

necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁶ 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-BX-2011-037 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-BX-2011-037. 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 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-BX-2011-037 and should be submitted on or before July 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64754; File No. SR-BATS-2011-015]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change To Amend BATS Rule 11.9, Entitled "Orders and Modifiers" and BATS Rule 11.13, Entitled "Order Execution"

June 27, 2011.

I. Introduction

On May 9, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 19-4 thereunder,² a proposed rule change to amend BATS Rule 11.9, entitled "Orders and Modifiers" and BATS Rule 11.13, entitled "Order Execution." The proposed rule change was published for comment in the **Federal Register** on May 18, 2011.³ The

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19-4.

³ See Securities Exchange Act Release No. 64475 (May 12, 2011); 76 FR 28830 ("Notice").

Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

First, the Exchange proposes to change its order handling procedures to allow both Non-Displayed Orders⁴ and orders subject to price sliding that are not executable at their most aggressive price to be executed in the manner and under the circumstances described below.⁵ Second, the Exchange proposes to modify the Exchange's rules to make clear that an order subject to "NMS price sliding"⁶ can be ranked at the same price as an order displayed on the other side of the BATS Book,⁷ although temporarily not executable at that price and displayed at one minimum price variation less aggressive than its price.

The Exchange's first proposed change noted above, amending BATS Rules 11.9 and 11.13, is intended to address two specific scenarios that currently exist on the Exchange: (1) Non-Displayed Orders posted opposite same-priced displayed orders and (2) orders subject to price sliding under BATS Rule 11.9(g) that are ranked at a price equal to an opposite-side displayed order (collectively "Resting Orders").⁸ These two scenarios can occur when an order on either side of the market is a BATS Post Only Order.⁹ Consistent with the Exchange's current rule regarding priority of orders, BATS Rule 11.12, these Resting Orders cannot be executed by the Exchange pursuant to BATS Rule 11.13 when such orders would be executed at prices equal to displayed orders on the opposite side of the market (the "locking price") because if the incoming orders were allowed to execute against such Resting Orders at

⁴ BATS Rule 11.9(c)(11) defines a Non-Displayed Order as "a market or limit order that is not displayed on the Exchange."

⁵ The reference to the most "aggressive" price means for bids the highest price the User is willing to pay, and for offers the lowest price at which the User is willing to sell.

⁶ For bids, this means that a price slid order is displayed at one minimum price variation less than the current national best offer ("NBO"), and for offers, this means that a price slid order is displayed at one minimum price variation more than the current national best bid ("NBB"). See BATS Rule 11.9(g)(1).

⁷ As defined in BATS Rule 1.5(e), the BATS Book is "the System's electronic file of orders."

⁸ See Notice, *supra* note 3.

⁹ See *id.* As defined in BATS Rule 11.9(c)(6), a BATS Post Only Order is "[a]n order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(1) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the BATS Book." Accordingly, a BATS Post Only Order does not remove liquidity, but posts to the BATS Book to the extent permissible.

⁶ 15 U.S.C. 78s(b)(3)(a)(ii).

the locking price, such incoming orders would receive a priority advantage over the prior, displayed order at the locking price.¹⁰

The Exchange proposes to provide for the execution of these Resting Orders under certain circumstances. For bids or offers equal to or greater than \$1.00 per share, in the event that an order submitted to the Exchange on the side opposite such Resting Order is a market order or a limit order priced more aggressively than the locking price, the Exchange proposes to amend BATS Rule 11.13 to provide for the execution of the Resting Order at, in the case of a Resting Order bid, one-half minimum price variation less than the locking price, and, in the case of a Resting Order offer, at one-half minimum price variation more than the locking price.¹¹ The Exchange also proposes adding Interpretation and Policy .01 to BATS Rule 11.13 to state that the Exchange will consider it inconsistent with just and equitable principles of trade to engage in a pattern or practice of using Non-Displayed Orders or orders subject to price sliding solely for the purpose of executing such orders at one-half minimum price variation from the locking price.¹² Evidence of such behavior may include, but is not limited to, a User's pattern of entering orders at a price that would lock or be ranked at the price of a displayed quotation and cancelling orders when they no longer lock the displayed quotation.¹³ The Exchange has also stated that it will conduct surveillance to ensure that users are not intentionally seeking to create an internally locked book for the purpose of obtaining an execution at a one-half minimum price variation.¹⁴

The Exchange notes that its proposal to modify its handling of Resting Orders is intended to address specific conditions that are a current, natural consequence of the Exchange's order handling procedures because such orders are priced at the very inside of the market but are temporarily un-executable at their full limit price due to the Exchange's priority rule and order handling procedures.¹⁵ The Exchange

believes the proposed change will provide incoming orders with the benefit of price improvement against such aggressively priced Resting Orders.¹⁶ The Exchange believes this will optimize available liquidity for incoming orders and provide price improvement for market participants at times when such participants are not receiving executions from the Exchange or are receiving less price improvement than is currently available.¹⁷

The Exchange's second proposed change is to clarify, by amending BATS Rule 11.9, that an order subject to NMS price sliding can be ranked at the same price as an order displayed on the other side of the BATS Book.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act¹⁸ and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,²⁰ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Commission finds that the proposal is consistent with Rules 610(d)²¹ and 612²² of Regulation NMS.

The Commission believes that the proposed order handling rule change providing for the execution, under

discouraging such liquidity by leaving it unexecuted. *Id.*

¹⁶ See *id.* In addition, if the BATS Book changes so that such orders are no longer resting or ranked opposite a displayed order, then such orders will again be executable at their full limit price, and in the case of price slid orders, will be displayed at that price. *Id.*

¹⁷ See *id.*

¹⁸ 15 U.S.C. 78f.

¹⁹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ SEC Rule 610(d) of Regulation NMS requires policies and procedures to avoid the display of quotations that lock or cross protected quotations. 17 CFR 242.610(d).

²² SEC Rule 612 of Regulation NMS states that no national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than \$0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than \$1.00 per share. 17 CFR 242.612.

certain circumstances, of certain Non-Displayed Orders and orders subject to price sliding that are not executable at their most aggressive prices should serve to enhance the quality of execution on the Exchange by facilitating executions that would not occur pursuant to the Exchange's current order handling process. In addition to facilitating executions that currently would not take place, the proposed rule change will offer price improvement to the orders executed under the new order handling process. The Commission believes that the new order handling process should benefit market participants by, among other things, providing greater opportunities for buy and sell orders to interact with each other and potentially reducing certain trading costs for market participants. The Commission further believes that any potential abuses are mitigated by the Exchange's addition of Interpretation and Policy .01 to BATS Rule 11.13 and its commitment to monitor relevant trading on its market. Additionally, the Commission believes that this proposed order handling process is consistent with Rule 612 of Regulation NMS because any executions in an increment smaller than \$0.01 are the result of bids, offers or orders that are priced in increments at least equal to \$0.01.²³ With regard to the proposed rule change clarifying that an order subject to NMS price sliding pursuant to BATS Rule 11.9 can be ranked at the same price as an order displayed on the other side of the BATS Book, the Commission believes that such clarification is consistent with Rule 610(d) of Regulation NMS because the proposed rule change would not result in the display of a locking quotation.²⁴

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-BATS-2011-015) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Elizabeth M. Murphy,
Secretary.

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²³ See Rule 612 of Regulation NMS. 17 CFR 242.612.

²⁴ See Rule 610(d) of Regulation NMS. 17 CFR 242.610(d).

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).

¹⁰ See *id.*

¹¹ See proposed changes to BATS Rule 11.13(a)(1). For bids or offers under \$1.00 per share, Resting Orders priced at the locking price will not be executed by the Exchange. *Id.*

¹² See proposed Interpretation and Policy .01 to BATS Rule 11.13.

¹³ See *id.*

¹⁴ See Notice, *supra* note 3.

¹⁵ See *id.* The Exchange further notes that by permitting a Member's Non-Displayed Order to rest at a locking price on the other side of a displayed order, the Exchange is incenting Members to post aggressively priced liquidity, rather than