchange Act consistent with Section 17A(b)(3)(I) of the Act.<sup>95</sup>

#### C. Effect on Efficiency and Costs

As previously discussed, both FICC and those commenting on the proposed rule change expect that the cross-margining proposal will reduce costs, including delivery costs, and increase cash flows through margin efficiencies. The Commission believes that the NYPC Arrangement has the potential to increase efficiencies by allowing clearing agencies to streamline the delivery process, employ common and coordinated risk management and margin methodologies, and lower costs for market participants.

A "two-pot" arrangement allows for offsets and lowered margin based on correlations in a members' cleared positions at different clearinghouses; however, there is not a unified arrangement for risk management or loss allocations.<sup>96</sup> The "two-pot" cross-margining arrangements approved by the Commission in the past, including one between FICC and CME, have allowed clearinghouses to allow credit against the margin requirement for offsetting positions cleared at another clearinghouse, but each clearinghouse maintained and managed separate pools

of collateral. The "one-pot" arrangement would offer greater margin reductions than a "two-pot" arrangement.

As result of these benefits in facilitating a more accurate and cost-effective system for settlement, the Commission believes that the proposal would promote the prompt and accurate clearance and settlement of securities transactions and help assure the safeguarding of securities and funds in a manner consistent with Section 17A(b)(3)(F) of the Act.<sup>97</sup>

#### D. Additional Reporting

As noted above, FICC has represented that it will provide certain information and reports to the Commission on an ongoing basis in order to facilitate ongoing monitoring of the cross-margining arrangement and thereby help ensure compliance with the standards in Section 17A of the Act.<sup>98</sup> In particular, with respect to information pertaining to risk matters, the Commission believes that these reports would assist the Commission in its efforts to monitor risk management practices under the cross-margining arrangement by providing information to help confirm that the actual performance of the models and systems are consistent with those anticipated during tests prior to launch. Specifically, FICC has agreed to provide the following information upon the proposed rule change becoming effective:

- For the first 250 trading days upon the proposed rule change becoming effective, FICC will provide the Commission staff with quarterly reports that itemize divergences between CME prices and NYSE Liffe prices for "look-alike contracts."<sup>99</sup>
- Semi-annually, FICC will provide the Commission staff with reports summarizing the sensitivity of the model used for the NYPC Agreement and the collected margin to the model's assumptions and established parameters.
- Quarterly, FICC will provide the Commission staff with detailed portfolio analyses of members participating in the NYPC Arrangement.
- Monthly, FICC will provide the Commission staff with reports summarizing the details of: (1) Any instances in which the account of a

member participating in the NYPC Agreement experienced a loss that exceeded its margin requirement and the magnitude of such loss; (2) FICC's analysis of the sufficiency of NYPC's guaranty fund in conjunction with NYPC; and (3) FICC's analysis of daily correlations between the futures and cash products that are subject to the NYPC Arrangement.

- FICC will provide the Commission staff with DTCC's periodic default simulations that factor in members' participation in the NYPC Agreement.
- For 24 months upon the proposed rule change becoming effective, FICC will provide the Commission staff with information on a quarterly basis regarding potential LPPs, including progress on negotiations and discussions of agreements or potential agreements with potential LPPs.
- FICC will provide the Commission all agreements entered into between NYPC and any LPPs, as well as all amendments to such agreements, including, but not limited to, those regarding changes in the fee arrangements.

#### V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act<sup>100</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FICC-2010-09) be, and hereby is, approved.

**Elizabeth M. Murphy,**  
Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63969; File No. SR-BATS-2011-007]

#### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. to Adopt BATS Rule 11.21, entitled "Input of Accurate Information"

February 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

<sup>100</sup> 15 U.S.C. 78q-1.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>94</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>95</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>96</sup> See Securities and Exchange Act Release No. 44301, 66 FR 28297 (May 11, 2001) (approving a "two-pot" cross-margining proposal between FICC's predecessor and CME).

<sup>97</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>98</sup> Letter from Michael Bodson, Executive Managing Director, Fixed Income Clearing Corporation and Walt Lukken, Chief Executive Officer, New York Portfolio Clearing, LLC (February 27, 2011).

<sup>99</sup> "Look-alike contracts" refers to contracts that have similar economic features but are traded separately on CME and NYSE Liffe.

notice is hereby given that on February 18, 2011, BATS Exchange, Inc. ("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 Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> 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 adopt new BATS Rule 11.21 to require Members to identify each order accurately as a Principal, Agency, or Riskless Principal Order.

### **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 add new BATS Rule 11.21 for the purpose of increasing transparency and to enhance the surveillance database and audit trail of transaction data used by the Exchange in surveillance of its market. The proposed rule change would require Members to identify the capacity of each order accurately as a Principal, Agency, or Riskless Principal Order. For purposes of surveillance, the Exchange currently identifies the capacity of each order as Principal, Agency, or Riskless Principal; however, several other capacities are accepted upon order entry, including no response, which are thereafter mapped to one of the above-

listed order capacities. By limiting the order capacity upon entry to Principal, Agency, or Riskless Principal and requiring Members to accurately submit an order capacity for each order, the Exchange will be able to more precisely identify the type of order received and more effectively surveil for abusive trading.

BATS does not have a rule that makes an explicit statement regarding a Member's obligation to input accurate information into the System. Notwithstanding, BATS believes that disciplinary cases against Members entering inaccurate or incomplete information may be brought appropriately under BATS Rule 3.1, which requires Members to observe high standards of commercial honor and just and equitable principles of trade. Rule 3.1 protects the investing public and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. Because of the regulatory importance of accurate information input in the System, BATS believes a rule that directly addresses Members' obligation to provide accurate information is warranted. The proposed rule makes clear Members' obligation to input accurate information into the System and that failure to do so would be considered a violation of BATS Rules.

BATS notes that it already has a rule in place for its equity options platform ("BATS Options") that requires members of BATS Options ("Options Members") to ensure that accurate information is input into the System, a requirement that includes, but is not limited to, the capacity of the Options Member as it relates to the order.<sup>5</sup> The Commission has also previously approved rules proposed by the Nasdaq Stock Market LLC ("Nasdaq") that apply to Nasdaq options and equities platforms and require participants to ensure that accurate information is entered into Nasdaq's system, including but not limited to the capacity of the participant.<sup>6</sup> Thus, the proposed rule change would: (1) make BATS Rules regarding equity trading consistent with its rules regarding options trading; and (2) bring BATS Rules in line with those of other self-regulatory organizations.

In order to allow Members sufficient time to review and complete any systems changes necessitated by this

filing, the Exchange has proposed an operative date of April 4, 2011.

##### **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.<sup>7</sup> Specifically, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. Specifically, the changes proposed herein will serve to promote the accuracy of information input into the Exchange. Accurate information is necessary for the efficient and fair operation of the Exchange, and will assist the Exchange in surveilling the markets for fraudulent activity.

#### *(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 Changes and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, 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

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> BATS Rule 18.2(a)(6).

<sup>6</sup> See Securities Exchange Act Release 59547 (March 10, 2009), 74 FR 11386 (March 17, 2009).

protection of investors and the public interest.<sup>11</sup>

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 furtherance of the purposes of the Act.<sup>12</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2011-007 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-2011-007. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE.,

<sup>11</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 Exchange has satisfied this requirement.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

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 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-2011-007 and should be submitted on or before March 25, 2011.

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

**Cathy H. Ahn,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63971; File No. SR-NYSEARCA-2011-05]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.16 (Short Sales) in Order To Implement the Provisions of Rule 201 of Regulation SHO Under the Securities Exchange Act of 1934

February 25, 2011.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 24, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 substantially 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 7.16 (Short Sales) in order to implement the provisions of Rule 201 of Regulation SHO ("Rule 201")<sup>4</sup> under the Act,

which, if triggered, imposes a restriction on the prices at which covered securities may be sold short ("Short Sale Price Test"). Among other things, Rule 201 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of a covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. The proposed rule amendment would establish procedures for the Exchange, as a listing market, to determine that a Short Sale Price Test has been triggered for a covered security. The proposed rule amendment would also establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the Short Sale Price Test is triggered, including establishing what types of short sale orders will be re-priced to achieve a permitted price, in accordance with Rule 201, during the period in which a Short Sale Price Test is in effect ("Short Sale Period").<sup>5</sup> Amended Rule 7.16 would also establish Exchange procedures regarding the execution and display of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt." Finally, the proposed rule amendment would also establish Exchange procedures for addressing situations where the Exchange determines that the Short Sale Price Test for a covered security was triggered by a "clearly erroneous" execution as that term is defined in NYSE Arca Equities Rule 7.10.<sup>6</sup>

The Exchange also proposes to amend NYSE Arca Equities Rule 7.65, which applies to the Exchange's Portfolio Crossing Service ("PCS"), to exempt PCS transactions from the short sale price test restrictions contained in NYSE Arca Equities Rule 7.16(f). PCS short sale transactions would, however, be subject to the order marking and securities lending provisions of Paragraphs (a)-(e) of NYSE Arca Equities Rule 7.16. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

<sup>5</sup> See notes 23-31 *infra* and accompanying text.

<sup>6</sup> See *infra* note 22 and accompanying text regarding "clearly erroneous" trades and proposed Rule 7.16(f)(iv)(A). The proposed rule amendment would, among other things, establish the duration of the Short Sale Price Test. See *infra* note 21 and accompanying text.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 17 CFR 242.201.