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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76205; File No. SR-BATS-2015-90]

October 21, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.25, Retail Order Attribution Program

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 October 14, 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 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) 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 filed a proposal to amend Rule 11.25, which governs the Exchange’s Retail Order Attribution Program (“Retail Program”), to distinguish between retail orders routed

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).

on behalf of other broker-dealers and retail orders that are routed on behalf of introduced retail accounts that are carried on a fully disclosed basis, as further 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 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 11.25, which governs the Exchange's Retail Program,⁵ to distinguish between orders routed on behalf of other broker-dealers and orders routed on behalf of introduced retail accounts that are carried on a fully disclosed basis, as further described below.

The Exchange established the Retail Program in an attempt to attract retail order flow to the Exchange, primarily by offering pricing incentives. Under the Retail Program, Retail

⁵ The Exchange adopted the Retail Program as Rule 11.24 in 2014. See Securities Exchange Act Release No. 73237 (September 26, 2014), 79 FR 59537 (October 2, 2014) (SR-BATS-2014-043). The Retail Program was subsequently re-numbered as 11.25. See Securities Exchange Act Release No. 73677 (November 24, 2014), 79 FR 71150 (December 1, 2014) (SR-BATS-2014-058).

Member Organizations⁶ (“RMOs”) are permitted to submit Retail Orders⁷, and receive rebates for added liquidity that are higher than the exchanges standard rebates for added liquidity.⁸ In addition, RMOs may optionally designate Retail Orders to be identified as Retail on the Exchange’s proprietary data feeds.⁹

Exchange Rule 11.25(b)(1) currently states that “[t]o qualify as a Retail Member Organization, a Member must conduct a retail business or handle retail orders on behalf of another broker-dealer.”¹⁰ Rather than stating that one way to qualify as an RMO is to “handle” retail orders on behalf of another broker-dealer, the Exchange proposes to state that a Member may qualify as an RMO if it “routes” retail orders on behalf of another broker-dealer. The Exchange believes that providing routing services on behalf of other broker-dealers with retail order flow was the intended meaning of the provision and that the term “handle” is vague. Thus, the Exchange believes that the description would be better if it referred to routing services provided to another broker-dealer with retail customers. The Exchange also proposes to distinguish such routing services on behalf of another broker-dealer from services provided by broker-dealers that carry retail customer accounts on a fully disclosed basis, as described below.

As background with respect to the proposed change, the Exchange first would like to describe the terms “introducing broker”, “carrying firm” or “carrying broker-dealer”, and “fully

⁶ A Retail Member Organization is a Member (or a division thereof) that has been approved by the Exchange under Rule 11.25 to submit Retail Orders.

⁷ A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology.

⁸ See BZX Exchange Fee Schedule, available at http://batstrading.com/support/fee_schedule/bzx/.

⁹ See Rule 11.25(e).

¹⁰ Emphasis added.

disclosed,” as such terms are commonly used in the securities industry. An “introducing” broker-dealer is “one that has a contractual arrangement with another firm, known as the carrying or clearing firm, under which the carrying firm agrees to perform certain services for the introducing firm. Usually, the introducing firm submits its customer accounts and customer orders to the carrying firm, which executes the orders and carries the account. The carrying firm’s duties include the proper disposition of the customer funds and securities after the trade date, the custody of customer securities and funds, and the recordkeeping associated with carrying customer accounts.”¹¹

Further, a “fully disclosed” introducing arrangement is “distinguished from an omnibus clearing arrangement where the clearing firm maintains one account for all the customer transactions of the introducing firm. In an omnibus relationship, the clearing firm does not know the identity of the customers of the introducing firm. In a fully disclosed clearing arrangement, the clearing firm knows the names, addresses, securities positions and other relevant data as to each customer.”¹²

With respect to a broker-dealer that is routing on behalf of another broker-dealer, the Exchange does not believe that the routing broker-dealer has sufficient information to assess whether orders are truly retail in nature, and thus, requires an RMO routing on behalf of other broker-dealers to maintain additional supervisory procedures and obtain annual attestations, as described below, in order to submit Retail Orders to the Exchange. In contrast, however, if a broker-dealer is carrying a customer account on a fully disclosed basis, then such carrying broker-dealer is required to perform certain diligence regarding such account that the Exchange

¹¹ See Securities Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973 (December 2, 1992).

¹² Id.

believes is sufficient to assess whether a customer is a retail customer in order to submit orders on behalf of such a customer to the Exchange as a Retail Order. The carrying broker of an account typically handles orders from its retail customers that are “introduced” by an introducing broker. However, as noted above, in contrast to a typical routing relationship on behalf of another broker-dealer, a carrying broker does obtain a significant level of information regarding each customer introduced by the introducing broker. Accordingly, the Exchange proposes to state in Rule 11.25(b)(1) that for purposes of Rule 11.25, “conducting a retail business shall include carrying retail customer accounts on a fully disclosed basis.”

Rule 11.25(b)(6) currently states, in part, that “[i]f a Retail Member Organization represents Retail Orders from another broker-dealer customer, the Retail Member Organization’s supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order.” This includes obtaining attestations from the other broker-dealers for whom the RMO routes. In addition to the proposed changes to Rule 11.25(b)(1) described above, the Exchange proposes to modify the language of Rule 11.25(b)(6) to again distinguish between an RMO that conducts a retail business because it carries accounts on a fully disclosed basis from an RMO that routes orders on behalf of another broker-dealer. As proposed, the additional attestation requirements of Rule 11.25(b)(6) would apply to an RMO that does not itself conduct a retail business but routes Retail Orders on behalf of other broker-dealers. In turn, such attestation requirements would not apply to an RMO that carries retail customer accounts on a fully disclosed basis. In connection with this change, the Exchange is proposing various edits to the existing rule text so that the reference is consistently to “other broker-dealers” rather than “broker-dealer customers.”

The Exchange believes that allowing an RMO that carries retail customer accounts on a fully disclosed basis to submit Retail Orders to the Exchange without obtaining attestations from broker-dealers that might introduce such accounts will encourage participation in the Retail Program. As noted above, the Exchange believes that the carrying broker has sufficient information to itself confirm that orders are Retail Orders without such attestations. The Exchange still believes it is necessary to require the attestation by broker-dealers that route Retail Orders on behalf of other broker-dealers, because, in contrast, such broker-dealers typically do not have a relationship with the retail customer and would not be in position to confirm that such customers are in fact retail customers.

2. Statutory Basis

The Exchange believes the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹³ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁴ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it highlights the parties for whom additional procedures are required because they do not maintain relationships with the end customer (i.e., routing brokers) and still requires the RMO to follow such procedures to ensure that such orders qualify as Retail Orders. As proposed, however, an RMO would not be required to follow such

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

procedures, including obtaining annual attestations, to the extent such RMO actually knows the end customer and carries the account of such customer and thus can itself confirm that the orders qualify as Retail Orders.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow RMOs that carry retail customer accounts to participate in the Program without imposing additional attestation requirements that the Exchange did not initially intend to impose upon them. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the Program.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the amendment, by increasing the level of participation in the Program, will increase the level of competition around retail executions. The Exchange believes that the transparency and competitiveness of operating a program such as the Program on an exchange market would result in better prices for retail investors and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-exchange venues.

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 Act¹⁵ 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.¹⁷

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 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 C.F.R. 240.19b-4.

¹⁷ The Exchange has satisfied this requirement.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2015-90 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-2015-90. 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, D.C. 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-2015-90, 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.¹⁸

Brent J. Fields,
Secretary.

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¹⁸ 17 CFR 200.30-3(a)(12).