

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70199; File No. SR-BATS-2013-036)

August 14, 2013

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change to Introduce a Connectivity Option Through Points of Presence

I. Introduction

On June 19, 2013, BATS Exchange, Inc. (“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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to introduce a connectivity option through Points of Presence (PoPs). The proposed rule change was published for comment in the Federal Register on July 3, 2013.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange currently maintains a presence in two third-party data centers: (i) the primary data center where the Exchange’s business is primarily conducted on a daily basis, and (ii) a secondary data center, which is predominantly maintained for business continuity purposes. Exchange participants, including participants trading on the Exchange and market data recipients, are required to connect directly to the Exchange at the primary or secondary data centers where the Exchange currently maintains servers. If an Exchange participant does not have a presence within these data centers, then the participant is required to obtain connectivity from the participant’s location, or data center, to the data centers where the Exchange’s servers are located. The Exchange is proposing to provide market participants with the ability to access

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 69877 (June 27, 2013), 78 FR 40241 (“Notice”).

the Exchange's network via physical ports at data center entry points, or PoPs, at data centers other than the Exchange's primary or secondary data center ("Remote Data Centers").

PoP ports will be located at Remote Data Centers in order to provide participants connectivity to the Exchange. In the Notice, the Exchange represented that connectivity established via PoP ports will allow market participants to perform all of the operations that they would typically perform when connecting directly to the Exchange, including order entry and receipt of market data. Participants would establish a physical connection to a PoP port in the Remote Data Center, from which the Exchange would provide the requisite connectivity to allow participants to access the Exchange's servers.<sup>4</sup>

Participants that do not maintain a presence in either of the Exchange's data centers must currently establish connectivity to such data centers themselves through third party telecommunications providers. By making PoP entry points available, the Exchange is reducing or eliminating the need for participants to contract themselves for third party connectivity located in the same data center as such PoP ports. The Exchange believes that some participants may choose to connect to the Exchange at a PoP location to the extent that the Exchange's service offering makes connecting to the Exchange in this manner more easily established or more cost effective. In the Notice, the Exchange suggested that the PoPs may be most attractive to smaller market participants that otherwise may not connect to the Exchange.

The Exchange proposes to provide the option to connect to the Exchange via PoPs to any member or non-member that has been approved to connect to the Exchange. Any member or non-member opting not to access the Exchange at a PoP location would still be able to access the Exchange in the existing data centers as they do currently.

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<sup>4</sup> The Exchange would contract with a third party telecommunications provider to supply connectivity to the Exchange to its participants.

### 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 Act<sup>5</sup> and the rules and regulations thereunder applicable to a national securities exchange. Additionally, in approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.<sup>6</sup> The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that competition for customers and order flow amongst exchanges and other non-exchange market participants is considerable and that the Exchange is offering this new connectivity option to keep pace with changes in the industry and evolving customer needs. The Exchange further states that the offering is entirely optional and is geared towards attracting new customers, as well as retaining existing customers. Additionally, the Exchange has represented that it will make PoPs equally available to any Exchange member or non-member that has been approved to connect to the Exchange.<sup>8</sup> Finally, the Exchange does not believe that

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<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See Notice, *supra* note 3, at 40242. The Exchange notes that this would include any

demand will exceed the capacity planned for PoP access. However, in the event that demand does exceed the capacity planned for PoP access, the Exchange represented that it would expand its infrastructure as necessary in order to meet demand.<sup>9</sup> For the reasons noted above, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-BATS-2013-036) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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Member, non-member service bureau that acts as a conduit for orders entered by Exchange Members, Sponsored Participant, or market data recipient. Id.

<sup>9</sup> Id.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).