



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-72685; File No. SR-BATS-2014-029]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify for Members and Non-Members the Use of Certain Data Feeds for Order Handling and Execution, Order Routing and Regulatory Compliance of BATS Exchange, Inc.

July 28, 2014

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 July 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 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 proposes to clarify for Members³ and non-Members the Exchange’s use of certain data feeds for order handling and execution, order routing, and regulatory compliance. 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.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act.” See Exchange Rule 1.5(n).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

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 submits this filing to clarify for Members and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance.

Order Handling and Execution

In order to calculate the national best bid and offer ("NBBO") in its Matching Engine (the "ME"), the Exchange uses quotes disseminated by market centers through proprietary data feeds (generally referred to as "Direct Feeds") as well as by the Securities Information Processors ("SIP"). The ME uses quotes disseminated from SIP feeds for the Chicago Stock Exchange, Inc. and NYSE MKT LLC. The Exchange notes that the ME receives Direct Feeds from the Exchange's affiliates, BATS Y-Exchange Inc., EDGA Exchange, Inc., and EDGX Exchange, Inc.

In addition to receiving Direct Feeds and SIP feeds, the ME's calculation of the NBBO may be adjusted based on orders sent to other venues with protected quotations, execution reports received from those venues, and certain orders received by the Exchange (collectively "Feedback"). The Exchange does not include its quotes in the calculation of the Exchange's NBBO because the system is designed such that all incoming orders are separately compared to the Exchange's Best Bid or Offer and the Exchange calculated NBBO, which together create a complete view of the NBBO, prior to display, execution, or routing.

Feedback from the receipt of Intermarket Sweep Orders ("ISOs") with a time-in-force of Day ("Day ISOs") and feedback from the Exchange's routing broker/dealer, BATS Trading, Inc., ("BATS Trading"), as described below, are used to augment the market data received by Direct Feeds and the SIP feeds. The Exchange's ME will update the NBBO upon receipt of a Day ISO. When a Day ISO is posted on the BATS Book,⁵ the ME uses the receipt of a Day ISO as evidence that the protected quotes have been cleared, and the ME does not check away markets for equal or better-priced protected quotes.⁶ The ME will then display and execute non-ISO orders at the same price as the Day ISO.

All Feedback expires as soon as: (i) one (1) second passes; (ii) the Exchange receives new quote information; or (iii) the Exchange receives updated Feedback information. With the exception of Day ISO Feedback, the Exchange only generates Feedback where the order was

⁵ See Exchange Rule 1.5(e).

⁶ Pursuant to Regulation NMS, a broker-dealer routing a Day ISO is required to simultaneously route one or more additional ISOs, as necessary, to execute against the full displayed size of any protected quote priced equal to or better than the Day ISO. See also Question 5.02 in the "Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS" (last updated April 4, 2008) available at <http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm>.

routed using one of the following routing strategies: Parallel D, Parallel 2D, Parallel T, SLIM, and TRIM (collectively “Smart Order Routing”).⁷

The Pegged NBBO (“PBBO”) comprises the Exchange’s calculation of the NBBO for purposes of determining the price at which a Pegged Order,⁸ Mid-Point Peg Order,⁹ or Market Maker Peg Order¹⁰ is to be pegged. The PBBO includes the Exchange’s quotes from the SIP feeds in the calculation but is otherwise derived using the same Direct Feeds, SIP feeds, and Feedback used for the NBBO calculation.

Order Routing

When the Exchange has a marketable order with instructions from the sender that the order is eligible to be routed, and the ME identifies that there is no matching price available on the Exchange, but there is a matching price represented at another venue that displays protected quotes, then the ME will send the order to the Routing Engine (“RE”) of BATS Trading.

In determining whether to route an order, the RE makes its own calculation of the NBBO using the Direct Feeds, SIP feeds, and Router Feedback, as described below.¹¹ The RE does not utilize Day ISO Feedback in constructing the NBBO; however, because all orders initially flow through the ME, to the extent Day ISO Feedback has updated the ME’s calculation of the

⁷ See Exchange Rule 11.13(a)(3). Thus, the Exchange does not generate Feedback from routing options where the User directs the Exchange to route an order to a particular venue, such as Destination Specific Orders and Directed ISOs, as defined in Rules 11.9(c)(12) and 11.9(d)(2), respectively, nor does the Exchange generate Feedback from the DRT routing option defined in Rule 11.13(a)(3)(E), which routes to alternative trading systems.

⁸ See Exchange Rule 11.9(c)(8).

⁹ See Exchange Rule 11.9(c)(9).

¹⁰ See Exchange Rule 11.9(c)(16).

¹¹ The Exchange uses the same Direct Feeds and quotes from the SIP feeds in the RE as is described above with respect to the ME.

NBBO, all orders processed by the RE do take Day ISO Feedback into account. The RE receives Feedback from all Smart Order Routing strategies.

There are three types of Router Feedback that contribute to the Exchange's calculation of the NBBO:

- Immediate Feedback. Where BATS Trading routes an order to a venue with a protected quotation using Smart Order Routing (a "Feedback Order"), the number of shares available at that venue is immediately decreased by the number of shares routed to the venue at the applicable price level.
- Execution Feedback. Where BATS Trading receives an execution report associated with a Feedback Order that indicates that the order has fully executed with no remaining shares associated with the order, all opposite side quotes on the venue's order book that are priced more aggressively than the price at which the order was executed will be ignored.
- Cancellation Feedback. Where BATS Trading receives an execution report associated with a Feedback Order that indicates that the order has not fully executed (either a partial execution or a cancellation), all opposite side quotes on the venue's order book that are priced equal to or more aggressively than the limit price for the order will be ignored.

All Feedback expires as soon as: (i) one (1) second passes; (ii) the Exchange receives new quote information; or (iii) the Exchange receives updated Feedback information.

Regulatory Compliance

Locked or Crossed Markets. The ME determines whether the display of an order would lock or cross the market. At the time an order is entered into the ME, the ME will establish,

based upon its calculation of the NBBO from Direct Feeds, SIP feeds and Feedback, whether the order will lock or cross the prevailing NBBO for a security. In the event that the order would produce a locking or crossing condition, the ME will cancel the order, re-price¹² the order, or route the order based on the Member's instructions. Two exceptions to this logic are Day ISOs and declarations of self-help.

Pursuant to Regulation NMS, when an Exchange receives a Day ISO, the sender of the ISO retains the responsibility to comply with applicable rules relating to locked and crossed markets.¹³ In such case, the Exchange is obligated only to display a Day ISO order at the Member's price, even if such price would lock or cross the market.¹⁴

Declarations of self-help occur when the RE detects that an exchange displaying protected quotes is slow, as defined in Regulation NMS, or non-responsive to the Exchange's routed orders. In this circumstance, according to Rule 611(b) of Regulation NMS, the Exchange may display a quotation that may lock or cross the market where the quotation that it may lock or cross is displayed by the market that the Exchange invoked self-help against.¹⁵ The Exchange may also declare self-help where another exchange's SIP quotes are slow or non-responsive resulting in a locked or crossed market. Once the Exchange declares self-help, the ME and RE will ignore the quotes generated from the self-help market in their calculations of the NBBO for execution and routing determinations in compliance with Regulation NMS. The Exchange will also disable all routing to the self-help market. The ME and RE will continue to consume

¹² See Rule 11.9(g).

¹³ See supra note 6.

¹⁴ See supra note 6.

¹⁵ See also Question 5.03 in the "Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS" (last updated April 4, 2008) available at <http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm>.

the self-help market center's quotes; however, in order to immediately include the quote in the NBBO calculation and enable routing once self-help is revoked.

Trade-Through Rule. Pursuant to Rule 611 of Regulation NMS, the Exchange shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on trading centers of protected quotations in NMS stocks that do not fall within a valid exception and, if relying on such an exception, that are reasonably designed to ensure compliance with the terms of the exception. The ME will not permit an execution on the Exchange if there are better-priced protected quotations displayed in the market unless the order is an ISO. At the time an order is entered into the ME, the ME uses the view of the NBBO as described above. If the NBBO is priced better than what is resident on the Exchange, the Exchange will not match such order on the BATS Book, and based on the Member's instructions, the ME will cancel the order, re-price the order or route the order.

Regulation SHO. The Exchange cannot execute a Short Sale Order¹⁶ equal to or below the current National Best Bid ("NBB") when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO ("Short Sale Circuit Breaker").¹⁷ When a Short Sale Circuit

¹⁶ See Exchange Rule 11.19.

¹⁷ 17 CFR 242.200(g); 17 CFR 242.201. On February 26, 2010, the Commission adopted amendments to Regulation SHO under the Act in the form of Rule 201, pursuant to which, among other things, short sale orders in covered securities generally cannot be executed or displayed by a trading center, such as the Exchange, at a price that is at or below the current NBB when a Short Sale Circuit Breaker is in effect for the covered security. See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). In connection with the adoption of Rule 201, Rule 200(g) of Regulation SHO was also amended to include a "short exempt" marking requirement. See also Securities Exchange Act Release No. 63247 (November 4, 2010), 75 FR 68702 (November 9, 2010) (extending the compliance date for Rules 201 and 200(g) to February 28, 2011). See also Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, www.sec.gov/divisions/marketreg/rule201faq.htm.

Breaker is in effect, the Exchange utilizes information received from Direct Feeds, SIP feeds, and Feedback, and a view of the BATS Book to assess its compliance with Rule 201 of Regulation SHO. The primary difference between the NBBO used for compliance with Rule 201 of Regulation SHO and other constructions of the NBBO, however, is that the Exchange includes market centers against which it has declared self-help in its view of the NBBO.

Latent or Inaccurate Direct Feeds. Where the Exchange's systems detect problems with one or more Direct Feeds, the Exchange will immediately fail over to the SIP feed to calculate the NBBO for the market center(s) where the applicable Direct Feed is experiencing issues. Problems that lead to immediate failover to the SIP feed may include a significant loss of information (i.e., packet loss) or identifiable latency, among other things. The Exchange can also manually failover to the SIP feed in lieu of Direct Feed data upon identification by a market center of an issue with its Direct Feed(s).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁹ in particular, in that it is designed 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. The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

The Exchange believes that its proposal to describe the Exchange's use of data feeds removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity and transparency. The Exchange's proposal will enable investors to better assess the quality of the Exchange's execution and routing services. The proposal does not change the operation of the Exchange or its use of data feeds; rather it describes how, and for what purposes, the Exchange uses the quotes disseminated from data feeds to calculate the NBBO for a security for purposes of Regulation NMS, Regulation SHO and various order types that update based on changes to the applicable NBBO. The Exchange believes the additional transparency into the operation of the Exchange as described in the proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The Exchange does not believe that the proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes the proposal would enhance competition because describing the Exchange's use of data feeds enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

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 proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be 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-2014-029 on the subject line.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

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-2014-029. 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 a.m. and 3 p.m. Copies of the 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-2014-029 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Kevin M. O'Neill,
Deputy Secretary.

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²² 17 CFR 200.30-3(a)(12).