

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60040; File No. SR-BATS-2009-014]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend BATS Rule 11.13, Entitled "Order Execution"

June 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 22, 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 BATS. On May 29, 2009, BATS filed Amendment No. 1 to the proposed rule change. BATS has designated the proposed rule change, as amended, as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 11.13, entitled "Order Execution," to add a new order type (a "BATS Only BOLT Order") and a pre-routing processing method ("BOLT Routing") that will each include an optional display period through which a marketable order will be displayed to Exchange Users (and market data recipients) for a brief period of time designated by the Exchange prior to being routed, cancelled, or posted to the BATS Book.

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

The purpose of the proposed rule change is to provide Users of the Exchange with another order type, as well as another option with respect to the order processing methods offered by the Exchange in connection with routing away from the Exchange. Specifically, both the order type and the pre-routing processing method will, after first seeking to execute against the BATS Book, display a marketable order at the NBB for a sell order or the NBO for a buy order to Exchange Users and market data recipients for a brief, variable amount of time (not to exceed 500 milliseconds) for potential execution. BATS notes that pre-routing display functionality has already been approved by the Commission for use by the CBOE Stock Exchange and that such functionality can be expected to provide System Users with greater control over their trading. Except for the addition of a variation of the BATS Only order type and changes to the routing functionality for market and marketable limit orders described herein, nothing in the proposal will modify or alter any existing rule or process related to order priority, order execution, trade-through protection or locked or crossed markets. The Exchange will implement the proposed changes such that marketable BATS Only BOLT Orders and routable orders will be distinguishable from the Exchange's protected bid and protected offer while displayed by the Exchange for potential execution during the variable time period described in this filing.

(i) Proposed BATS Only BOLT Order

The proposed order type, a BATS Only BOLT Order, will first seek to execute against the BATS Book. If such order would lock or cross a Protected

Quotation when entered it will be displayed at the NBB for a sell order or the NBO for a buy order to Exchange Users (and market data recipients) for potential execution for a variable time period not to exceed 500 milliseconds, such time period to be designated by the Exchange. Any unfilled balance of the order remaining after this variable period of time will be cancelled back to the User if such balance would continue to lock or cross a Protected Quotation. If, however, after the variable period of time the unfilled balance would not lock or cross a Protected Quotation, then such unfilled balance will remain posted in the BATS Book.

(ii) Proposed BOLT Routing

The proposed order processing method, set forth in BATS Rule 11.13, will apply when an unfilled balance of a routable market or limit order that is marketable against the existing NBBO remains after the Exchange has attempted to execute the order against the BATS Book. Specifically, the Exchange proposes to offer a method of processing that can be used in conjunction with, or instead of, routing options offered by the Exchange, through which such order will be briefly displayed to Users of the Exchange (and to Exchange market data recipients) for potential execution at a price equal to the NBB for a sell order or the NBO for a buy order.

The Exchange currently allows Users to submit various types of orders to the Exchange that are processed pursuant to Rules 11.13(a)(1) and 11.13(a)(2). Rule 11.13(a)(1) describes the process by which an incoming order would execute against the BATS Book.⁴ To the extent an order has not been executed in its entirety against the BATS Book, Rule 11.13(a)(2)(A) and (B) then describe the process of routing orders⁵ to one or more Trading Centers. The Exchange proposes to offer the display process to Users as an additional option for processing the unfilled balance of an order that remains after an initial attempt to execute against the BATS Book.

Under the proposal, after first executing a market or marketable limit order against the BATS Book, any remaining shares will be displayed at the NBB for a sell order or the NBO for a buy order to Users of the Exchange and Exchange market data recipients for potential execution for a variable time period not to exceed 500 milliseconds,

⁴ As defined in BATS Rule 1.5(d).

⁵ Market orders are routed away pursuant to Rule 11.13(a)(2)(A) and marketable limit orders are routed away pursuant to Rule 11.13(a)(2)(B).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

such time period to be designated by the Exchange. The BOLT routing display process will be the default processing preference, and thus, Users that do not wish to have their orders displayed pursuant to this process prior to routing will be required to opt-out of the BOLT routing display period.

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.⁶ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,⁷ 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 select another method of processing for routable and non-routable marketable orders that may result in the efficient execution of such orders. Specifically, the Exchange believes that Users may receive more efficient order executions by briefly displaying their marketable orders to BATS Users for potential execution. BATS notes that similar brief marketable order display functionality has already been found to be consistent with the Act by the Commission.⁸

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.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (SR-CBOE-2004-21); Securities Exchange Act Release No. 59359 (February 4, 2009), 74 FR 6927 (February 11, 2009) (SR-CBOE-2008-123). NASDAQ also recently adopted a similar rule pursuant to an immediately effective rule filing. See Securities Exchange Act Release No. 59875 (May 6, 2009), 74 FR 22794 (May 14, 2009) (SR-NASDAQ-2009-043) (notice of filing and immediate effectiveness of NASDAQ proposal to incorporate an optional pre-routing display period for all orders using NASDAQ routing strategies).

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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BATS requests that the Commission waive the 30-day operative delay because the Exchange expects to have technologies in place to support the proposed rule change, as amended, on or about June 5, 2009, and believes that the expected benefits to Exchange Users from the proposed rule change, as amended, should not be delayed. The Commission believes that waiving the 30-day operative delay¹³ is consistent with the protection of investors and the public interest and designates the proposal operative on June 5, 2009.

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.¹⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give 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. BATS has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 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).

¹⁴ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 29, 2009, the date on which BATS submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2009-014 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-2009-014. 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 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 publicly available. All submissions should refer to File Number SR-BATS-2009-014 and should be submitted on or before July 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

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¹⁵ 17 CFR 200.30-3(a)(12).