

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66891; File No. SR-BATS-2012-016)

May 1, 2012

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify Exchange Rule 11.9 and Rule 21.1 to Allow Optional Attribution of Orders.

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 April 25, 2012, 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 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 filing with the Commission a proposal to amend Rule 11.9, entitled “Orders and Modifiers” and Rule 21.1, entitled “Definitions”, to allow optional attribution of orders submitted to the Exchange in Exchange data feeds.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 this filing is to allow Users to optionally enter orders into the Exchange's systems that will be displayed in Exchange data feeds with such User's market participant identifiers or "MPIDs". Specifically, the Exchange proposes to amend Rule 11.9, which is applicable to the Exchange's equities platform ("BATS Equities") to add a definition of an Attributable Order, which shall mean an order that is designated for display (price and size) including the User's MPID. The Exchange also proposes to adopt a definition in Rule 11.9 for a Non-Attributable Order, which shall mean an order that is designated for display (price and size) on an anonymous basis by the Exchange. Similarly, the Exchange propose to amend Rule 21.1, which is applicable to the Exchange's equity options platform ("BATS Options") to add a definition of an Attributable Order, shall mean an order that is designated for display (price and size) next to the User's MPID. The Exchange also proposes to adopt a definition in Rule 21.1 for a Non-Attributable Order, which shall mean an order that is designated for display (price and size) on an anonymous basis by the Exchange. The proposed definitions of Attributable Order and Non-Attributable Order are virtually identical between BATS Equities and BATS Options, and are also substantively identical to definitions contained in the Rules of The NASDAQ Stock Market LLC ("Nasdaq") and the Nasdaq Options Market ("NOM"), respectively, as described in further detail below.

All display-eligible orders entered into BATS Equities and BATS Options are currently displayed by the Exchange on an anonymous basis without attribution to the entering User. The Exchange is proposing to allow Users to utilize Attributable Orders to include their MPID on published quotations in the Exchange's data feeds. The Exchange believes that such display is consistent with traditional market making on the floor of an exchange as well as existing rules of the Exchange's competitors.³ The addition of Attributable Orders will allow a party engaged in market making to identify itself as the party willing to buy or sell securities on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal 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.⁴ In particular, the proposal is consistent with Section 6(b)(5) of the Act,⁵ 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. The Exchange believes that the proposal will benefit market participants and help to promote transparency by providing additional information regarding quotations displayed on the Exchange. Specifically, any User that wishes to publicly disclose their identity when quoting on the Exchange will be permitted to do so, and such attributed quotations will be analogous to the quotations they provide in other contexts (e.g., on the floor of a floor-based stock exchange or in the over-the-counter market through direct

³ See Nasdaq Rule 4751(e)(1) and (2) and NOM Chapter VI, Section (1)(d)(1) and (2); see also NYSE Arca Options Rule 6.62(x).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

interaction). The proposal also promotes transparency in that other Users will be able to see with whom they are interacting when trading against displayed, attributed orders.

The proposed rule change is also consistent with Section 11A(a)(1) of the Act⁶ in that it seeks to assure fair competition among brokers and dealers by providing functionality that is consistent with that of functionality offered by the Exchange's competitors.⁷ The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning the ability to display an attributed order on an exchange.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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 Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

⁶ 15 U.S.C. 78k-1(a)(1).

⁷ See supra note 4.

⁸ 15 U.S.C. 78s(b)(3)(A).

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it would permit the Exchange to immediately implement the proposed rule change that would allow the Exchange to compete with other exchanges that offer a similar optional attribution of quotations functionality.¹⁰ The Exchange represented that the proposed rule is substantially similar to and based on rules of other exchanges and that the waiver of the 30-day operative delay would help ensure uniformity across market centers concerning the display of attributed quotations. Further, the Exchange believes that because the attribution functionality is optional, there will be no need for a phased implementation as Users that do not wish to avail themselves of the options functionality would not have to make any systems changes. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver would allow the Exchange to offer a functionality to market participants that is substantially similar other exchanges without delay. The Commission notes that the proposed rule change is based on and similar to NASDAQ Rule 4751(e)(1) and (2).¹¹ Additionally, the Commission notes that this attribution functionality is optional. Therefore, the Commission designates the proposal operative upon filing.¹²

⁹ 17 CFR 240.19b-4(f)(6). 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.

¹⁰ See SR-BATS-2012-016, Item 7.

¹¹ See supra note 3.

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered

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.

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-BATS-2012-016 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-2012-016. 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 website (<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

the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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-2012-016 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).