sifma
Invested in America

May 5, 2015

By Electronic Mail

Chair Mary Jo White
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. 4-680: BATS Petition for Rulemaking

Dear Chair White:

The Securities Industry and Financial Markets Association ("SIFMA")[1] submits this letter in response to the petition for rulemaking filed with the Securities and Exchange Commission ("Commission") by BATS Global Markets, Inc. ("BATS") on January 21, 2015. In its petition, BATS requested that the Commission adopt amendments to Rules 600(b)(57) (definition of a protected bid or offer), 605 and 606 (disclosure of order execution and order routing information), and 610(c) (the access fee cap) of Regulation NMS. SIFMA believes that the issues raised and the proposals put forth by BATS in its petition warrant the Commission's consideration and we support them, particularly in the interest of enhancing the stability and transparency of the U.S. equity markets.

SIFMA and its members have been vocal advocates and thought leaders on equity market structure issues. The U.S. equity markets are the deepest, most liquid and most efficient in the world, with investors enjoying extraordinarily low transaction costs, narrow spreads, and fast execution speeds. Nevertheless, SIFMA believes there are aspects of market structure that could be enhanced through steps designed to decrease unnecessary market complexity, increase transparency of market information, and promote fairness in access. To sharpen the focus on these important issues, SIFMA's Board of Directors convened a broad-based task force in 2014 of members from across the country and across the industry, including retail and institutional dealers and asset managers, to develop a series of tangible and actionable market structure reforms. Through this task force, SIFMA has developed more than a dozen specific recommendations for addressing equity market structure. We published those recommendations

[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving retail clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

in July 2014.[2] In October 2014, SIFMA submitted a letter to the Commission providing background and analysis in connection with our market structure recommendations.[3]

BATS has requested that the Commission engage in rulemaking that would result in: (1) tiering access fees starting at $0.0005 per share (5 cents per 100 hundred shares); (2) increasing order handling and execution transparency; and (3) revising the definition of a protected bid or offer and the distribution of market data revenue to address the proliferation of national securities exchanges. The specific measures that BATS has proposed in its petition are, in practical effect, consistent with SIFMA's recommendations and we are pleased to support them.

Access Fees

BATS has proposed the following on Access Fees:

> *Tiered access fees starting at $0.0005 (5 cents per hundred shares) for the most liquid securities. This proposal recognizes that exchange liquidity rebates that are enabled by access fees (which are transparent, rule-based, and open to all) provide a meaningful incentive for liquidity providers to display quotes and narrow spreads. But, highly liquid securities don't require as great a rebate as less liquid securities.*[4]

SIFMA supports BATS in advocating for a reduction in baseline access fees, to no more than five cents per hundred shares. We have identified access fees as an outsized element of transaction costs that in turn distorts price discovery and contributes to market complexity, both on- and off-exchange. With respect to complexity, we note that market participants regularly implement complex order routing strategies, consistent with best execution, that divide, route and re-route orders and parts of orders, when possible, to market centers that enable them to avoid paying excessive access fees. We further recognize that access fees have increased complexity on exchanges as well, for instance, through the proliferation of exchange order types designed to avoid access fees.[5] Both SIFMA's and BATS's recommendations to reduce access fees still allow room for exchanges to provide rebates to market participants in order to

---

[2] *See* SIFMA Equity Market Structure Recommendations (July 10, 2014), available at http://www.sifma.org/workarea/downloadasset.aspx?id=8589949840.

[3] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Mary Jo White, Chair, Securities and Exchange Commission dated October 24, 2014 ("**SIFMA Equity Market Structure Recommendations SEC Letter**").

[4] *See* File No. 4-680, January 21st, 2015 ("**BATS SEC Rulemaking Petition**").

[5] One example is the "post-only" order type, which allows a market participant to specify that its order should execute only if it will not take liquidity and incur an access fee. Post-only features are often added on top of already complex order types, further increasing market complexity.

incentivize liquidity, while at the same time significantly reducing the market distortions and unnecessary complexity that access fees have caused.

BATS has proposed tiering access fees such that access fees and rebates for less liquid stocks would remain at their current level or possibly increase, whereas SIFMA has recommended a reduction on access fees for all securities regardless of liquidity. Regardless of this distinction, SIFMA believes that the access fee cap under Rule 610 should be amended. At the same time, we encourage the Commission to consider reasonable alternatives, which could include a tiered approach as a means of continuing to adequately incentivize liquidity provision in less liquid names, or a uniform access fee reduction as a means to avoid unnecessary market complexity. In either case, a reduction in access fees should be accompanied by monitoring and measuring the potential impact of reduced access fees and rebates on liquidity and spreads, particularly in less liquid names.

Order Handling Transparency

BATS has proposed the following on Order Handling Transparency:

> *Investors deserve to be informed and empowered with respect to their brokers' order handling decisions. In this regard, all ATSs should be required to provide customers with their rules of operation, and Rules 605 and 606 of Regulation NMS should be amended as appropriate to require additional disclosure of achieved execution quality on a broker by broker basis.*[6]

SIFMA's supports the BATS proposal on this issue. We support increasing public transparency of Alternative Trading Systems ("ATSs") and, in our recommendations on equity market structure, we stated that ATSs should publish their Form ATS and make their forms available on their websites. In addition, SIFMA has supported FINRA's transparency initiative to publish ATS and over-the-counter equity trading volumes.[7] As we noted in our recommendations, we also believe that the Commission should direct the for-profit exchanges to provide standardized public disclosure of their trading volumes through displayed orders, undisplayed and partially undisplayed orders.

SIFMA also supports increasing disclosure for retail and institutional customers. For example, we have recommended that regulators should direct broker-dealers to provide retail investors with public reports of order routing and execution quality metrics that are in a uniform

---

[6] *See* BATS SEC Rulemaking Petition at 2.

[7] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Marcia E. Asquith, Financial Industry Regulatory Authority dated February 20, 2015; *see also* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA to Elizabeth M. Murphy, Securities and Exchange Commission dated November 11, 2013.

format and easy to understand, and updated and published on a regularly occurring schedule.[8] In addition, to enhance transparency for institutional investors, we have recommended that regulators should direct broker-dealers to provide institutional investors with standardized execution venue statistical analysis reports.[9] To help facilitate this, SIFMA worked with the Investment Company Institute ("ICI") and the Managed Funds Association ("MFA") to develop an order routing disclosure template.[10]

Small Trading Centers

BATS has proposed the following on Small Trading Centers:

> *Competition and automation have combined to dramatically improve the market's trading infrastructure. The low commissions, diversity of products and ability to handle large order and trading volumes are a direct result of these forces. At the same time, we need to reconsider where it may artificially subsidize competition or encourage complexity that does not address a market need. In particular, all exchanges and displayed ATSs are given a significant competitive advantage regardless of their size by virtue of the "trade through rule" under Regulation NMS, which effectively requires all market participants to do business with all execution venues that display orders to the market. While this was necessary in an era where legacy exchanges routinely ignored their competitors, current practices have reduced the need for regulatory protections of smaller venues. Regulation NMS should be revised so that, until an exchange or other currently-protected market center achieves greater than 1% share of CADV in any rolling three-month period, they should (i) no longer be protected under the trade-through rule, and (ii) not share in/receive any NMS plan market data revenue.*[11]

SIFMA supports the BATS proposal to tie protected quotation status to a meaningful volume threshold. In our recommendations, we recommended that the SEC amend the definition of "protected quotation" under Regulation NMS so that it applies only to the displayed

---

[8] For instance, the information to be included in the retail reports should be leveraged from metrics currently reported pursuant to Rule 605, and examples would include: (i) Percent of Shares Improved; (ii) Average Price Improvement; (iii) Net Price Improvement Per Share; and (iv) Effective/Quoted Spread Ratio.

[9] Examples of the types of information (per venue) that should be incorporated into these execution analysis reports are: (i) percentage of orders executed; (ii) average number of shares ordered and executed; (iii) fill rates – overall, taken, added, and routed; and (iv) percentage executed displayed and undisplayed.

[10] *See* Letter from Dorothy M. Donohue, Deputy General Counsel, Investment Company Institute; Stuart J. Kaswell Executive Vice President & Managing Director, General Counsel, Managed Funds Association; and Randy Snook, Executive Vice President, Securities Industry and Financial Markets Association to Mary Jo White, Chair, Securities and Exchange Commission dated October 23, 2014.

[11] *See* BATS SEC Rulemaking Petition at 2.

quotations of a market center with one percent (1%) or more of the average daily dollar volume in all NMS stocks over a period of three consecutive calendar quarters. In our subsequent letter, we raised that the order protection rule under Regulation NMS has encouraged the proliferation of an unnecessarily high number of exchanges that broker-dealers are effectively mandated to connect to, and trade on, regardless of the level of liquidity offered by the exchange. We further note in our subsequent letter that the resources needed to maintain linkages to and monitor quotations on an exchange, no matter how low its trading volume, are not justified by corresponding benefits to the market.

* * *

We appreciate the Commission's consideration of our comments in support of BATS petition for rulemaking. If you have any questions, please contact me at [redacted] or [redacted].

Sincerely,

Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets