SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75324; File No. SR-BATS-2015-47)

June 29, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.9 of BATS Exchange, Inc., to Modify its Price Adjust Functionality

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 June 16, 2015, 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 filed a proposal to amend Rule 11.9 to modify the Exchange's Price Adjust functionality, as described below.

The text of the proposed rule change is available at the Exchange's website at 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

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 currently offers various forms of sliding, which, in all cases, result in the re-pricing of an order to, or ranking and/or display of an order at, a price other than an order's limit price in order to comply with applicable securities laws and/or Exchange rules. Specifically, the Exchange currently offers price sliding to ensure compliance with Regulation NMS and Regulation SHO. Price sliding currently offered by the Exchange re-prices and displays an order upon entry and in certain cases again re-prices and re-displays an order at a more aggressive price one time if and when permissible ("single display-price sliding"), and optionally continually re-prices an order ("multiple display-price sliding") based on changes in the national best bid ("NBB") or national best offer ("NBO", and together with the NBB, the "NBBO"). The Exchange proposes to modify one form of price sliding offered by the Exchange, the Price Adjust process, as described below, in order to align more closely with the Exchange's other form of price sliding, the display-price sliding process.

The Exchange's display-price sliding functionality is designed to avoid locking or crossing other markets' Protected Quotations, but does not price slide to avoid executions on the Exchange's order book ("BATS Book"). Specifically, when the Exchange receives an incoming order designated with a display-price sliding instruction that could execute against resting displayed liquidity on the BATS Book, it will execute against such liquidity. However, when an execution against resting displayed liquidity does not occur because an incoming order is designated as an order that will not remove liquidity (i.e., a BATS Post Only Order), then the

Exchange will cancel the incoming order. In contrast to display-price sliding, which is based solely on Protected Quotations[3] at external markets other than the Exchange, Price Adjust is currently based on Protected Quotations at external markets and at the Exchange. Under the Price Adjust process, if the Exchange has a Protected Quotation that an incoming order to the Exchange locks or crosses then such order executes against the resting order, or, if the incoming order is a BATS Post Only Order or Partial Post Only at Limit Order, such order would be executed in accordance with Rules 11.9(c)(6) and (c)(7), respectively,[4] or would be adjusted pursuant to the Price Adjust process. The Exchange proposes to modify the Price Adjust process so that it is applicable only with respect to quotations of external markets, which, as noted above, is how the display-price sliding process currently operates on the Exchange.

As proposed, under the Price Adjust process, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market will be ranked and displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers). However, as is true for the current

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3 As defined in BATS Rule 1.5(t), a "Protected Quotation" is "a quotation that is a Protected Bid or Protected Offer." In turn, the term "Protected Bid" or "Protected Offer" means "a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association."

4 The Exchange notes that BATS Post Only Orders are permitted to remove liquidity from the BATS Book if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity. See Rule 11.9(c)(6). Similarly, Partial Post Only at Limit Orders are permitted to remove price improving liquidity as well as a User-selected percentage of the remaining order at the limit price if, following such removal, the order can post at its limit price. See Rule 11.9(c)(7).

display-price sliding process, the Price Adjust process would not adjust the price of a BATS Post Only Order or Partial Post Only at Limit Order that would lock or cross an order displayed by the Exchange but rather, would either execute[5] or cancel such order upon entry. Further, to the extent the NBBO changes such that a BATS Post Only Order subject to the Price Adjust process would be ranked at a price at which it could remove displayed liquidity from the BATS Book, the order will be executed as set forth in Rule 11.9(c)(6) or cancelled.

As an example of the Price Adjust process, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.11 per share. Assume the NBBO is $10.10 by $10.11, which includes an offer of $10.11 displayed by at least one other market.

- Under the current functionality, if the Exchange receives a Post Only bid to buy 100 shares at $10.11 per share with a Price Adjust instruction the Exchange will rank and display the order to buy at $10.10 because displaying the bid at $10.11 would lock the offer to sell for $10.11 displayed by the Exchange (as well as one or more external markets).
- As proposed, however, if the Exchange receives a Post Only bid to buy 100 shares at $10.11 per share with a Price Adjust instruction the Exchange will cancel the order back because displaying the bid at $10.11 would lock the offer to sell for $10.11 displayed by the Exchange (as well as one or more external markets) and the Exchange's Price Adjust functionality would no longer price slide past a displayed order resting on the Exchange.
- Assume however, that all facts are the same as the immediately preceding

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5 See id.

example except that the Exchange's best offer is displayed at $10.12. Because an incoming Post Only bid to buy 100 shares at $10.11 could be displayed by the Exchange but would lock the Protected Quotation of one or more external markets at that price, the Exchange would re-price and display the order to buy at $10.10.

In addition to the change proposed above, the Exchange proposes to correct two aspects of the Exchange's current rule regarding the display-price sliding process. First, the Exchange proposes to modify Rule 11.9(g)(1)(D), which states that "any" display-eligible BATS Post Only Order or Partial Post Only at Limit order that locks or crosses a Protected Quotation displayed by an external market upon entry will be subject to the display-price sliding process. Because an order can also be subject to the Price Adjust process or no price sliding option at all, the Exchange proposes to instead start this provision with "depending on User instructions." The Exchange proposes to use this same language in the proposed revision to Rule 11.9(g)(2)(D) with respect to Price Adjust. Second, the Exchange proposes to modify the cross-reference at the end of Rule 11.9(g)(2)(D) from 11.9(c)(7) to 11.9(c)(6) to accurately refer to the rule applicable to BATS Post Only Orders.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act")[6] and further the objectives of Section 6(b)(5) of the Act[7] 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

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6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(5).

in securities, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[8] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed change to Price Adjust is consistent with Section 6(b)(5) of the Act,[9] as well as Rule 610 of Regulation NMS[10] and Rule 201 of Regulation SHO.[11] The Exchange is not modifying the overall functionality of Price Adjust, which is designed to avoid locking or crossing quotations of other market centers or to comply with applicable short sale restrictions. Instead, the Exchange is proposing changes to Price Adjust to more closely mirror the display-price sliding process, such that neither form of price sliding functionality adjusts the price of an order to avoid locking or crossing an order displayed by the Exchange, and instead, such an order will either be cancelled or executed by the Exchange. As noted above, in contrast to display-price sliding, which is based solely on Protected Quotations of external markets, the Price Adjust process is currently based on Protected Quotations at external markets and at the Exchange.

Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid "[d]isplaying quotations that lock or cross any protected quotation in an NMS stock."[12] Such rules must be "reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock," and must "prohibit … members from engaging in a pattern or practice of displaying quotations that lock or cross any protected quotation in an

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8 15 U.S.C. 78k-1(a)(1).

9 15 U.S.C. 78f(b)(5).

10 17 CFR 242.610.

11 17 CFR 242.201.

12 17 CFR 242.610(d).

NMS stock."[13] The Price Adjust process, as amended will continue to assist Users by displaying orders at permissible prices or rejecting them if the Exchange has displayed liquidity that would preclude their display. Similarly, Rule 201 of Regulation SHO[14] requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a price at or below the current NBB under certain circumstances. The Exchange's short sale price sliding will continue to operate the same for Users of Price Adjust as it does for Users that select the display-price sliding process offered by the Exchange.

Thus, if the Exchange has a Protected Quotation that an incoming order to the Exchange locks or crosses then such incoming order will execute against the resting order, or, if the incoming order is a BATS Post Only Order or Partial Post Only at Limit Order, such order would be executed in accordance with Rules 11.9(c)(6) and (c)(7), respectively, or cancelled. The Exchange believes that it is reasonable and consistent with the Act to cancel orders on entry that cannot executed or displayed at their limit price because this is consistent with display-price sliding functionality. Therefore, the Exchange believes the proposal to apply the Price Adjust process to orders that cannot be displayed because they would lock or cross displayed contra-side interest on the Exchange will 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 also reiterates that the proposed change to the Price Adjust process will continue to enable the System to avoid displaying a locking or crossing quotation in order to ensure compliance with Rule 610(d) of Regulation NMS.

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13 Id.

14 17 CFR 242.201.

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. The proposed rule change is being proposed as minor modification to functionality offered by the Exchange that will ensure that the Exchange's Price Adjust process is consistent with the display-price sliding process offered by the Exchange today.

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 Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[15] and paragraph (f)(6) of Rule 19b-4 thereunder.[16] 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

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

16 17 C.F.R. 240.19b-4.

and text of the proposed rule change at least five business days prior to the date of this filing.

A proposed rule change filed under Rule 19b-4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that BATS may implement the proposed rule change immediately. The Exchange has represented that it has alerted its Members of the proposed change[18] and that those currently utilizing Price Adjust functionality would not need to make any system changes in connection with the proposed change. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will align the display-price sliding functionality and Price Adjust functionality and help harmonize the Exchange's rulebook. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be

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

[18] See BATS Trade Desk Notice dated May 19, 2015, "BATS Update to Post Only Price Adjust Logic Effective Friday, June 19, 2015 on BZX," available at www.batstrading.com/alerts under Release Notes.

[19] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

approved or disapproved.

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-2015-47 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BATS-2015-47. 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 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 offices 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-2015-47, 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.[20]

Robert W. Errett
Deputy Secretary

20 17 CFR 200.30-3(a)(12).