

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64445; File No. SR-BATS-2011-017)

May 9, 2011

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add BATS Rule 11.22, Entitled “Data Products”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 5, 2011, BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 continue to make available those data feeds provided by the Exchange to data recipients³ without charge and to start making available the Latency Monitoring feed, which will also be available without charge. The Exchange also proposes to add language to its Rules to memorialize those data feeds that have already been approved by the Commission.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange data recipients include Members of the Exchange as well as non-Members that have entered into an agreement with the Exchange that permits them to receive Exchange data.

⁴ BATS has separately filed a rule proposal and received approval to offer certain data products for which it assesses a fee but, outside of its fee schedule, did not propose written rules related to such data products. See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 10332 (April 16, 2010).

The text of the proposed rule change is available at the Exchange's Web site 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to continue to make available, without charge, several of the Exchange's data feeds for receipt by Exchange data recipients. In addition, the Exchange proposes to introduce a new feed, the Latency Monitoring feed, which will also be available without charge. The free data feeds offered and proposed to be offered by the Exchange include: (i) TCP PITCH; (ii) TCP FAST PITCH; (iii) Multicast PITCH; (iv) TOP; (v) DROP; (vi) Historical data; and (vii) Latency Monitoring (collectively, the "Data Feeds"). Lastly, the Exchange proposes to add language to its Rules to memorialize those data feeds that have already been approved by the Commission (specifically, the Last Sale Feed and historical data for equities).⁵

⁵ See supra note 4.

The Exchange provides detailed and up to date technical information regarding each of the Data Feeds currently offered by the Exchange on its public website.⁶ All orders and executions displayed through the Data Feeds are anonymous and do not contain the identity of the party that submitted the order.

By making the Data Feeds available free of charge, the Exchange believes that it enhances market transparency and fosters competition among orders and markets. At this time, the Exchange does not have plans to charge any fee associated with the receipt of the Data Feeds.⁷ Of course, should the Exchange determine to charge fees associated with the Data Feeds, the Exchange will submit a proposed rule change to the Commission in order to implement those fees.

Below is a description of each of the Data Feeds. As specified in the descriptions below, the Data Feeds are applicable either to the Exchange's equity securities platform ("BATS Equities"), its equity options platform ("BATS Options"), or both.

(i) TCP PITCH

The BATS TCP PITCH data feed is available for BATS Equities only, and provides Exchange data recipients with depth of book quotations and execution information based on

⁶ <http://www.batstrading.com/support/#menu-md-docs>.

⁷ The Exchange does not charge directly for any of the Data Feeds, though it does charge for ports used for receipt of data from the Exchange in order to offset certain infrastructure costs. These fees apply to ports associated with receipt of all of the Data Feeds except for Multicast PITCH, recipients of which are provided with 12 pairs of the requisite ports free of charge. See Securities Exchange Act Release No. 60586 (August 28, 2009), 74 FR 46256 (September 8, 2009) (SR-BATS-2009-026) (order approving proposal to impose fees for ports used for order entry and receipt of market data); see also Securities Exchange Act Release No. 63857 (February 7, 2011), 76 FR 7891 (February 11, 2011) (SR-BATS-2011-004) (notice of filing and immediate effectiveness of proposed rule change related to BATS Exchange fees, including modification of port fees).

equity orders entered into the System⁸ on an uncompressed feed. The PITCH feeds offered by BATS (including TCP FAST PITCH and Multicast PITCH) are the data feeds through which Exchange data recipients can receive full, real-time quotation and execution information. Each PITCH message reflects the addition, deletion or execution of an order in the System. TCP PITCH is the data feed used by Exchange data recipients to receive BATS PITCH information via a TCP/IP connection.

(ii) TCP FAST PITCH

The BATS TCP FAST PITCH data feed is available for BATS Equities only. The TCP FAST PITCH data feed, like TCP PITCH, offers depth of book quotations and execution information, however, unlike TCP PITCH, this data feed is compressed and packaged by BATS prior to transmission and is translated by the recipient. The Exchange plans to cease offering TCP FAST PITCH effective July 1, 2011.

(iii) Multicast PITCH

The BATS Multicast PITCH data feed is available for BATS Equities and BATS Options. The Multicast PITCH data feed, like TCP PITCH and TCP FAST PITCH, offers depth of book quotations and execution information, however, unlike BATS' other PITCH data feeds, this data feed is transmitted in a manner that can be processed more efficiently by recipients.

(iv) TOP

The BATS TOP data feed is available for BATS Equities only, and offers top of book quotations and last sale execution information based on equity orders entered into the System. By only providing top of book quotations and last sale information, TOP offers data recipients a

⁸ As defined in BATS Rule 1.5(aa), the term "System" means "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away."

significant reduction in required bandwidth and processing when compared to BATS' standard TCP PITCH data feed. The quotations made available via TOP provide an aggregated size and do not indicate the size or number of individual orders at the best bid or ask.

(v) DROP

The BATS DROP data feed is available for BATS Equities and BATS Options. BATS' DROP data feed offers information regarding the trading activity of a specific Member. This feed is typically used by Members or clearing firms to monitor trading activity. DROP information is only available to the Member to whom the specific data relates and those recipients expressly authorized by the Member, such as the Member's clearing firm or a third-party vendor who provides services to the Member. The Exchange offers two forms of DROP, one of which provides a record for each execution and the other of which provides a record of each order and each execution.

(vi) Historical Multicast PITCH

The BATS Historical Multicast PITCH data product is available for both BATS Equities and BATS Options, and offers up to three months of data on a T+1 basis. Such information can be downloaded from the Exchange's website. In addition, upon request, the Exchange provides data recipients with historical data on external hard drives. Although the Exchange charges for historical data related to its equity securities platform, Historical Multicast PITCH data related to BATS Options is made available to Exchange data recipients without charge. Historical data provided by the Exchange can be used for a variety of purposes. For instance, data recipients that wish to back-test certain trading strategies can use historical data for such purpose.

(vii) Latency Monitoring

The BATS Latency Monitoring data product will initially be available for BATS Equities only. The Latency Monitoring data product will offer real-time latency information based on equity orders entered into the System to data recipients on an uncompressed feed. This data feed will provide various statistics to data recipients based on the latency from when an order enters the BATS network until the time that the order appears on a particular BATS data feed. The Exchange will initially present various statistics aggregated across the exchange and also separated by matching engine unit including minimum latency, maximum latency, average latency, standard deviation, and the number of samples observed. The Exchange may add additional aggregate statistics in the future. In addition, the Exchange may also add other latency measures to the data feed in the future, to the extent a different method becomes relevant. The latency data will not be member or port specific. This data feed does not include any quotation or execution information.

2. Statutory Basis

Approval of the rule change proposed in this submission 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) of the Act.⁹ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁰ 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. Specifically, the Exchange believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

BATS equity and options market data along with information regarding the Exchange's internal latencies.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BATS requests that the Commission waive the

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ Id.

30-day operative delay in order to allow BATS to continue to provide without interruption the Data Feeds that are already available, voluntary, and free to subscribers. In addition, BATS requests waiver of the 30-day operative delay for the Latency Feed because it is ready for distribution, voluntary, free to receive, and contains only aggregate statistical information related to the latency of the System. BATS believes that waiver of the operative delay will allow it to continue providing market participants that use the Data Feeds with useful real-time and historical data concerning orders that have been entered, executions that have occurred, and the latency of the system, consistent with other products provided by other exchanges. The Commission believes that waiving the 30-day operative delay¹⁵ is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

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.

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

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

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2011-017 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BATS-2011-017. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,¹⁶ 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 website viewing and printing 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

¹⁶ The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov/rules/sro.shtml>.

make available publicly. All submissions should refer to File Number SR-BATS-2011-017 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.¹⁷

Cathy H. Ahn
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).