



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73875; File No. SR-BATS-2014-068)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.9(a)(2) and 11.18(e) of BATS Exchange, Inc.

December 18, 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 December 10, 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.9(a)(2), which describes BATS market orders, and Rule 11.18(e), which describes the Exchange’s implementation of the Limit Up-Limit Down Plan, as defined below.

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

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 Exchange proposes to amend Rule 11.9(a)(2), which describes BATS market orders, and Rule 11.18(e), which describes the Exchange's implementation of the Limit Up-Limit Down Plan, as defined below. The proposed change to the operation of BATS market orders is based on existing behavior of Market Orders available on EDGA Exchange, Inc. ("EDGA") and EDGX Exchange, Inc. ("EDGX").³

Earlier this year, the Exchange and its affiliate, BATS Y-Exchange, Inc. ("BYX"), received approval to effect 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 BZX, BYX and EDGX, the "BGM Affiliated Exchanges").⁴ 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.

Currently, BATS market orders can be executed on the Exchange or routed to other destinations but cannot be posted to the BATS Book. The proposed modification to the

³ See EDGA Rule 11.8(a)(4) and EDGX Rule 11.8(a)(4).

⁴ See Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059; SR-BYX-2013-039).

operation of a BATS Market Order would allow such orders to post to the BATS Book under certain limited circumstances to the extent such BATS Market Order is designated with a time-in-force of Day. Specifically, as proposed, a BATS market order that is not eligible for routing (i.e., BATS Only) and contains a time-in-force of Day will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.13(a)(1) unless the reason that such BATS market order cannot be executed is because it is entered into the System and the NBO (NBB) is greater (less) than the Upper (Lower) Price Band, as such term is defined in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan”), in which case such order will be posted by the System to the BATS Book and priced at the Upper (Lower) Price Band, and re-priced as set forth in Rule 11.18(e)(5)(B), which the Exchange proposes to amend as described below. Similarly, a BATS market order to sell with a time-in-force of Day that is marked short that cannot be executed because of the existence of a Short Sale Circuit Breaker pursuant to Regulation SHO will be posted by the System to the BATS Book subject to the price sliding process as set forth in Rule 11.9(g).

The Exchange also proposes to modify Rule 11.18(e)(5)(A), which describes the handling of BATS market orders and other orders that are not currently posted to the Exchange’s order book when not executable pursuant to the Limit Up-Limit Down Plan. The Exchange proposes to make clear that a BATS market order that cannot be executed within the applicable Price Bands will be cancelled if it contains a time-in-force other than Day but if it maintains a time-in-force of Day that such an order will be posted and displayed at the applicable Price Band and re-priced to remain at such Price Band. Specifically, the Exchange proposes to state that a BATS market order to buy (sell) with a time-in-force of Day that is posted to the BATS Book

and displayed at the Upper (Lower) Price Band will be re-priced and displayed at the Upper (Lower) Price Band if Price Bands move such that the price of the resting market order to buy (sell) would be above (below) the Upper (Lower) Price Band or if the Price Bands move such that the order is no longer posted and displayed at the most aggressive permissible price. The Exchange further proposes that the System shall re-price such displayed interest to the most aggressive permissible price until the order is executed in its entirety or cancelled.

The Exchange proposes to post to the BATS Book all BATS market orders with a time-in-force of Day in these circumstances (i.e., when an execution would otherwise occur but cannot due to the application of Price Bands pursuant to the Limit Up-Limit Down Plan or due to a Regulation SHO Short Sale Circuit Breaker), because the sender of a market order typically expects an execution when such order is sent. In these circumstances although an execution could not occur, the Exchange believes that Users would prefer to have their orders posted to the Exchange's book in compliance with the Limit Up-Limit Down Plan and Regulation SHO to potentially receive a later execution.

A BATS market order will default to a time-in-force of Day unless otherwise specified by a User, however, Users that do not want their orders posted to the BATS Book in these circumstances can choose a different time-in-force, in which case their order will be cancelled back in such circumstances. A BATS market order that is not eligible for routing with a time-in-force other than Day will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.13(a)(1). Further, the Exchange proposes to make clear that BATS market orders that are designated as BATS Post Only are rejected.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with section 6(b) of

the Act⁵ and further the objectives of section 6(b)(5) of the Act⁶ 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 to functionality that may result in the execution of such orders when they would otherwise be cancelled and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. Therefore, the Exchange believes that the proposed change removes impediments to and perfects the mechanism of a free and open market and a national market system.

As explained elsewhere in this proposal, the proposed operation of BATS Market Orders with a time-in-force of Day is intended to allow such orders to post to the BATS Book, rather than cancel back to the User unexecuted, when an execution would have occurred but did not because of the application of Limit Up-Limit Down Price Bands or a Regulation SHO Short Sale Circuit Breaker. The Exchange believes that Users in such circumstances would prefer to have their orders posted to the BATS Book in compliance with the Limit Up-Limit Down Plan and Regulation SHO, to potentially receive a later execution. Similarly, the Exchange believes that it

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

is reasonable and consistent with the Act to continue to re-price and display BATS market orders at their most aggressive permissible price because this functionality will be more likely to result in an execution of such order and is consistent with the overall intent of a BATS market order, which is to receive an execution not bounded by price but at the going price for the security. Specifically, the Exchange believes that its proposed handling of BATS market orders in this way is consistent with the Act because it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Lastly, the Exchange does not believe that this will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users and will be applied as the default for BATS market orders. The Exchange notes that Users that do not want to have their orders posted to the BATS Book in such circumstances can elect a different time-in-force.

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 Exchange does not believe that the proposed rule change raises any competitive issues, as it will simply allow certain orders that would otherwise be cancelled to post to the BATS Book. In addition, 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 Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to 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 the proposal may become operative immediately upon filing, noting that a waiver of the operative delay will allow the Exchange to continue to strive towards a complete technology integration of the BGM Affiliated Exchanges, with gradual roll-outs of new functionality to ensure stability of the System. The Exchange also notes that waiver of the operative delay will allow orders that would otherwise be cancelled to post to the BATS

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 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.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

Book for potential later execution. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹²

At any time within 60 days of the filing of such 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 under section 19(b)(2)(B)¹³ of the Act to determine whether the proposed rule change 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-2014-068 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission,

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78s(b)(2)(B).

100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2014-068. 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 at 100 F Street, NE, Washington, DC 20549-1090 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-2014-068, 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.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-30119 Filed 12/23/2014 at 8:45 am; Publication Date: 12/24/2014]

¹⁴ 17 CFR 200.30-3(a)(12).