

Donald Bollerman
Private Citizen

By Electronic Mail

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

Re: Proposed Rule Change, File Number SR-BatsBZX-2017-34

Dear Mr. Fields,

I appreciate the opportunity to respectfully submit these comments regarding the BATS proposed Bats Market Close (“BMC”) order type. I submit these comments as a private citizen, I have no stake, obligations, restrictions, nor relationship, with any concerned parties, and have absolutely no financial interest in the outcome of this process beyond my concern for, and belief in, the US Equity Market as a critical asset of this great Nation.

I recommend that the Commission approve BATS proposal for the following reasons:

- The proposal is consistent with the Act and furthers its policy objective of competition between exchange markets.
- The mechanics of the close(s), and the resulting closing prices, will be unaffected by the migration of any offsetting Market on Close (MOC) orders to the proposed BMC.
- The arguments presented by commenters thus far have been unconvincing and largely unsupported, though alarmingly presented.
- The rational outcome of an approval should result in lower prices for closing auction shares at the Listing Exchanges and negligible share capture for BMC.
- The Commission has the power to call for a cessation of operation should any unacceptable impact of the proposal become evident.

Consistency with the Act

The BATS proposal is consistent with the Act and furthers its policy objective as per Section 11A(a)(C)(ii) “fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;”.

The proposal is not inconsistent with the Act, as alleged by NASDAQ and NYSE in their comment letters, by imposing burdens on competition not necessary or appropriate, and impeding the perfection of the market and national market system.

Regarding price discovery, given the current closing auctions’ mechanics the BMC as proposed will have no impact on the discovery of closing price in existing auctions.

Regarding burden on competition, I do not believe that the Act's intent in prohibiting burden on competition that is not necessary or appropriate was meant to protect an incumbents long-since-sunk investment against straight out price competition, which is exactly what the BMC presents. Nothing in BATS proposal prevents a competitive response from NASDAQ or NYSE, the most obvious and simple of which would be price reduction for shares traded in their closing auctions.

NASDAQ especially seems to be suggesting that BATS "freeriding" on price rather than innovating is some failure to comply with the Act. I do not understand that to be the case, nor did I find any material argument in the NASDAQ letter drawn from the Act or related materials to support that. That aside, who is to say that this isn't the first step in a strategy designed to draw participation to an exchange, after which time they may begin to experiment with price discovery mechanisms of their own? That goes to the NYSE example as well, where they describe a scenario where "all MOC orders were paired through an away market closing cross process" would result in meaningfully different closing prices than if the NYSE were to process those orders. I think if another venue paired "all MOC orders" for a given symbol price discovery would promptly move to that market, likely along with the listing.

Fragmentation of orders is not a valid argument in a market paradigm which insists on competition. The Act specifically calls for linkage to deal with fragmentation. The BATS proposal includes provision of data from its own paired shares in BMC, however facile that needs to be (e.g. free, readily available, not technically burdensome, timely, etc) should be able to satisfy. BATS has made clear that they are willing to disseminate the necessary information in such fashion as will satisfy the need, including through the Securities Information Processors ("SIP"s) that deliver consolidated market data from all exchanges today.

Market manipulation increasing (or opportunity thereof) is certainly a good consideration, but I believe of no great concern. NYSE makes the argument that the potential for manipulation would increase as the participation rate in the Listing Exchanges' auction decreases, making the outcome more fragile, more sensitive to influence. Intuitively I must agree, however this is nothing uncommon. My understanding is that some auctions are well populated, some are barely populated, some don't even have enough interest to run the auction, and the rest are somewhere on the curve in between.

Today all exchanges are under agreement with each other to share order and trade data for the purpose of regulatory oversight, and the Financial Industry Regulatory Authority ("FINRA") receives all such data from exchanges today, as well as from exchange and FINRA members via Order Audit Trail System ("OATS") required reporting, and performs cross-market surveillance for all exchanges (worth mentioning) today. In fact the industry is adding yet another cross market surveillance amalgamator in the form of the massively scoped and budgeted Consolidated Audit Trail ("CAT"). My point being that variable participation rates are already a factor in auctions today, and the industry already must surveil for manipulation in a thin close. So, this is no reason to disapprove.

Integrity of the Paradigm

There have been several comments and overtures in response to this proposal lauding the value, benefits, and desirability of a single centralization of liquidity for the closing auctions (or auctions in general). NYSE quotes from the Limit-Up/Limit-Down ("LULD") approval order regarding that program's process of waiting for the Listing Exchange to run a re-opening auction before resuming trading market wide. NYSE goes on to say "It would be inconsistent for the Commission to find it in the public interest

to consolidate trading interest in a re-opening auction following a Trading Pause, but permit the de-consolidation – or fragmentation – of trading interest in a closing auction.”

It is important to note that the LULD rules allow trading to resume without the Listing Exchange producing an auction price after a couple of waiting periods. It is also important to note that the Commission and the Industry did not deign to require all interest to re-constitute at the Listing Exchange in order to support price discovery. That said, I must disagree energetically with NYSE’s assertion of inconsistency with the quote from LULD should they approve BMC.

A wise person once told me that the Market *wants* to be a monopoly. Academically at least, the market would be most efficient as a single pool of liquidity with all players participating on parity. However, Congress has directed the Market to eschew monopoly in favor of competition, with fragmentation as an acceptable product of that decision.

NYSE and NASDAQ are asking for monopoly protection of their auctions, while they maintain free market, competitive pricing power. THAT is inconsistent with the Act. THAT creates unnecessary burdens on competition. THAT is wholly contradictory to the current competitive paradigm under which the Market is currently managed.

NASDAQ and NYSE both mention having auction products/order types that compete with the auction of the Listing Exchange. NASDAQ tries to dismiss theirs behind the veil of the more recent dialogue around the Listing Exchanges providing back-up auctions to each other in the event of the Listing Exchange’s inability to perform. NASDAQ’s rules haven’t been changed to make those order-types valid and live ONLY when the corresponding Listing Exchange is experiencing a failure.

NYSE tries to make a point about the competing auctions being on a “level playing field”, I believe because they’re after price setting orders as well, and independently arrive at their own price. NASDAQ makes or suggests similar points along the lines of “BATS proposal would be more virtuous if it sought to discover price”, which actually would impact NASDAQ’s price discovery. But somehow BATS proposal is worse because its lack of impact on NASDAQ’s price discovery relies on it free riding the NASDAQ auction price.

The SEC has approved, competing auction products for the listed securities in operation today. These competing products vie for price setting orders, and that produce different “official” closing prices for those securities, on those exchanges.

How can it fail to approve another competing product that is actually less disruptive since it will be priced identically to the Listing Exchanges’ closing prices?

Novelty is not a requirement in the Act that I’ve understood directly, or observed to be insisted upon by the Commission subsequently.

I’d like to note, I don’t disagree with NYSE and NASDAQ’s theoretical assertions of centralized auctions’ value to participants, I simply can’t reconcile disapproving BATS’ proposal because of the virtues of an existing product, with the current paradigm of competition we favor for our equity markets today.

The SEC and Industry might consider examining different functions, foremost single priced auctions, as best to operate under a monopolistic mandate granted to the Listing Exchange. If it is so determined, of

course that would require the overseer to set price. The benefits may well outweigh the costs of operating thusly, and competition would still be possible via competition for listings.

Conclusion

I believe the Commission should approve BATS proposal without further delay, and state clearly in the approval order that should the Commission determine the effect is intolerable negative, it will order the cessation of the order type immediately. I can't imagine a responsible market operator or participant disagreeing with that.

I am at your disposal via phone or email if I may offer any clarifications or be of other use on this or related topics.

Respectfully,



Donald Bollerman

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Cc: The Honorable Jay Clayton, Chairman
The Honorable Michael S. Piwowar, Commissioner
The Honorable Kara M. Stein, Commissioner
Heather Seidel, Acting Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets
Richard Holley III, Associate Director, Division of Trading and Markets