

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59967; File No. SR-BATS-2009-015)

May 21, 2009

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.13, entitled “Order Execution.”

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 May 19, 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 Act³ 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 11.13, entitled “Order Execution,” to provide Users⁵ of the Exchange with another option with respect to the Exchange’s method of

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).

⁵ As defined in BATS Rule 1.5(bb).

processing the unfilled balance of a limit order that returns to the Exchange and is posted to the BATS Book after being routed away to one or more away Trading Centers⁶ for execution.

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 option with respect to the Exchange's method of processing the unfilled balance of a limit order that returns to the Exchange and is posted to the BATS Book after being routed away to one or more away Trading Centers for execution. Specifically, the Exchange will allow Users to designate an order as eligible for re-routing after being posted to the BATS Book if another Trading Center has locked or crossed the posted order.

The Exchange currently allows Users to submit various types of limit orders to the Exchange that are processed pursuant to Rules 11.13(a)(1) and 11.13(a)(2)(B), as set forth

⁶ As defined in BATS Rule 2.11.

below. Rule 11.13(a)(1) describes the process by which an incoming order would execute against the BATS Book.⁷ To the extent an order has not been executed in its entirety against the BATS Book, Rule 11.13(a)(2)(B) then describes the process of routing marketable limit orders⁸ to one or more Trading Centers, including a description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. If not filled through routing, and based on the order instructions, the unfilled balance of the order may be posted to the BATS Book. The Exchange is proposing to permit Users to designate the order as eligible to be routed away from the Exchange, after being posted, to the extent another Trading Center locks or crosses the posted order. The Exchange believes that the proposed change to Rule 11.13 will give additional flexibility with respect to the treatment of their orders and may result in such orders being executed more quickly. The proposed option to route a posted order to a locking or crossing market is offered by at least one of the Exchange's competitors.⁹

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.¹⁰ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹¹ because it would promote just and

⁷ As defined in BATS Rule 1.5(d).

⁸ Market orders are also routed away, pursuant to Rule 11.13(a)(2)(A), however the Exchange is not proposing any changes to the treatment of routed market orders at this time.

⁹ See, e.g., NASDAQ Rule 4758(a)(1)(A)(ii).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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 instruct the Exchange to route a posted order away from the Exchange to the extent another market has locked or crossed such order. This functionality will allow the Exchange to seek to execute the resting order if market conditions have changed since such order was originally posted.

B. Self-Regulatory Organization's Statement of 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 rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁴ However, Rule 19b-4(f)(6)(iii)¹⁵ 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 requested that the Commission waive the 30-day operative delay. The Commission notes that BATS' proposal is substantially similar to the rules of another national securities exchanges and does not raise any new substantive issues.¹⁶ BATS expects to have operational and technological changes in place to support the proposed rule change on May 22, 2009.¹⁷ In addition, BATS states that the proposed functionality is completely optional, and will not require any programming changes by Users of the Exchange unless they choose to use the new functionality. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.¹⁸

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary

¹⁴ 17 CFR 240.19b-4(f)(6)(iii). 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 deems this requirement to have been satisfied.

¹⁵ Id.

¹⁶ See supra note 9.

¹⁷ See SR-BATS-2009-015, Item 7.

¹⁸ For the 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).

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 No. SR-BATS-2009-015 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 No. SR-BATS-2009-015. 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 10:00 am and 3:00

pm. Copies of such filing also will be available for inspection and copying at the principal office of BATS. 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 No. SR-BATS-2009-015 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).