

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64957; File No. SR-BATS-2011-023)

July 25, 2011

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rules in Connection with the Elimination of a Directed Order Program for BATS Options

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 July 22, 2011, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. 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 21.1, entitled “Definitions,” to remove two order types, Market Maker Price Improving Orders and Directed Orders, from the types of approved order types offered by the BATS options market (“BATS Options”). Through this amendment, the Exchange is eliminating its recently approved

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

rules related to the establishment of a directed order program on a pilot basis for BATS Options.⁵

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, at www.sec.gov, 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 Exchange recently received approval to operate a directed order program for BATS Options on a pilot basis.⁶ The BATS Options directed order program would allow members of BATS Options ("Options Members") to direct an order to a particular BATS Options Market Maker for potential execution at a price improved over the existing National Best Bid ("NBB") or National Best Offer ("NBO"). The goal of the directed order program was to create a competitive structure to enhance aggressive quoting and shift economics associated with non-transparent payment for order flow arrangements to

⁵ See Securities Exchange Act Release No. 64781 (June 30, 2011), 76 FR 39953 (July 7, 2011) (SR-BATS-2011-023).

⁶ Id.

better execution prices for customer orders on the Exchange. While pending, the proposal to operate a directed order program received several comments from competitors of the Exchange and other market participants, some of which raised concerns that the directed order program may foster internalization and a widening of quoted spreads.⁷ During this time period, the Exchange also discussed the proposal with several Options Members, and the Exchange has continued these discussions following the approval of the proposal. While the Exchange continues to believe that the proposal is consistent with the Act and contains appropriate requirements to incent competitive quotations and further the public price discovery process, based on on-going discussions with Options Members, the Exchange believes there is sufficient reason to withdraw the directed order program and continue analyzing potential refinements that may better achieve the Exchange's goal. The Exchange notes that it has not yet implemented the directed order program.

⁷ See e.g., Letters to Elizabeth M. Murphy, Secretary, Commission, from Thomas F. Price, Managing Director, Securities Industry and Financial Markets Association, dated June 30, 2011; Christopher Nagy, Managing Director Order Strategy, TD Ameritrade, dated June 30, 2011; Jennifer M. Lamie, Assistant General Counsel, Legal Division, Chicago Board Options Exchange, dated June 29, 2011; Tom Wittman, The NASDAQ OMX PHLX, Inc. and The NASDAQ Options Market, dated June 24, 2011; Janet L. McGinness, SVP & Corporate Secretary, Legal & Government Affairs, NYSE Euronext, dated June 17, 2011; Michael J. Simon, Secretary, International Securities Exchange, LLC, dated June 17, 2011; Anthony D. McCormick, Chief Executive Officer, BOX Options Exchange Group, LLC, dated June 13, 2011; John C. Nagel, Managing Director and General Counsel, Asset Management and Markets, Citadel LLC, dated April 25, 2011; Andrew Stevens, Legal Counsel, IMC Chicago, LLC d/b/a IMC Financial Markets, dated April 21, 2011. The Exchange also notes that other options exchanges filed with the Commission a joint petition related to the directed order program following the approval of the directed order program.

Based on the foregoing, the Exchange proposes to eliminate the definitions for Market Maker Price Improving Orders and Directed Orders from the types of approved order types offered by the BATS Options pursuant to Rule 21.1.

2. Statutory Basis

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.⁸ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,⁹ 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. The Exchange believes that elimination of the directed order program will provide the Exchange and the options industry as a whole with additional time to evaluate the potential benefits of a program such as the directed order program.

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.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because the Exchange would like additional time to consider potential refinements to the directed order program and the directed order program has not been implemented.¹²

Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written 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 is deemed to have satisfied this requirement.

¹² 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).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2011-023 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-2011-023. 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, 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 such 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-2011-023 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.¹³

Elizabeth M. Murphy
Secretary

¹³ 17 CFR 200.30-3(a)(12).