SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62102; File No. SR-BATS-2010-011)

May 13, 2010

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.9, entitled "Orders and Modifiers"

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 4, 2010, BATS Exchange, Inc. (the "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[3] 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 proposes to make a modification to the existing technology that it provides to a User that wishes to avoid trading against orders from that same User (currently referred to as "Member Match Trade Prevention" or "MMTP").

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.

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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).

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 make a minor change to its Member Match Trade Prevention,

or MMTP, functionality, described in BATS Rules 11.9(f) and 21.1(g) and to rename the

functionality as Match Trade Prevention ("MTP").

        MMTP modifiers are designed to prevent two orders with the same Unique Identifier (as

defined below) from executing against each other. The Exchange currently offers four MMTP

modifiers that 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").[5] BATS is proposing a change to the MMTP Decrement and Cancel identifier

("MDC"); none of the other MMTP identifiers are affected by this proposal, other than to change

the references throughout the rule text to MTP.

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

Under the existing rules, 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 (the "MDC Exception"). Thus, as shown in the example below, rather than decrementing either order, pursuant to the MDC Exception both orders are cancelled in their entirety when the resting order contains an MMTP modifier other than MDC and is larger than the incoming order.

Current MDC Exception - Example: An order to buy 500 shares @ $22.00 is marked with any MMTP modifier other than MDC 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.

Current MDC Exception - Result: 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.

The Exchange proposes to allow Users to opt-out of the default behavior of the MDC Exception to allow an incoming MDC order to result in a decremented order even when it is smaller than the resting order and the resting order contains an MMTP modifier other than MDC.

Proposed Opt-Out of MDC - Example: An order to buy 500 shares @ $22.00 is marked with any MMTP 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.

Proposed Opt-Out of MDC - Result: 400 of the 500 shares on the resting buy order at $22.00 marked with any MMTP modifier 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.

Although the Exchange intentionally created the MDC Exception based on conversations with its Users regarding the best way to implement the MDC modifier, other Users have requested that the Exchange allow them to have the incoming order control the result in all situations, and thus, have requested to be able to opt-out of the MDC Exception. The Exchange notes that NYSE Arca Equities ("NYSE Arca") has implemented its version of match trade prevention without the MDC Exception, and thus, allowing Users to opt-out of the exception is consistent with NYSE Arca's STP Decrement and Cancel option.[6] The Exchange will allow a User to opt-out of the MDC Exception by changing the settings of its order entry ports. The Exchange may also permit Users to opt-out of the MDC Exception on an order-by-order basis through use of a specific tag attached to each order.

Additional Discussion

In addition to the modification to the MDC modifier described above, the Exchange proposes to change the references throughout its rules from "Member Match Trade Prevention" to "Match Trade Prevention" and from "MMTP" to "MTP".

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[6]   See NYSE Arca Rule 7.31(qq)(3).

The Exchange believes that its Match Trade Prevention functionality allows certain firms to better internalize their agency order flow, which in turn may decrease costs to customers of such firms. The Exchange notes that MTP modifiers do not alleviate, or otherwise exempt, broker-dealers from their best execution obligations. As such, broker-dealers using MTP modifiers are 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, MTP modifiers 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 MTP modifiers may 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 MTP 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.[7] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

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[7]   15 U.S.C. 78f(b).

[8]   15 U.S.C. 78f(b)(5).

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. Specifically, Match Trade Prevention functionality allows firms to better manage order flow and prevent undesirable executions against themselves, and the proposed change described herein enhances the choices available to such firms in how they do so.

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 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 Act[9] and Rule 19b-4(f)(6) thereunder.[10]

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.[11] However, Rule 19b-4(f)(6)(iii)[12] permits the

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[9]   15 U.S.C. 78s(b)(3)(A).

[10]   17 CFR 240.19b-4(f)(6).

[11]   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,

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 so that the Exchange may immediately offer Exchange Users another choice with respect to MTP modifiers. The Commission notes that the proposal is consistent with the rules of another national securities exchange.[13] 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.[14]

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 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

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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.

[12] Id.

[13] See supra note 6.

[14] 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).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2010-011 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-2010-011. 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,[15] 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 10:00 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

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[15]   The text of the proposed rule change is available on the Commission's Web site at http://www.sec.gov/rules/sro.shtml.

you wish to make available publicly. All submissions should refer to File No. SR-BATS-2010-011 and should be submitted on or before [insert date 21 days from publication in the <u>Federal Register</u>].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy
Secretary

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[16] 17 CFR 200.30-3(a)(12).