

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73234; File No. SR-BATS-2014-042)

September 26, 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.9(c) to Adopt a Supplemental Peg Order

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 September 15, 2014, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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 the Substance of the Proposed Rule Change

The Exchange proposed to amend: (i) Rule 11.9(c) to adopt a new order type called the Supplemental Peg Order and; (ii) Rule 11.12(a) to reflect the priority of Supplemental Peg Orders. The proposed Supplemental Peg Order is identical to the existing Route Peg Order available on EDGX Exchange, Inc. (“EDGX”) and EDGA Exchange, Inc. (“EDGA”)⁵ and

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)(iii).

⁵ See EDGA Rules 11.5(c)(14), 11.8(a)(2) and 11.8(a)(7); EDGX Rules 11.5(c)(17), 11.8(a)(2) and 11.8(a)(7).

similar to order types offered by the Nasdaq Stock Market LLC (“Nasdaq”) and NYSE Arca, Inc. (“NYSE Arca”).⁶ The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁷

The text of the proposed rule change is available at the Exchange’s website 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 Exchange proposes to amend: (i) Rule 11.9(c) to adopt a new order type called the Supplemental Peg Order and; (ii) Rule 11.12(a) to reflect the priority of Supplemental Peg Orders. The proposed Supplemental Peg Order is identical to the existing Route Peg Order available on EDGX and EDGA⁸ and similar to order types offered by the NYSE and NYSE Arca.⁹

⁶ See Nasdaq Rules 4751(f)(14) and 4757(a)(1)(D); NYSE Arca Rule 7.31(f).

⁷ 17 CFR 240.19b-4(f)(6)(iii).

⁸ See supra note 5.

⁹ See supra note 6.

Earlier this year, the Exchange and its affiliate, BATS Y-Exchange, Inc. (“BYX”), received approval to affect a merger (the “Merger”) of the Exchange’s parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BATS, BYX and EDGX, the “BGM Affiliated Exchanges”).¹⁰ In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges.

Like the Route Peg Order on EDGA and EDGX,¹¹ the proposed Supplemental Peg Order would be a non-displayed limit order that posts to the BATS Book,¹² and thereafter be eligible for execution at the National Best Bid (“NBB”) for buy orders and National Best Offer (“NBO”) for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price. Supplemental Peg Orders are passive, resting orders on the BATS Book and do not take liquidity. A User¹³ may specify a minimum execution quantity for a Supplemental Peg Order. A minimum execution quantity on a Supplemental Peg Order will no longer apply where the number of shares remaining after a partial execution are less than the minimum execution quantity. Supplemental Peg Orders are eligible for execution in a given security during the Pre-Opening Session, Regular Trading

¹⁰ See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

¹¹ See EDGA Rule 11.5(c)(14); EDGX Rule 11.5 (c)(17).

¹² The “BATS Book” is defined as “the System’s electronic file of orders.” See Exchange Rule 1.5(e).

¹³ The term “User” is defined under Exchange Rule 11.5(cc) as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.”

Hours, and After Hours Trading Session.¹⁴ Supplemental Peg Orders are not eligible for execution in the Opening Process.¹⁵ A Supplemental Peg Order does not execute at a price that is inferior to a Protected Quotation, and is not permitted to execute if the National Best Bid or Offer (“NBBO”) is locked or crossed. Any and all remaining, unexecuted Supplemental Peg Orders are cancelled at the conclusion of the After Hours Trading Session. The Exchange notes that the proposed rule text is substantially identical to the rules of EDGA and EDGX.¹⁶

The Exchange also proposes to amend Rule 11.12(a)(2) to outline the execution priority of the proposed Supplemental Peg Order. Like a Route Peg Order on EDGA and EDGX,¹⁷ an incoming order that is eligible for routing would first be matched against orders other than Supplemental Peg Orders in price/time priority in accordance with Rule 11.12(a)(2).¹⁸ Any unexecuted portion of that order would then be eligible to execute against any Supplemental Peg Orders resting on the BATS Book. The Exchange also proposes to amend Rule 11.12(a)(4) and add new subparagraph (a)(6) to Rule 11.12 to state that if a Supplemental Peg Order is partially

¹⁴ Route Peg Orders on EDGA and EDGX are currently only eligible for execution during Regular Trading Hours. See supra note 11. The Exchange understands that EDGA and EDGX are to file a propose rule change with the Commission to permit Route Peg Orders to be eligible for execution during the Pre-Opening and Post-Closing Sessions.

¹⁵ The Exchange’s process currently applies only to BATS-listed securities. The Exchange has filed a proposed rule change with the Commission to implement an Opening Process for non-BATS-listed securities. See SR-BATS-2014-037. Because there is currently no Opening Process for non-BATS-listed securities, if Supplemental Peg Orders are offered prior to the approval of the proposed rule change or if the proposed rule change is never approved, then this restriction will only apply to BATS-listed securities.

¹⁶ See supra note 11.

¹⁷ See EDGA Rule 11.8(a)(2); EDGX Rule 11.8(a)(2).

¹⁸ In sum, Exchange Rule 11.12(a)(2) states that the System shall execute equally priced trading interest within the System in time priority in the following order: displayed size of Limit Orders; non-displayed Limit Orders; Pegged Orders; Mid-Point Peg Orders; Reserve size of orders; and discretionary portion of Discretionary Orders as set forth in Exchange Rule 11.9(c)(9).

executed, the remaining portion of the order would continue to be eligible for execution but it would be assigned a new timestamp after each partial execution. Assigning a new timestamp after each partial execution would allow for a rotating priority of executions for Users who place Supplemental Peg Orders. The Exchange notes that the proposed rule text is substantially similar to the rules of EDGA and EDGX.¹⁹

Implementation Date

The Exchange will announce the effective date of the proposed rule change in a Trade Desk Notice to be published following publication of the proposed rule change by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act²⁰ and further the objectives of Section 6(b)(5) of the Act²¹ because they are designed 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest.

The proposed rule change adds certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering across the BGM Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on BYX, EDGA and/or EDGX. The proposed rule changes would also provide Users with access

¹⁹ See EDGA Rule 11.8(a)(5) and (7); EDGX Rule 11.8(a)(5) and (7).

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

to functionality that may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. As explained elsewhere in this proposal, the proposed Supplemental Peg Order is available on numerous other market centers and is substantially identical to the Route Peg Order available on EDGA and EDGX. Thus, the Exchange believes that the proposed functionality has already been accepted as consistent with the Act and offered by various market centers for many years.

The benefits to investors of enhanced depth of liquidity at the NBBO in today's market structure cannot be understated. The Supplemental Peg Order is designed to incentivize Users to place greater liquidity at the NBBO, thereby promoting more favorable and efficient executions for the benefit of public customers. It would do so by (1) offering liquidity providers a means to use the Exchange to post larger limit orders that are only executable at the NBBO and that do not disclose their trading interest to other market participants in advance of execution; (2) offering market participants seeking to access liquidity a greater expectation of market depth at the NBBO than may currently be the case; and (3) offering more predictable executions at the NBBO for Users by reducing the risk that incremental latency associated with routing an order to an away destination may result in an inferior execution. Thus, by providing an additional means by which market participants can be encouraged to post liquidity at the NBBO on the Exchange, which would add depth and support to the NBBO on the Exchange and mitigate the negative effects of market fragmentation, the proposed rule changes would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and national market system. Moreover, the proposed rule changes would protect investors and the public interest by increasing the probability of an execution on the Exchange at

the NBBO in the event that the order would otherwise be shipped to an external destination and potentially miss an execution at the NBBO while in transit.

The Exchange believes, however, that the benefits to be derived from Supplemental Peg Orders would only be realized if Supplemental Peg Orders only interact with orders eligible for routing. Routable orders are typically characteristic of public customers, both retail and institutional (colloquially referred to as well as “natural” investors), who are concerned with executing at the best price. On the other hand, non-routable orders typically expect to post liquidity on the BATS Book or seek to execute immediately, such as via an Immediate-or-Cancel Order, against the Exchange’s best displayed bid or offer or against hidden liquidity at or inside the NBBO. Professional traders, in particular, are more apt to submit, and often immediately cancel, “pinging” orders, as reflected in generally higher message-to-trade ratios. The Exchange believes this type of order behavior, while it has its own business purposes, would not be suitable to interact with Supplemental Peg Orders simply because Users would be reticent to post liquidity via Supplemental Peg Orders given the uncertain, and therefore difficult to manage, exposure to executions against orders attributable to professional traders. Indeed, the Exchange believes potential liquidity providers would be more apt to provide liquidity in alternative trading systems and other non-exchange market centers where the customization and segmentation experience may be less transparent and objective.

While non-routable orders would not be permitted to execute against Supplemental Peg Orders, the Exchange does not believe that the proposed rule changes would be designed to permit unfair discrimination between customers, brokers, or dealers. First, the Exchange believes this limited exception is constructed narrowly enough, based on rational and legitimate grounds, so that the compelling policy objectives, which are wholly consistent with the Act, can

be realized. Second, the Exchange is not proposing to limit the type of User that can place routable orders, or that can place Supplemental Peg Orders. So any disadvantage resulting from the limitation to executing against routable orders would not target particular segments of market participants, per se, but rather a particular type of market behavior. Therefore, the Exchange believes that not only would the proposed rule changes not be designed to permit unfair discrimination between customers, brokers, or dealers, the differentiation between routable and non-routable orders is an important element for the Supplemental Peg Order to be able to achieve the objectives of protecting investors and the public interest and promoting just and equitable principles of trade.

The Exchange also believes that permitting executions against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price would remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest because it would incentivize Users seeking large size executions to route orders to the Exchange by increasing opportunities for executions against Supplemental Peg Orders in a manner similar to existing functionality available on EDGA and EDGX²² as well as Nasdaq and NYSE Arca.²³

The Exchange also believes its proposal to provide optional functionality that would allow Users to designate a minimum execution quantity on a Supplemental Peg Order removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it would provide an incentive for Members seeking larger-sized executions both to post liquidity at the Exchange using this feature and to route larger-sized orders to the Exchange because of the potential for an execution against such liquidity. The

²² See supra note 5.

²³ See supra note 6.

Exchange further believes that adding an optional minimum quantity would remove impediments to and perfect the mechanism of a free and open market system because the proposed functionality is similar to functionality available at the NYSE Arca.²⁴ The Exchange believes it is appropriate to provide an option for Users seeking to provide such liquidity to not only designate a minimum execution quantity, but for a minimum execution quantity on a Supplemental Peg order to no longer apply where the number of shares remaining after a partial execution are less than the minimum execution quantity. Doing so would permit Users to continue to have their Supplemental Peg Orders eligible for execution in such circumstances. In such case, Users will have the option to cancel their Supplemental Peg Order if they wish.

Lastly, the Exchange believes that the proposal will promote competition by offering an order type that is similar to order types offered by EDGA, EDGX, Nasdaq and NYSE Arca.²⁵ Therefore, the Exchange believes the proposed rule change is designed to support the principles of Section 11A(a)(1)²⁶ of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will promote competition by enhancing the value of the Exchange's Route Peg Order by mirroring the functionality of similar order types offered by EDGA, EDGX, Nasdaq and NYSE Arca.²⁷ Thus, the Exchange believes this

²⁴ Id.

²⁵ See supra notes 5 and 6.

²⁶ 15 U.S.C. 78k-1(a)(1).

²⁷ See supra notes 5 and 6.

proposed rule change is necessary to permit fair competition among national securities exchanges. The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Therefore, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve a consistent technology offering by the BGM Affiliated Exchanges.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)²⁸ of the Act and Rule 19b-4(f)(6)²⁹ thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given 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 Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(6).

least five business days prior to the date of filing.³⁰

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-2014-042 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2014-042. 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

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

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 available publicly. All submissions should refer to File Number SR-BATS-2014-042, 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.³¹

Kevin M. O'Neill
Deputy Secretary

³¹ 17 CFR 200.30-3(a)(12).