

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59284; File No. SR-BATS-2009-002)

January 23, 2009

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.8, entitled “Obligations of Market Makers.”

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 January 15, 2009, BATS Exchange, Inc. (“BATS” or the “Exchange”) 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 Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.8, entitled “Obligations of Market Makers,” to provide Exchange functionality to Market Makers who wish to have the Exchange automatically enter orders on their behalf in order to comply with the obligation to maintain continuous two-sided limit orders in securities in which they are registered to trade.

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).

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 purpose of the proposed rule change is to provide any Member of the Exchange that is registered as a Market Maker with Exchange system functionality to have the Exchange enter and maintain on its behalf "stub quotes" (i.e., quotes that are substantially far away from the Exchange's best bid or offer such that they are unlikely to be executed).⁵ As part of its Market Maker obligations, pursuant to BATS Rule 11.8(a)(1), a Market Maker is required to maintain continuous, two-sided limit orders in the securities in which the Market Maker is registered to trade. In order to assist Exchange Market Makers with this obligation, the Exchange proposes to offer functionality through which Market Makers could choose to have the Exchange enter and

⁵ As with all BATS quotes, these stub quotes would be firm quotes and, as such, would be immediately and automatically executable. However, to the extent such an execution could be considered clearly erroneous it would be subject to review under Rule 11.17 (Clearly Erroneous Executions).

maintain a limit order on either side of the market on their behalf. At 9:00 a.m. Eastern Time, the Exchange will extract information submitted by the Market Maker that provides specific quote instructions for the Exchange to enter a quote on the Market Maker's behalf. Specifically, the Market Maker would instruct the Exchange to enter limit orders of \$0.0001 as a bid and \$999,999.99 as an offer in the amount of one round lot each. Such orders will be posted by the Exchange as BATS Only Orders,⁶ and will be maintained on the Exchange during Regular Trading Hours⁷ unless cancelled by the Market Maker pursuant to the Exchange's Rules.⁸

According to the Exchange, the proposed rule change would allow the Exchange to provide functionality similar to that provided by both the Nasdaq Stock Market LLC ("NASDAQ") and NYSE Arca Equities, Inc. ("NYSE Arca") to market makers registered with such exchanges. In particular, the Exchange represents that registered market makers on NASDAQ have the ability to enter "stub quotes" through the NASDAQ system in order to ensure that they are continually meeting their quoting obligations.⁹ Similarly, the Exchange represents that NYSE Arca provides its registered market makers with the ability to direct that exchange to enter orders on their behalf called "Q Orders," which automatically refresh in the NYSE Arca system,¹⁰ including orders that would be considered to be "stub quotes."

Although the Exchange believes that its registered Market Makers will be at or near the best bid or offer of the Exchange during much of the trading day, without stub quote

⁶ As defined in BATS Rule 11.9(c)(4).

⁷ Defined in BATS Rule 1.5(v) as 9:30 a.m. to 4:00 p.m. Eastern Time.

⁸ See BATS Rule 11.9(e).

⁹ See Securities Exchange Act Release No. 56586 (October 1, 2007), 72 FR 57085 (October 5, 2007) (SR-NASDAQ-2007-069).

¹⁰ See NYSE Arca Rule 7.31(k).

functionality, and due to the speed of the modern trading environment, some Market Makers may not have a posted quote on one or both sides of the market for small periods of time, even for fractions of a second. The Exchange believes that the system functionality provided under the proposed rule change will provide Market Makers with a useful tool that they can utilize to meet their quoting obligations on the Exchange. Accordingly, the modifications to BATS Rule 11.8 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 believes that the proposed functionality is similar to that provided by other national securities exchanges and permissible under such exchanges' approved rules.¹¹

2. Statutory Basis

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.¹² Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹³ because it would 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, and, in general, protect investors and the public interest, by encouraging Market makers to register with and trade on the Exchange by providing such Market Makers with system functionality that will assist them in maintaining continuous, two-sided limit orders in the securities in which they are registered.

¹¹ See, e.g., NYSE Arca Rule 7.31(k).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes 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 Changes and Timing for Commission Action

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

Rule 19b-4(f)(6)(iii)¹⁶ requires the Exchange to give the Commission written notice of the Exchange's intent to file a 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 shorter time as designated by the Commission. The Exchange has satisfied this requirement.

As described above and in its filing with the Commission, the Exchange believes that the proposed rule change is consistent with the rules of another self-regulatory organization. For the

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 proposal 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 No. SR-BATS-2009-002 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-BATS-2009-002. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies

¹⁷ 17 CFR 240.19b-4(f)(6).

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 changes 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of BATS. 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 No. SR-BATS-2009-002 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).