August 21st, 2014
Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Dear Ms. Murphy,

Themis Trading appreciates the opportunity to comment on the proposed BATS One Feed (Release No. 34-72688; File No. SR-BATS-2014-028).

BATS is proposing an aggregated pricing feed that will apparently provide a "suitable alternative" to subscribing to all of the BATS Global Markets pricing feeds in an attempt to get accurate top-of-book data (BBO). Optionally, subscribers may also choose to get aggregated book data for up to five pricing levels with this feed as well. BATS states they are creating such a feed for "members that do not need or are unwilling to pay for the individual book feeds offered by each of the individual BATS exchanges."

BATS will also supply on this same feed, which is to be delivered no earlier than BATS disseminates data to the CTA (SIP), Retail Liquidity Identifier indications. These indications will tell subscribers when there is retail interest on the exchanges at least $0.001 better than the exchange "protected bid and protected offer", which is already being done on their individual direct feeds.

This BATS One feed will cost between $120,000 and $180,000 per year for internal distribution, and between $30,000 and $60,000 per year for external distribution. The BATS one feed also allows for an Enterprise fee, which apparently provides for economies of scale if member firms have thousands of recipients.

BATS believes this feed supports fair competition among broker dealer, exchange markets, and between exchange markets and other markets (ATSs?). They also believe the proposed feed is not "unreasonably discriminatory", consistent with requirements of Reg NMS. BATS notes that other exchanges offer similar market data offerings (such as NASDAQ Basic).

BATS's position is that if REG NMS opened the door to allowing for the selling of market data in general, it stands to reason that the SEC should allow innovation in pricing and packaging, and let market forces dictate what types of data should be offered, and at what pricing.

BATS acknowledges that there will be latency issues. BATS will need to take individual direct feed data from its own exchanges, and aggregate them. That takes time, albeit not time in the same sense that most human beings think of time. BATS believes that the time it takes to aggregate the BATS One feed is very similar, and likely not quicker than what some external distributors would incur anyway.

BATS One feed appears designed to be an in-between data product, between the SIP and the Direct Feeds. BATS feels its pricing is constrained and held in check by market forces.

OK, so you know this, as you have the proposal on your desks! Why is Themis Trading commenting? We are commenting because of the increasing complexity being introduced into the marketplace with this BATS One filing. And we are frankly confused as to what quotes are to be used in judging best execution in general. And we have some questions.

Eric Hunsader at Nanex created a visualization a few years back that demonstrated how each exchange "sees" the other exchanges best bids and offers (BBOs) (see it here: https://www.youtube.com/watch?v=BJYeNTbhwyU); these views are of course different, as each exchange has different technologies, different locations, and the speed of their direct feeds are also different. Some exchanges use direct feeds to see what is going on at the other exchanges. Some use the SIP. Some use direct feeds to price trades in their matching engines. Some use the SIP!

Now, we have a new product, although optional in its availability, which will add a new "tier" of market data quality. Where the SIP is slow, and Direct Feeds are fast, BATS One is "in between" (aggregation time, you see). What standard will BATS use to make sure trading on its exchanges complies with Reg NMS? Will it use the SIP? Will it use its direct feeds? Will it use BATS One? Will it disclose timing differences between BATS One and the SIP? What standard will the SEC use to check on stock exchange enforcement? **What is the appropriate speed that anyone in the industry can use to judge best execution? Let us rephrase that; How slow a quote, how stale a quote, and how low can we make the hurdle to judge best execution?**

How complex can we make it? Will BATS One and other similar feeds degrade the importance of the SIP? According to panelists at Rep. Scott Garrett's most recent market structure roundtable, nobody uses it anymore! Is the SIP important? Is it important to the SEC? Should it be important to the public?

As stock exchanges continue to add new data products, the complexity is increasing. How long will it be before dark pools start selling data of activity in its pools? What speeds will that data be offered at? How many speed/quality tiers? How will all of the multiple tiers from exchanges and dark pools be viewed at the SEC? Will all of this technology be robust enough to not break down? Who will audit the technology? Will the SEC audit it? Will FINRA audit it? Will exchanges audit it? Will ATSs audit it? What will be the benchmark to audit against?

The more complex we make the simple matching of supply and demand, and the more we leverage technologies to introduce more complexities into this simple matching function, the more we guarantee systemic breakdowns. Additionally, the more complex we make the viewing of market data, the more we guarantee that for-profit games and business models will be played and made around the viewing of that data.

BATS makes some compelling and impressive Milton-Friedman-esque arguments for allowing competition to judge which products and pricings are offered to the marketplace by stock exchanges. We just ask that the SEC recognize that SROs, and the special importance of stock exchanges in our capital markets, and investing, means that unfettered competition in financial markets has different implications than unfettered competition in selling laundry detergent.

R.T. Leuchtkafer recently submitted an outstanding comment letter, which we have read. He specifically raises this point:

> *"…firms could well drop the SIPs.* ***Why pay twice? The current SIPs then are further neglected, replaced by consolidated feeds from the exchange groups themselves****.* ***But unlike the SIPs, the proprietary consolidated feeds will not be managed by any National Market System plan, and will surely have less public transparency and regulatory oversight****. It's also simple enough to predict rising fees for these private consolidated feeds if the current SIPs themselves are orphaned.*
>
> ***Rather than a public good in the public interest, as Congress clearly intended with the 1975 amendments, it's easy to see consolidated data become a private battleground.*** *As that happens, SIP data as a "common reference point...[for] the public, Firms, and regulatory authorities" will be challenged by anyone using the new feeds why pay twice? What, then, will be the common reference point for the public and regulators?*

Many of our points are very similar to the points he has raised. We raise them separately, however, as the concerns of an additional market participant.

Sincerely,
Sal Arnuk and Joe Saluzzi,
Themis Trading LLC