



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

July 22, 2015

Eric Swanson  
EVP, General Counsel & Secretary  
BATS Global Markets, Inc.  
8050 Marshall Drive, Suite 120  
Lenexa, KS 66214-1585

**Re: Denial of No-Action Request under Rule 603(c) of Regulation NMS**

Dear Mr. Swanson:

In your letter dated February 25, 2015, you request assurance that the staff of the Division of Trading and Markets (“Staff”) would not recommend enforcement action to the Commission under Rule 603(c) of Regulation NMS (the “Vendor Display Rule”) if a registered representative of a broker-dealer references the BATS One Feed generated by the four BATS-affiliated exchanges,<sup>1</sup> which contains only a subset of consolidated market data, “to provide securities quotations to a customer, and the registered representative enters any order submitted by that customer into an automated system that relies on consolidated market data in making its trading and order-routing decision.”

The Vendor Display Rule provides that “[n]o securities information processor, broker, or dealer shall provide, in a context in which a trading or order-routing decision can be implemented, a display of any information with respect to quotations for or transactions in an NMS stock without also providing, in an equivalent manner, a consolidated display for such stock.”<sup>2</sup> In adopting this provision of the Vendor Display Rule, the Commission stated that it “narrows the contexts in which a consolidated display is required to those when it is most needed – a context in which a trading or order-routing decision could be implemented.”<sup>3</sup> The

<sup>1</sup> In your letter, you state that the BATS One Feed is a data feed that disseminates, on a real-time basis, last sale information and the aggregate best bid and offer of all displayed orders for securities traded on the BATS Exchanges (*i.e.*, EDGA Exchange, Inc., EDGX Exchange, Inc., BATS Exchange, Inc., and BATS Y-Exchange, Inc.) and for which the BATS Exchanges report quotes under the Consolidated Tape Association Plan or the Nasdaq/UTP Plan. You state that the BATS One Feed also contains optional functionality that enables recipients to receive aggregated two-sided quotations from the BATS Exchanges for up to five price levels.

<sup>2</sup> 17 CFR 242.603(c)(1). The Vendor Display Rule provides exceptions for a display of information on the trading floor or through the facilities of a national securities exchange or to a display in connection with the operation of a market linkage system implemented in accordance with an effective national market system plan. *See* 17 CFR 242.603(c)(2).

<sup>3</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37569 (June 29, 2005) (“Regulation NMS Adopting Release”). As examples, the Commission noted that: the consolidated display requirement will continue to cover broker-dealers who provide on-line data to their customers in software programs from which trading decisions can be implemented; the requirement will continue to

Commission also noted that, “[p]articularly for retail investors, the NBBO<sup>[4]</sup> continues to retain a great deal of value in assessing the current market for small trades and the quality of execution of such trades.”<sup>5</sup>

In your letter, you state that the “BATS One Feed aggregates approximately 20% of the daily volume in national market [system] securities<sup>[6]</sup> amongst the four BATS Exchanges,” and that “a registered representative of a broker-dealer might use the BATS One Feed for purposes of identifying a reference price of Tape A, B, and C securities<sup>[7]</sup> and may use that reference price to provide a quotation to a customer.” You further note that, “[i]n such case, the registered representative would utilize a system that ultimately relies on consolidated market-wide data to determine how to execute or where to route that order.” You state your belief that, “should a customer enter an order after receiving a quotation based on a subset of consolidated data, so long as that order is processed by a system that relies on consolidated market data when making its execution and routing decisions... the policy concerns associated with the Vendor Display Rule have been met.”

The Staff believes that when a registered representative of a broker-dealer provides a quotation to a customer this typically is done in a context where the customer uses that information to make a trading decision (including a decision regarding whether or not to trade, or the terms of the trade such as a limit price). As noted above, in adopting the Vendor Display Rule, the Commission expressed the view that the NBBO continues to provide a great deal of value for retail investors in assessing the current market for small trades and the quality of execution of such trades. Accordingly, the Staff believes that a quotation provided by a registered representative to a customer, which the customer can use to assess the current market or the quality of trade execution, is provided “in a context in which a trading or order-routing decision can be implemented” for purposes of the Vendor Display Rule. Therefore, in such a context, the Staff believes that reliance on the BATS One Feed alone, as suggested by your letter, would not be consistent with the Vendor Display Rule.

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apply to vendors who provide displays that facilitate order routing by broker-dealers; and the requirement will not apply when market data is provided on a purely informational website that does not offer any trading or order-routing capability. *See id.*, at 37569-70.

<sup>4</sup> 17 CFR 242.600(b)(42) (defining national best bid and national best offer to mean, “with respect to quotations for an NMS security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; provided, that in the event two or more market centers transmit to the plan processor pursuant to such plan identical bids or offers for an NMS security, the best bid or best offer (as the case may be) shall be determined by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time)”).

<sup>5</sup> Regulation NMS Adopting Release, 70 FR at 37567.

<sup>6</sup> 17 CFR 242.600(b)(46) (defining NMS security as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options”).

<sup>7</sup> Tape A securities are securities listed on the New York Stock Exchange, Tape B securities are securities listed on NYSE Arca and NYSE MKT, and Tape C securities are securities listed on NASDAQ.

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Thus, based on the facts and representations set forth in your letter, the Staff is unable to assure you that it would not recommend enforcement action to the Commission under the Vendor Display Rule if registered representatives of broker-dealers engage in the activities set forth in your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Luparello", with a long horizontal flourish extending to the right.

Stephen Luparello  
Director



February 25, 2015

**BY EMAIL AND FEDERAL EXPRESS**

Stephen Luparello, Esq.  
Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**RE: Request for No Action Relief under Rule 603(c) of Regulation NMS**

Dear Mr. Luparello:

BATS Global Markets, Inc. (“BATS”), on behalf of broker-dealer subscribers to the BATS One Feed, respectfully requests your assurance that the staff of the Division of Trading and Markets (“Staff”) will not recommend that the Commission take any enforcement action under Rule 603(c) of Regulation NMS (“Vendor Display Rule”) in connection with a subscriber of the BATS One Feed using such data feed to provide securities quotations to customers. Specifically, BATS requests this relief for instances where a registered representative of a broker-dealer references a subset of consolidated market data to provide securities quotations to a customer, and the registered representative enters any order submitted by that customer into an automated system that relies on consolidated market data in making its trading and order-routing decision.

**Background**

On December 23, 2014, the Commission approved proposed rule changes filed by the national securities exchanges owned and operated by BATS<sup>1</sup> to adopt a market data product called the BATS One Feed.<sup>2</sup> The BATS One Feed is a data feed that disseminates, on a real-time basis, last sale information and the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on the BATS Exchanges and for which the BATS Exchanges report quotes under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan. In addition, the BATS One Feed contains optional functionality that enables recipients to receive aggregated

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<sup>1</sup> The affiliated exchanges are EDGA Exchange, Inc. (“EDGA”), EDGX Exchange, Inc. (“EDGX”), BATS Exchange, Inc. (“BZX”) and BATS Y-Exchange, Inc. (“BYX”, together with EDGX, EDGA, and BZX, the “BATS Exchanges”).

<sup>2</sup> See Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-BATS-2014-055, SR-BYX-2014-030, SR-EDGA-2014-25, and SR-EDGX-2014-25) (“BATS One Approval Order”).

two-sided quotations from the BATS Exchanges for up to five (5) price levels. The BATS One Feed aggregates approximately 20% of the daily volume in national market securities amongst the four BATS Exchanges.<sup>3</sup>

The Exchange does not anticipate that an end user would, or could, use the BATS One Feed for purposes of making order-routing or implementing trading decisions. Rather, as the BATS Exchanges noted in their proposed rule changes to adopt the BATS One Feed, under the Vendor Display Rule, the BATS One Feed could not be substituted for consolidated data in all instances in which consolidated data is used and certain subscribers would still be required to purchase consolidated data for trading and order-routing purposes.<sup>4</sup> However, the Exchange notes that a registered representative of a broker-dealer might use the BATS One Feed for purposes of identifying a reference price of Tape A, B, and C securities and may use that reference price to provide a quotation to a customer. In such case, the registered representative would utilize a system that ultimately relies on consolidated market-wide data to determine how to execute or where to route that order.

This letter requests no action relief from the Staff for instances where a registered representative of a broker-dealer references a subset of consolidated market data, namely the BATS One Feed, to provide a securities quotation to a customer, and the registered representative enters any order submitted by that customer into an automated system that relies on consolidated market data in making its trading and order-routing decision.

### **Applicable Law**

#### **Origin and Purpose of the Vendor Display Rule**

The Vendor Display Rule provides, in relevant part, that:

No . . . broker, or dealer shall provide, *in a context in which a trading or order-routing decision can be implemented*, a display of any information with respect to quotations for or transaction in an NMS stock without also providing, in an equivalent manner, a consolidated display for such stock. (Emphasis added).

In amending the Vendor Display Rule as part of Regulation NMS, the Commission stated the following:

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<sup>3</sup> See Market Volume Summary available at [http://batstrading.com/market\\_summary/](http://batstrading.com/market_summary/) (last visited February 18, 2015).

<sup>4</sup> See Securities Exchange Act Release Nos. 73594 (November 14, 2014), 79 FR 69142 (November 20, 2014); 73595 (November 14, 2014), 79 FR 69160 (November 20, 2014); 73596 (November 14, 2014), 79 FR 69148 (November 20, 2014); and 73597 (November 14, 2014), 79 FR 69180 (November 20, 2014) (File Nos. SR-BATS-2014-055, SR-BYX-2014-030, SR-EDGA-2014-25, and SR-EDGX-2014-25) (“BATS One Proposing Release”). 17 CFR § 242.603(c).

[A]dopted Rule 603(c) narrows the contexts in which a consolidated display is required to those when it is most needed – a context in which a trading or order-routing decision could be implemented. For example, the consolidated display requirement will continue to cover broker-dealers who provide on-line data to their customers in software programs from which trading decisions can be implemented. Similarly, the requirement will continue to apply to vendors who provide displays that facilitate order routing by broker-dealers. It will not apply, however, when market data is provided on a purely informational website that does not offer any trading or order-routing capability.<sup>5</sup>

### **Discussion**

The Exchange appreciates the purpose of the Vendor Display Rule to promote the wide availability of market data and to produce the most useful data for investors by narrowing the context in which a consolidated display of market wide data is required to where a trade or order routing decision could be implemented. According to the above, the Vendor Display Rule requires a consolidated display of market data when brokers are providing an on-line display to customers in a scenario in which a customer can implement a trading decision, but does not require a consolidated display when the market data is presented “on a purely informational website” from which a trading decision cannot be implemented.<sup>6</sup>

Given that the BATS One Feed aggregates approximately 20% of the daily volume in national market securities, BATS expects that a potential use for the data will be to provide reference prices for the broader market. In that context, an individual registered representative of a broker-dealer might use the BATS One Feed for the purpose of identifying a reference price for a security and may use that reference price to provide a quotation to a customer. Under the Vendor Display Rule, a subset of consolidated data could not be substituted for market-wide consolidated data in all instances in which consolidated data is used and certain subscribers would still be required to utilize consolidated market-wide data for trading and order-routing purposes. Even though the initial decision by the customer to enter an order to buy or sell a security may have been based on a quotation from a subset of consolidated data, any subsequent execution or routing of that order will be implemented by a system utilizing consolidated market-wide data. As such, no execution will occur if the order is not executable in the context of the complete market for the security at the time of potential execution and consistent with applicable regulations. Therefore, should a customer enter an order after receiving a quotation based on a subset of consolidated data, so long as that order is processed by a system that relies on consolidated market data when making its execution and routing decisions, the Exchange believes that the policy concerns associated with the Vendor Display Rule have been met.

The Exchange notes that a registered representative of a broker-dealer utilizing a subset of consolidated data to provide a securities quotation to a customer would continue to maintain a duty of best execution to their customer. Specifically, the registered representative must use

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<sup>5</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>6</sup> *Id.*

“reasonable diligence” to ascertain the best market for a security and to buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.<sup>7</sup> This request for no action relief would not absolve a registered representative from satisfying its duty of best execution when providing securities quotations based on a subset of consolidated data, and the Vendor Display Rule would continue to require that the registered representative implement such customer’s order through a system that relies on consolidated market-wide data and consistent with applicable regulations.

**Request for Relief**

For the reasons set forth above, BATS, on behalf of broker-dealer subscribers to the BATS One Feed, respectfully requests that the Staff not recommend that the Commission take any enforcement action under the Vendor Display Rule in instances where a registered representative of a broker-dealer references the BATS One Feed, a subset of consolidated market data, to provide a securities quotation to a customer, and the registered representative enters any order submitted by that customer into an automated system that relies on consolidated market data in making its trading and order-routing decision.

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In view of the foregoing, the Exchange respectfully requests that the Staff provide the no action relief as reflected in this letter. Please do not hesitate to contact me if you have any questions.

Sincerely,



Eric Swanson  
EVP, General Counsel & Secretary

cc: David Shillman, Associate Director, Division of Trading and Markets  
Daniel Grey, Senior Special Counsel, Division of Trading and Markets  
Katherine England, Assistant Director, Division of Trading and Markets

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<sup>7</sup> See FINRA Rule 5130.