

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73363; File No. SR-BATS-2014-038)

October 15, 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change to Rules 11.9 and 21.1 of BATS Exchange, Inc. to Add Price Adjust Functionality

I. Introduction

On August 26, 2014, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rules 11.9 and 21.1 to add Price Adjust functionality to the Exchange’s equities and options trading platforms. The proposed rule change was published for comment in the Federal Register on September 4, 2014.³ The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend BATS Rule (“Rule”) 11.9 to add a new, optional Price Adjust functionality to the Exchange’s cash equities trading platform (“BATS Equities”).⁴ Consistent with its practice of offering similar functionality for the Exchange’s equity options trading platform (“BATS Options”) as it does for BATS Equities, the Exchange also has proposed to amend Rule 21.1 to add Price Adjust functionality to BATS Options.⁵ On both

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72945 (August 28, 2014), 79 FR 52790 (“Notice”).

⁴ See proposed Rule 11.9(g).

⁵ See proposed Rules 21.1(i) and (j).

BATS Equities and BATS Options, the Price Adjust functionality would have to be elected by a User⁶ in order to be applied by the Exchange.

BATS Equities

Currently, the Exchange offers price sliding to ensure compliance with Regulation NMS and Regulation SHO for BATS Equities, as well as price sliding for BATS Options to ensure compliance with rules analogous to Regulation NMS adopted by the Exchange and other options exchanges. With respect to price sliding offered to ensure compliance with Regulation NMS (“display-price sliding”), under the Exchange’s current rules for BATS Equities, if, at the time of entry, a non-routable order would lock or cross a Protected Quotation⁷ displayed by another trading center, the Exchange ranks (and in the case of a cross, re-prices) such order at the locking price, and displays such order at one minimum price variation below the NBO for bids and above the NBB for offers.⁸ The Exchange currently offers display-price sliding functionality to avoid

⁶ As defined in Rule 1.5(cc), a User is “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.”

⁷ As defined in Rule 1.5(t), applicable to BATS Equities, a “Protected Quotation” is “a quotation that is a Protected Bid or Protected Offer.” In turn, the term “Protected Bid” or “Protected Offer” means “a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.” As defined in BATS Rule 27.1, applicable to BATS Options, a “Protected Quotation” is “a Protected Bid or Protected Offer.” In turn, the term “Protected Bid” or “Protected Offer” means “a Bid or Offer in an options series, respectively, that: (A) Is disseminated pursuant to the OPRA Plan; and (B) Is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange.” An “Eligible Exchange” is defined in Rule 27.1 as means “a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (a) is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (b) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (c) if the national securities exchange chooses not to become a party to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection.”

⁸ See Rule 11.9(g)(1).

locking or crossing other markets' Protected Quotations, but does not price slide to avoid executions on the Exchange's order book ("BATS Book"). Specifically, when the Exchange receives an incoming order that could execute against resting displayed liquidity but an execution does not occur because such incoming order is designated as an order that will not remove liquidity (e.g., a BATS Post Only Order), then the Exchange will cancel the incoming order unless it is permitted to remove liquidity upon entry.⁹

Under the proposed Price Adjust process, by contrast, an order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market or the Exchange will be ranked and displayed at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers).¹⁰ Thus, the proposed Price Adjust process differs from the Exchange's current display-price sliding process in two main ways. First, the Price Adjust process would both rank and display such an order at one minimum price variation below the current NBO or above the current NBB (rather than ranking the order at the locking price). Second, Price Adjust would be based on Protected Quotations at external markets and at the Exchange (rather than just Protected Quotations at external markets).

Because the Exchange will route orders to external markets with locking or crossing quotations, the Exchange notes that the Price Adjust process would only be applicable to non-

⁹ The Exchange notes that BATS Post Only Orders are permitted to remove liquidity from the BATS Book if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity. See Rule 11.9(c)(6). Similarly, Partial Post Only at Limit Orders are permitted to remove price improving liquidity as well as a User-selected percentage of the remaining order at the limit price if, following such removal, the order can post at its limit price. See Rule 11.9(c)(7).

¹⁰ See proposed Rule 11.9(g)(2)(A).

routable orders, including BATS Only Orders, BATS Post Only Orders and Partial Post Only at Limit Orders. In turn, because BATS Only Orders will execute against locking or crossing interest on the Exchange (including both Protected Quotations as well as any non-displayed interest), the fact that Price Adjust would be based on Protected Quotations at the Exchange is only relevant for BATS Post Only Orders and Partial Post Only at Limit Orders. The Price Adjust process would adjust, as described above, the price of a display-eligible BATS Post Only Order or Partial Post Only at Limit Order that would lock or cross a Protected Quotation displayed by the Exchange unless such order is permitted to remove liquidity as described in Rules 11.9(c)(6) and (c)(7), respectively,¹¹ whereas the display-price sliding process would cancel such order back to the User unless it is permitted to remove liquidity under Rules 11.9(c)(6) or (c)(7).

In addition, the Exchange has proposed that, in the event the NBBO changes such that an order subject to Price Adjust would not lock or cross a Protected Quotation, the order will receive a new timestamp, and will be displayed at the price that originally locked the NBO (for bids) or NBB (for offers) on entry.¹² All orders that are re-ranked and re-displayed pursuant to Price Adjust would retain their priority as compared to other orders subject to Price Adjust based upon the time such orders were initially received by the Exchange.¹³ Further, as proposed, following the initial ranking and display of an order subject to Price Adjust, an order will only be re-ranked and re-displayed to the extent it achieves a more aggressive price.¹⁴ In order to offer multiple-price sliding to Exchange Users that select Price Adjust, the Exchange also has

¹¹ See proposed Rule 11.9(g)(2)(D).

¹² See proposed Rule 11.9(g)(2)(B).

¹³ Id.

¹⁴ Id.

proposed that the ranked and displayed prices of an order subject to Price Adjust may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO.¹⁵ Multiple-price sliding pursuant to Price Adjust would be optional and would have to be explicitly selected by a User before it will be applied (the same is true for display-price sliding). Orders subject to multiple price sliding for Price Adjust would be permitted to move all the way back to their most aggressive price, whereas orders subject to Price Adjust without an explicit selection of multiple price sliding may not be adjusted to their most aggressive price, depending upon market conditions and the limit price of the order upon entry.

Further, the Exchange has proposed that in the event the NBBO changes such that display-eligible orders subject to display-price sliding and Price Adjust would not lock or cross a Protected Quotation and are eligible to be displayed at a more aggressive price, the System will first display all orders subject to display-price sliding at their ranked price followed by orders subject to Price Adjust, which will be re-ranked and re-displayed as set forth in proposed Rule 11.9(g)(2).¹⁶ The Exchange believes it is reasonable to un-slide orders subject to display-price sliding before it un-slides orders subject to Price Adjust because Price Adjust is a less aggressive form of price sliding than display-price sliding, in that an order submitted by a User that elects Price Adjust will be displayed and ranked at the same price rather than ranked at the locking price and displayed at a less aggressive price.

The Exchange currently applies display-price sliding to Non-Displayed Orders that cross Protected Quotations of external markets. The Exchange is not proposing to change its handling of Non-Displayed Orders other than by updating the language of its rule to reflect that it will handle Non-Displayed Orders for which a User has selected Price Adjust in the same way as it

¹⁵ See proposed Rule 11.9(g)(2)(C).

¹⁶ See proposed Rule 11.9(g)(3).

currently handles Non-Displayed Orders for which a User has selected display-price sliding.¹⁷ As such, Non-Displayed Orders that are subject to Price Adjust (or display-price sliding) would be ranked at the locking price on entry.¹⁸ The proposed rule also would state that price sliding for Non-Displayed Orders is functionally equivalent to the handling of displayable orders except that such orders will not have a displayed price and will not be re-priced again unless such orders cross a Protected Quotation of an external market (i.e., such orders are not un-slid).¹⁹

Lastly, the Exchange does not propose to modify its current short sale price sliding functionality, which is designed to ensure compliance with Regulation SHO, and proposes to apply that functionality to orders for which Price Adjust is chosen. As a result, orders for which a User selects either display-price sliding or Price Adjust will be subject to the Exchange's existing short sale price sliding functionality.²⁰

BATS Options – Price Adjust

In order to maintain consistency between analogous processes offered by BATS Equities and BATS Options, the Exchange has proposed to amend Rule 21.1 to add Price Adjust functionality to BATS Options, largely in conformance with the changes described above related to the Price Adjust process on BATS Equities. BATS Options currently offers display-price sliding (including multiple display-price sliding) to ensure compliance with locked and crossed market rules relevant to participation on BATS Options. The proposed Price Adjust functionality for BATS Options, as described in proposed Rules 21.1(i) and (j), is similar to the proposed functionality for BATS Equities, with the exception that it omits language related to

¹⁷ See proposed Rule 11.9(g)(4).

¹⁸ Id.

¹⁹ Id.

²⁰ See proposed Rule 11.9(g)(6).

applying Price Adjust to non-displayed orders because BATS Options does not have non-displayed orders.

III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.²¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²² which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to offer Price Adjust functionality is consistent with Section 6(b)(5) of the Act,²³ as well as Rule 610 of Regulation NMS²⁴ and Rule 201 of Regulation SHO.²⁵ The Exchange notes that it is not modifying the overall functionality of price sliding, which, to avoid locking or crossing quotations of other market centers or to comply with applicable short sale restrictions, displays orders at permissible prices while retaining a price at which the User is willing to buy or sell, in the event display at such price or an execution at such price becomes possible.²⁶ Instead, the Exchange is making changes to adopt an optional form of price sliding, Price Adjust, which will rank orders at their displayed price rather than, as with the

²¹ In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 15 U.S.C. 78f(b)(5).

²³ Id.

²⁴ 17 CFR 242.610.

²⁵ 17 CFR 242.201.

²⁶ See Notice, supra, note 3 at 52793.

current display-price sliding process, at the locking price. The exchange notes that, as a result, while subject to Price Adjust sliding, an order is ranked at a less aggressive price than it would be under the display-price sliding process, which may be preferable to certain Users that wish to provide liquidity but do not wish to cross the spread (i.e., if buying, do not wish to trade at the NBO or if selling, do not wish to trade at the NBB).²⁷

In addition, as noted above, in contrast to display-price sliding, which is based solely on Protected Quotations at equities markets and options exchanges other than the Exchange, the proposed Price Adjust process would be based on Protected Quotations at external markets and at the Exchange. According to the Exchange, applying the Price Adjust process to orders that, upon entry, cannot be executed or displayed at their limit price should contribute to more displayed liquidity on the Exchange than if such orders were cancelled back to the User.²⁸ Therefore, the Exchange believes the proposal to apply the Price Adjust process to orders that cannot be displayed because they would lock or cross displayed contra-side interest on the Exchange (and not just external markets) will 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.²⁹ The Exchange also states that the proposed Price Adjust process will enable the System to avoid displaying a locking or crossing quotation in order to ensure compliance with Rule 610(d) of Regulation NMS.³⁰

Further, the Exchange believes it is reasonable to un-slide display-price sliding orders before it un-slides Price Adjust orders because Price Adjust is a less aggressive form of price

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id.

sliding than display-price sliding, in that an order submitted by a User would be displayed and ranked at the same price rather than ranked at the locking price and displayed at a less aggressive price.³¹ Because orders subject to display-price sliding are ranked at and subject to execution at higher prices when buying and lower prices when selling, the Exchange believes that such orders should be re-displayed before orders subject to Price Adjust orders in response to changes to the NBBO.³²

Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid “[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.”³³ Such rules must be “reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock,” and must “prohibit ... members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock.”³⁴ The Exchange believes that the proposed Price Adjust functionality for BATS Equities as well as BATS Options will assist Users by displaying orders at permissible prices.³⁵ Similarly, Rule 201 of Regulation SHO³⁶ requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a price at or below the current NBB under certain circumstances. The Exchange represents that its short sale price sliding will continue to operate the same for Users

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Id.

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Id.

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17 CFR 242.610(d).

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Id.

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See Notice, supra, note 3 at 52793.

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17 CFR 242.201.

that select Price Adjust as it does for Users that select the display-price sliding process currently offered by the Exchange.³⁷

For the reasons noted above, the Commission finds that the proposed rule change is consistent with the Act, including Section 6(b)(5) of the Act,³⁸ which requires, among other things, that the rules of an exchange be designed to 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.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁹ that the proposed rule change, SR-BATS-2014-038, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Kevin M. O'Neill
Deputy Secretary

³⁷ See Notice, supra, note 3 at 52793.

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ 17 CFR 200.30-3(a)(12).