

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58776; File No. SR-BATS-2008-007)

October 14, 2008

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.13, Entitled “Order Execution”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 10, 2008, BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. BATS has also requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>4</sup> If such waiver is granted by the Commission, the Exchange will implement this rule proposal immediately upon commencement of its operations as a national securities exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.13, entitled “Order Execution,” to more closely mirror the rules of other self-regulatory organizations related to order routing and

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Id.

to provide the Exchange's Outbound Router (as defined below) with additional flexibility when routing orders away from the Exchange.

The text of the proposed rule change is available at the Exchange's website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The routing performed in connection with the operation of the Exchange will be conducted by an affiliate of the Exchange, BATS Trading, Inc. (the "Outbound Router"), which is regulated as a facility of the Exchange (as defined in Section 3(a)(2) of the Act),<sup>5</sup> subject to Section 6 of the Act.<sup>6</sup> The role and functions of the Outbound Router are set forth in BATS Rule 2.11, which has previously been approved by the Commission.

The purpose of the proposed rule change is to provide the Exchange's Outbound Router with additional flexibility when routing orders away from the Exchange. The proposed modifications will permit the Outbound Router to route to additional Trading Centers (as defined

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<sup>5</sup> 15 U.S.C. 78c(a)(2).

<sup>6</sup> 15 U.S.C. 78f.

in Exchange Rule 2.11),<sup>7</sup> without limiting the permissible destinations to execution venues with “protected quotations” (as defined in Rule 600(b)(58) of the Act).<sup>8</sup> Under the proposed rule, orders could be routed to one or more Trading Centers provided that such routing is compliant with Regulation NMS, specifically, Rule 611 thereof (the “Order Protection Rule”).<sup>9</sup> Such Trading Centers may include execution venues known as “dark books.”

Under current Rule 11.13, when an incoming market or marketable limit order is received by the Exchange, the order will first check the BATS Book. If such order is not executed in full against liquidity on the BATS Book, and is eligible for routing based on the User’s instructions, then the order will be transmitted to the Outbound Router to be routed away. The Outbound Router will then route the order to one or more protected quotations for potential execution in compliance with the Order Protection Rule of Regulation NMS. This process continues until the order has been executed in full or the Outbound Router has confirmed that there are no available protected quotations at the routed price level or at a better price level. Following the routing process described above, the order will return to the Exchange to check available liquidity at the next permissible price level, and, if not executed in full, will either be posted to the BATS Book or again routed away to protected quotations at that next permissible price level.

After the proposed rule change, the Order Router may route orders not only to protected quotations, but also to other Trading Centers, so long as such routing is in compliance with the Order Protection Rule of Regulation NMS. With the exception of this proposed change, the order routing process will continue as it does currently. Thus, orders will continue to be routed

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<sup>7</sup> The Exchange’s definition of Trading Center, contained in Rule 2.11, is consistent with the definition of “trading center” contained in Rule 600(b)(78) of Regulation NMS.

<sup>8</sup> 17 CFR 242.600(b)(58).

<sup>9</sup> 17 CFR 242.611.

in the order routing process until the order has been executed in full or the Outbound Router has confirmed that there are no available protected quotations at the routed price level or at a better price level. The order will then return to the Exchange to check available liquidity at the next permissible price level, and, if not executed in full, will either be posted to the BATS Book or again routed away to available Trading Centers at that next permissible price level.

Routing under the proposed rule change will be subject to the requirements as those contained in Rule 2.11. Such requirements include that: (1) the Outbound Router will operate as a facility of the Exchange, and thus, the Exchange will be responsible for filing with the Commission rule changes related to the operation of, and fees for services provided by, the Outbound Router, and the Outbound Router shall be subject to exchange non-discrimination requirements; (2) for purposes of Rule 17d-1 under the Act,<sup>10</sup> the designated examining authority of the Outbound router will be a self-regulatory organization unaffiliated with the Exchange or any of its affiliates; (3) use of the Outbound Router is optional; (4) the Outbound Router will not engage in any business other than (a) its Outbound Router function and (b) any other activities it may engage in as approved by the Commission; (5) the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including the Outbound Router), and any other entity, including any affiliate of the Outbound Router, and, if the Outbound Router or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Outbound Router or its affiliate that provides the other business activities and the routing services; and (6) the books, records, premises, officers, agents, directors and employees of the Outbound Router as a facility

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<sup>10</sup> 17 CFR 240.19b-4.

of the Exchange shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act, and the books and records of the Outbound Router, as a facility of the Exchange shall be subject at all times to inspection and copying by the Exchange and the Commission. Accordingly, the Exchange believes that routing of orders away from the Exchange under the proposed rule change is consistent with the previously approved functions of the Outbound Router, and the Exchange does not believe that such functions are expanded through the proposed rule change.

The Exchange believes that routing under the proposed rule change will enhance order execution opportunities for market participants by allowing such participants to benefit from the Outbound Router's ability to route orders to additional Trading Centers,<sup>11</sup> rather than limiting such routing to market centers with protected quotations. Accordingly, the modifications to BATS Rule 11.13 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. As described in more detail below, the Exchange also believes that the proposed modification is similar to routing capabilities provided by other national securities exchanges and permissible under such exchanges' approved rules.<sup>12</sup>

## 2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>13</sup> In particular, for the reasons described

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<sup>11</sup> Such benefits may include, for example, potentially receiving lower transaction fees or executions at a single price.

<sup>12</sup> See, e.g., Rule 4758(a)(1)(A)(iii) of the Nasdaq Stock Market LLC ("NASDAQ"); see also NYSE Arca Equities Rule 7.37(d).

<sup>13</sup> 15 U.S.C. 78(f)(b).

above, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by providing the Outbound Router with additional flexibility when routing orders away from the Exchange, which may allow market participants to obtain better prices and/or lower access fees for such orders, while making clear the requirement that such routing be compliant with the Order Protection Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

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<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 C.F.R. 240.19b-4(f)(6). Rule 19b-4(f)(6) also requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BATS has satisfied the five-day pre-filing requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

BATS has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal is designed to provide for more efficient routing of orders of BATS members, and may provide further benefits to investors such as lower transaction fees or executions at a single price.<sup>17</sup> The Commission also notes that BATS Rule 11.13, as amended pursuant to the proposal, will be similar to rules of other exchanges that the Commission has previously approved<sup>18</sup> in that it will permit BATS to route to trading centers other than only those displaying protected quotations, and in this regard raises no new regulatory issues. Waiver of the 30-day operative delay will allow the Exchange to implement the proposed rule change upon commencement of its operations as a national securities exchange. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.<sup>19</sup>

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<sup>17</sup> See supra note 11 and accompanying text.

<sup>18</sup> See supra note 12 and accompanying text. See also Securities Exchange Act Release Nos. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001) (order approving The Nasdaq Stock Market LLC's "Single Book" proposal, including Nasdaq Rule 4758) and 54549 (September 29, 2006), 71 FR 59179 (October 6, 2006) (SR-NYSEArca-2006-59) (order approving NYSE Arca, Inc.'s proposed rule change relating to the adoption of Regulation NMS, including revisions to NYSEArca Rule 7.37(d)).

<sup>19</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2008-007 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2008-007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments



received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2008-007 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Florence E. Harmon  
Acting Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).