December 22, 2014

Brent Fields
Secretary
Securities and Exchange Commission
100 F. Street N.E.
Washington, D.C. 20549-1090

RE: Proposed National Market System Plan to Implement a Tick Size Pilot Program on a One-Year Pilot Basis; Exchange Act Release No. 73511; File No. 4-657.

Dear Mr. Fields:

BATS Global Markets, Inc. ("BATS") appreciates the opportunity to comment on the above-referenced proposed National Market System ("NMS") Plan to implement a tick size pilot program on a one-year pilot basis ("Tick Proposal"), which was filed by certain registered national securities exchanges, including those owned and operated by BATS, and FINRA (collectively, "the Participants"), and is intended to comply with the Securities and Exchange Commission's ("SEC" or "Commission") June 24, 2014 Order[1] ("the Order") directing the Participants to act jointly in developing and implementing an NMS plan that, among other things, would widen the quoting and trading increment for certain small capitalization stocks. The purpose of the Tick Proposal is to assist the Commission, market participants, and the public in studying and assessing the impact of different quoting and trading increments on the liquidity and trading of stocks of small capitalization companies.

BATS commends the Commission for recognizing in the Order that the market structure paradigm that delivers the best market quality for one group of securities may not be the same market structure paradigm that delivers the best market quality for another group of securities. Since the implementation of Regulation NMS in 2007, with minor exceptions, all national market securities have been subject to the same rules regarding, among other things, minimum tick sizes and access fees. This one-size fits all approach to market structure admittedly has the limited benefit of relative ease of implementation. However, BATS believes that national market securities deserve a more dynamic market structure that reflects the needs of the different characteristics of the individual securities. It has become apparent that illiquid securities in particular have not benefited from this one-size fits all approach. Accordingly, while BATS has several concerns with the specifics of the Tick Proposal, BATS continues to support the broader goals of the proposed pilot.

1 Exchange Act Release No. 72460, 79 FR 36840 (June 30, 2014).

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I. Background

The Tick Proposal would require the Participants to select a representative group of stocks of small capitalization companies ("Pilot Securities") and subject groups of those Pilot Securities ("Test Groups") to various requirements with regards to quoting and trading increments. Pilot Securities would generally consist of NMS common stocks with a market capitalization of $5 billion or less, a closing price of at least $2.00, and a consolidated average daily trading volume ("CADV") of 1 million shares or less. Once the list of Pilot Securities is determined, the Participants will create three difference Test Groups. Pilot Securities in Test Group One would be quoted in $0.05 minimum increments, but would continue to trade at any price increment currently permitted. Pilot Securities in Test Group Two would be subject to the same quoting requirements as Test Group One; however, with few exceptions, Pilot Securities in Test Group Two may only be traded in $0.05 minimum increments.

Pilot Securities in Test Group Three would be subject to the same quoting and trading increments as Test Group Two; however, Pilot Securities in Test Group Three would also be subject to a trade-at prohibition. In the Order, the Commission directed the Participants to include a trade-at prohibition in the Tick Proposal to "prevent price matching by a trading center not displaying the NBBO." The proposed trade-at prohibition in Test Group Three would generally condition the ability of a trading center to execute a protected quotation on that trading center's contemporaneous display of liquidity, either via a single plan processor or an SRO quotation feed, at that, or a superior price level. There would also be several exceptions to the trade-at prohibition that would generally align with the exceptions to the order protection rule in Rule 611 of Regulation NMS.

The exchanges operated by BATS are Participants and, as such, are signatories to the Tick Proposal required by the Order. However, while the Tick Proposal is a significant step towards the realization of a more customized set of market structure rules that reflect the different liquidity profiles of different securities, BATS does not support all aspects of the Tick Proposal. In particular, BATS has some concerns about the methodology proposed to select the Pilot Securities and BATS does not support the inclusion of the proposed trade-at prohibition in Test Group Three, which has nothing to do with facilitating the trading of illiquid securities, the stated goal of the pilot, and removes investor choice while adding unnecessary complexity to the pilot.

For the reasons discussed below, BATS recommends that the Commission limit the number of securities in the pilot by reducing the market capitalization threshold in the Tick Proposal from $5 billion to $1 billion, and including only 100 securities in each Test Group. In addition, with respect to Test Group 1, BATS recommends that the Commission allow orders in Pilot Securities to be accepted and ranked, but not displayed, in one penny increments. Finally, BATS recommends that the Commission not approve the Tick Pilot with a trade-at prohibition.

II. Pilot Securities Selection Methodology

As discussed above, the Tick Proposal requires the Pilot Securities to be selected from a universe of national market securities with a market capitalization of $5 billion or less, a closing price of at least $2.00, and a CADV of 1 million shares or less. The Tick Proposal further requires each of the three Test Groups to be comprised of 400 Pilot Securities. BATS believes the Tick Proposal is far too inclusive as it relates to the universe of securities included in the pilot. The purpose of the pilot is to ascertain whether an increase in the tick size will improve the liquidity of those securities that are the most difficult to trade. In this regard, BATS does not believe that securities with a market capitalization of $5 billion generally fit this profile. Instead, BATS recommends that the Tick Proposal be amended such that the pilot include only those national market securities with a market capitalization of $1 billion, which BATS believes more closely reflects the universe of national market securities that could benefit from a wider tick size.

Moreover, BATS is concerned about the disruption the pilot program may present to the market. In this regard, BATS believes the number of securities included in the pilot – 400 in each of three Test Groups for a total of 1200 – is too large. BATS recommends that the Tick Proposal be amended to reduce the number of securities included in the pilot to 100 securities in each Test Group, which BATS believes better balances the need to collect data from a meaningful subset of securities and the desire to avoid undue market disruption. BATS is not arguing that these changes would substantially reduce the complexity of the pilot – regardless of the number of securities that are included in the pilot the systems changes required are essentially the same. However, BATS does believe reducing the number of securities would serve to limit the potential for market disruption.

III. Test Group One

Pursuant to the Tick Proposal, Pilot Securities in Test Group One must be quoted in $0.05 cent increments, but may be traded in any increment currently permitted. However, the Tick Proposal also specifies that Participants and members would be prohibited from accepting and ranking orders in any Pilot Securities in Test Group One in price increments other than $0.05. BATS is concerned that by disallowing exchanges and agency ATSs the ability to accept and rank orders at one penny increments while displaying them at rounded $0.05 increments, those entities will be put at a competitive disadvantage vis-a-vis other broker-owned proprietary execution systems, which can execute against orders at any increment without having "accepted" or "ranked" an order at an impermissible increment. BATS sees no benefit to the pilot from putting the exchanges and agency ATSs at this competitive disadvantage and as a practical matter, from the standpoint of the exchanges and agency ATSs, Test Group One and Test Group Two are identical. As such, BATS recommends that the Commission allow market participants to accept and rank, but not display, orders in Pilot Securities in Test Group One in one penny increments.

IV. Trade-At Prohibition

In requiring the inclusion of a trade-at prohibition in Test Group Three, the Commission stated in the Order that it was concerned that when the trading and quoting increment are widened in Test Group Two "there is a possibility trading volume could migrate away from 'lit venues' – trading venues that provide public pre-trade transparency by displaying the best-priced quotations – to 'dark venues' that do not provide such public pre-trade price transparency." As such, the Commission stated in the Order that "if trading volume in Test Group Two Pilot Securities moves to nondisplayed trading centers, then including the trade-at requirement in Test Group Three could test whether trading remains on lit venues and what impact, if any, the migration of trading from lit venues to dark venues would have on liquidity and market quality for the Pilot Securities."

BATS does not support the inclusion of a trade-at prohibition in the pilot. A trade-at prohibition is unrelated to facilitating the trading of illiquid securities, the stated goal of the pilot, and it removes investor choice. Post Regulation NMS, the market has evolved into an ecosystem of dozens of competing exchanges, alternative trading systems, and other broker-dealer execution systems, each with its unique attributes and each that thrive only so long as it continues to provide valuable services to its customers. BATS believes a trade-at prohibition, which will unquestionably shift the competitive environment in favor of the lit markets, is an intrusive and heavy handed regulatory reaction to concerns that have not been fully analyzed or proven. Adopting an intrusive and prescriptive regulatory scheme like a trade-at prohibition should not be done lightly, and to do so based on the *potential* that trading might shift away from the lit markets, without first determining whether that has happened, but more importantly, if it does, whether that has resulted in a degradation of market quality is, frankly, irresponsible.

BATS also believes that the inclusion of trade-at in the pilot is unnecessary because it is so prescriptive as to render its outcome a foregone conclusion. In particular, the trade-at prohibition would prohibit a trading center from executing a nondisplayed order at a price equal to any protected quotation unless it is publicly quoting at or better than that price. And, even if a trading center is publicly quoting at or better than that price, it must send orders to all such protected quotations before executing nondisplayed orders. In combination, these two requirements will require market participants to route orders to the lit markets and, therefore, render pointless the need to test whether the inclusion of a trade-at prohibition will cause trading to stay on lit markets. The answer is clear: It will. And if the answer is clear, then there is no need to test it in a pilot program.

BATS is also concerned that the implementation of the trade-at prohibition in Test Group Three unduly complicates the pilot, making implementation difficult and may result in some market participants simply choosing to avoid providing liquidity in Test Group Three Pilot Securities for the duration of the pilot, which would skew the pilot's results in such a way as to make its outcome unreliable. In addition, BATS expects that the trade-at prohibition will result in a dramatic increase in routing to and between lit trading centers, which would add additional systemic risk into the marketplace.[2]

BATS is further concerned about the complexity of a trade-at prohibition as it relates to the risk it would introduce within each of the lit trading venues. In particular, each of the registered national exchanges maintains some form of price-sliding that is designed to allow each exchange to accept and display orders that lock or cross other markets in a manner compliant with Regulation NMS. Typically, such orders are ranked at the locking price, where they are executable, and displayed at one tick less aggressive than the locking price. Consider the following example of how price sliding works today:

> The NBBO is (Exchange A) 10.00 x 10.01 (Exchange B)
> Exchange C is quoting 10.00 x 10.02
> Exchange C receives a non-routable order to buy at 10.01
> Exchange C ranks the buy order at 10.01, but displays it at 10.00 to avoid locking Exchange B
> Exchange C receives a market order to sell, which executes against the price slid order at 10.01

Under the trade-at prohibition in the Tick Proposal, Exchange C could not execute that price slid order without first routing away to the protected quotes at 10.01, and that result effectively renders this form of price sliding unusable for the Pilot Securities in Test Group Three. Price sliding to avoid locked markets is already some of the most complex functionality performed by exchange matching engines, and customizing those matching engines to perform or not perform these functions on a symbol-by-symbol basis adds further complexity and, hence, risk into the marketplace.

Finally, by disallowing a trading center that is quoting in the public markets the ability to execute a nondisplayed order at a price equal to a protected quotation, a trade-at prohibition may perversely disincentivize trading centers from quoting in the lit markets. For these reasons, BATS recommends that the Commission not approve the inclusion of a trade-at prohibition in the pilot.

If, however, the Commission decides it is appropriate for the pilot to include a trade-at prohibition, BATS has specific concerns about the trade-at prohibition contained in the Tick Proposal. For example, as noted above, the trade-at prohibition would require market participants to route orders to *all* protected quotes, as opposed to just the protected quotes at the NBBO, the latter of which reflects the best displayed prices in the market. BATS believes the Commission ought to be concerned about balancing the goal of rewarding those who set prices in the lit markets against the goal of preserving competition among trading centers and investor

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2 For example, today exchanges often have substantial undisplayed reserve size behind their displayed quotes, which the exchanges access when the displayed liquidity is exhausted. Under the trade-at prohibition in the Tick Proposal, exchanges would be prohibited from executing against that reserve quantity without first routing to other protected quotations, which in turn will result in a significant increase in routing between exchanges.

choice. In this regard, BATS believes that if there is a trade-at prohibition included in the pilot, limiting its scope to those protected quotes at the NBBO better achieves that balance.

BATS also questions that aspect of the trade-at prohibition that would prevent a trading center from executing nondisplayed orders at prices equal to protected quotations when the market is locked. When the market is not locked, the trade-at prohibition provides trading centers with the option of executing a nondisplayed order at a price that is improved over the best protected quote. However, during a locked market, that opportunity does not exist and, hence, deprived of a choice, BATS believes that trading centers should be allowed to execute a nondisplayed order at a price equal to the locked protected quote. Again, BATS believes such an outcome better preserves competition and investor choice.

Finally, BATS believes that if the Commission approves the Tick Proposal with the inclusion of the trade-at prohibition, the Commission should clarify the treatment of odd lots. In particular, an exception to the trade-at prohibition applies where an "order is executed by a trading center that is displaying a quotation, via either a processor or an SRO quotation feed, at a price equal to the traded-at protected quotation but only up to the trading center's full displayed size." Currently, odd lots are not considered protected quotations and are not published via a processor, however, they are published on SRO quotation feeds. BATS requests that the Commission clarify the application of the trade-at prohibition where an SRO has an odd lot published on its quotation feed at a price equal to the best protected quote. Can that SRO execute the odd lot without first routing orders away to execute against all other protected quotes at the odd lot's price? BATS believes the exception would allow the SRO to execute the odd lot without first routing to protected quotations and BATS believes this would be the appropriate policy outcome. Retail investors, who often trade in odd lot sizes, would be unduly disadvantaged if they were denied an execution merely because they were quoting less than a round lot. Nonetheless, BATS recommends that the Commission clarify the application of the trade-at prohibition as it relates to odd-lots.

V. Success Criteria

Should the Commission decide to approve the Tick Proposal, BATS requests that the Commission communicate in advance the criteria that will be used to measure the success of the pilot to determine if it should be continued beyond one year or be expanded to additional securities. What will be the key metrics that the SEC uses to analyze the pilot and how will they be used? For example, if spreads (quoted or effective) widen but liquidity at the NBBO increases is this good or bad? How much does the liquidity need to increase at the NBBO to offset the added costs to investors of crossing a wider spread? If Test Group Three is implemented and one of the stated goals is to encourage more liquidity on exchange, how much more will be considered a success? If overall market quality degrades but the percentage of volume trading on exchange increases dramatically, is this positive or negative? Without well-defined criteria to evaluate the effectiveness of the pilot in meeting certain goals that the Commission has, BATS is concerned the pilot and its outcomes will be misinterpreted without the necessary context of clearly communicated objectives in advance.

VI. Conclusion

While BATS supports the Commission's efforts to implement a pilot program to test the impact of a wider trading increment on the trading of illiquid securities, BATS believes the Tick Proposal suffers various flaws and unnecessary complexity. To more closely tailor the pilot to target illiquid securities as well as to avoid market disruption, BATS respectfully requests that the Commission reduce the market capitalization threshold for Pilot Securities from $5 billion to $1 billion, as well as reduce the number of securities in the pilot from 400 per Test Group to 100 per Test Group. Moreover, BATS requests that the Commission reject the inclusion of a trade-at prohibition in the pilot because it is ill-conceived, unwarranted, and unduly intrusive.

BATS continues to support market structure reform that recognizes the different trading characteristics of securities within different liquidity profiles, including not only minimum tick sizes greater than one cent for less liquid securities, but also tick sizes below one cent for more liquid securities. In addition to tick sizes, BATS supports a revisiting of the current access fee cap. BATS believes that overall market quality could be improved by implementation of rules that tier the access fee caps across a liquidity spectrum. BATS believes the rebate to liquidity providers enabled by the permissible access fee creates a meaningful incentive for liquidity providers to display a narrow spread by mitigating the potential impact of being adversely selected. And in that regard, BATS believes the existing access fee cap of $0.003 per share continues to serve the majority of securities well in terms the rebate that fee cap enables. However, BATS believes that for the most liquid securities liquidity providers do not need as great as an incentive as they do in less liquid securities, and BATS would support decreasing the access fee cap in those securities to $0.0005 per share. Conversely, for illiquid securities, BATS believes liquidity providers require a greater incentive to provide liquidity, and BATS would support increasing the access fee cap in those securities to as much as $0.005 per share.

In any event, BATS does not support market structure changes advocated by others that would preserve a one-size fits all approach to market structure such as a reduction in the access fee cap for all national market securities or a ban on paying a rule-based, transparent rebate for those willing to provide liquidity to the market. A one-size fits all access fee reduction or a ban on rebates in exchange for a trade-at rule as part of some "grand compromise" may move more trading on-exchange and decrease agents' explicit costs but would likely do this at the cost of the end investor who would be forced to pay a higher implicit transaction cost due to widened bid/offer spreads.

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BATS appreciates the opportunity to comment on the Tick Proposal. Please feel free to contact me at (913) 815-7000 if you have any questions related this matter.

Sincerely,

Eric Swanson
General Counsel & Secretary

Cc: Mary Jo While, Chair
Luis Aguilar, Commissioner
Daniel Gallagher, Commissioner
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