

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73473; File No. SR-BATS-2014-037)

October 30, 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change to Establish an Opening Process for Non-BATS-Listed Securities

I. Introduction

On September 3, 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 add new BATS Rule (“Rule”) 11.24, entitled “Opening Process for Non-BATS-Listed Securities,” and to make several corresponding changes, in order to modify the manner in which the Exchange opens trading for non-BATS-listed securities at the beginning of the day and after trading halts. The proposed rule change was published for comment in the Federal Register on September 19, 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 implement a process for opening trading in non-BATS-listed securities at the beginning of Regular Trading Hours⁴ and re-opening trading in such securities following a trading halt. Currently, the Exchange accepts orders in non-BATS-listed securities during the Pre-Opening Session,⁵ and any such orders are immediately eligible for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73093 (September 15, 2014), 79 FR 56421 (“Notice”).

⁴ Regular Trading Hours is defined in Rule 1.5(w).

⁵ Pre-Opening Session is defined in Rule 1.5(r).

execution. Orders that are on the BATS Book⁶ at the beginning of Regular Trading Hours remain on the BATS Book, subject to the User’s instructions, and trading continues into Regular Trading Hours without any transition period. Upon a halt, the Exchange currently cancels all orders on the BATS Book, except Eligible Auction Orders,⁷ and does not accept any orders until the halt is lifted. The time-in-force of Regular Hours Only (“RHO”)⁸ that the Exchange currently offers is not available for non-BATS-listed securities (it is only available for BATS-listed securities).

Under the proposal, the Exchange would amend its rules to allow orders in non-BATS-listed securities to be designated RHO, and would accept and queue any such orders during the Pre-Opening Session for execution at the midpoint of the NBBO⁹ shortly after the beginning of Regular Trading Hours (the “Opening Process”).¹⁰ The Exchange also has proposed to implement a similar process for re-opening trading after a halt, suspension, or pause (collectively, a “Halt”), under which a User’s orders would remain on the BATS Book unless the User has designated that they be cancelled upon a Halt (the “Re-Opening Process”).

Specifically, the Exchange has proposed to replace current Rule 11.23(a)(22) with proposed new Rule 11.9(b)(7), which would re-define RHO as a time-in-force modifier that

⁶ BATS Book is defined in Rule 1.5(e).

⁷ Eligible Auction Order is defined in Rule 11.23(a)(8).

⁸ Regular Hours Only is currently defined in Rule 11.23(a)(22) but, as described infra, the Exchange has proposed to replace Rule 11.23(a)(22) with proposed Rule 11.9(b)(7).

⁹ NBBO is defined in BATS Rule 1.5(o).

¹⁰ Only orders designated RHO would be queued for Opening Process participation when submitted during the Pre-Opening Session; orders not so designated would continue to be executable immediately upon entry during the Pre-Opening Session.

applies to all securities, both BATS-listed and non-BATS-listed.¹¹ Prior to the beginning of Regular Trading Hours, Users¹² that wish to participate in the Opening Process for a non-BATS-listed security may enter orders to buy or sell with a time in force of RHO.¹³ All orders that are marked as RHO may participate in the Opening Process except BATS Post Only Orders, Partial Post Only at Limit Orders, ISO orders not modified by Rule 11.24(a)(1) (as described below), and Minimum Quantity Orders.¹⁴ Limit orders with a Reserve Quantity could participate to the full extent of their displayed size and Reserve Quantity.¹⁵ Discretionary Orders could participate only up to their ranked price for buy orders or down to their ranked price for sell orders; the discretionary range of such orders would not be eligible for participation in the Opening Process.¹⁶ All Pegged Orders and Mid-Point Peg Orders would be eligible for execution in the Opening Process based on their pegged prices.¹⁷ Orders cancelled before the Opening Process and orders not designated RHO would not be eligible to participate in the Opening Process.¹⁸

Pursuant to proposed Rule 11.24(a)(1), during the period between 9:30 a.m. Eastern Time and the occurrence of the Opening Process, all non-RHO orders, subject to order instructions, and ISOs designated RHO may execute against eligible Pre-Opening Session contra-side interest

¹¹ See proposed Rule 11.9(b)(7). Proposed Rule 11.9(b)(7) also would specify that any remaining portion of market RHO order will be cancelled immediately following any auction in which it is not executed. Id. The Exchange also has proposed to delete the word “limit” from Rule 11.9(b) because a RHO order can be either a limit order or a market order. See proposed Rule 11.9(b).

¹² User is defined in Rule 1.5(cc).

¹³ See proposed Rule 11.24(a).

¹⁴ See proposed Rule 11.24(a)(2). For the definitions of BATS’ order types, see Rule 11.9.

¹⁵ See proposed Rule 11.24(a)(2).

¹⁶ Id.

¹⁷ Id.

¹⁸ See proposed Rule 11.24(a).

resting in the BATS Book.¹⁹ The Exchange has proposed to convert any unexecuted portion of an ISO designated RHO entered during this period into a non-ISO and queue the order for participation in the Opening Process.²⁰

The Exchange has proposed to implement the Opening Process shortly after the beginning of Regular Trading Hours, at which point the Exchange would attempt to execute all orders eligible for the Opening Process in a particular non-BATS-listed security at the midpoint of the NBBO.²¹ All such orders would be processed in time sequence beginning with the order with the oldest time stamp, and would be matched until there is no remaining volume or there is an order imbalance.²² All MTP modifiers would be ignored during the matching process.²³ If no matches can be made, or if orders are not executed in whole or part due to an imbalance, the Opening Process would conclude with all orders that participated in the Opening Process being placed in the BATS Book, cancelled, executed, or routed to away Trading Centers²⁴ in accordance with Rule 11.13(a)(2).²⁵ The Exchange notes that because an RHO order is not executable until the Opening Process (rather than upon entry), to the extent that any RHO order is not executed during the Opening Process and is placed on the BATS Book, such order will

¹⁹ See proposed Rule 11.24(a)(1).

²⁰ Id.

²¹ See proposed Rule 11.24(a)(3).

²² Id. According to the Exchange, time priority is more appropriate for the Opening Process than price-time priority because the price of the order is not particularly important to the Opening Process, so long as the order is priced at or more aggressively than the midpoint of the NBBO. As such, the Exchange believes that there is no reason to reward a more aggressive order with priority in the Opening Process. See Notice, supra note 3, 79 FR at 56422.

²³ See proposed Rule 11.24(b).

²⁴ Trading Center is defined in Rule 2.11(a).

²⁵ See proposed Rule 11.24(b).

receive a time stamp that reflects the time that the order was placed on the BATS Book during the Opening Process and not the time that the order was entered for queuing.²⁶

Under proposed Rule 11.24(c), the NBBO that the Exchange would use for purposes of setting the Opening Process price would be: (a) when the listing exchange is either the NYSE or NYSE MKT, the first NBBO subsequent to the first reported trade on the listing exchange after 9:30:00 a.m. Eastern Time, or the then-prevailing NBBO when the first two-sided quotation is published by the listing exchange after 9:30:00 a.m. Eastern Time, if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange; or (b) for any other listing market except for the Exchange, the first NBBO disseminated after 9:30:00 a.m. Eastern Time.²⁷ The Exchange has proposed to differentiate its calculation of the NBBO for NYSE and NYSE MKT-listed securities from its calculation of the NBBO for securities listed on other exchanges because NYSE and NYSE MKT do not offer continuous trading prior to 9:30:00 a.m. Eastern Time whereas the other listing exchanges do offer continuous trading prior to 9:30:00 a.m. Eastern Time. Thus, according to the Exchange, the market for trading in NYSE and NYSE MKT-listed securities may take a moment to develop after 9:30:00 a.m. Eastern Time whereas the market for securities listed on other exchanges is more fully developed immediately after 9:30:00 a.m. Eastern Time.²⁸

If the conditions to establish the price of the Opening Process set forth under proposed Rule 11.24(c) do not occur by 9:45:00 a.m. Eastern Time, the Exchange has proposed to implement a contingent opening process (the “Contingent Open Process”) under which, instead of being matched at the midpoint of the NBBO, orders would be handled in time sequence,

²⁶ See Notice, supra note 3, 79 FR at 56423.

²⁷ See proposed Rule 11.24(c).

²⁸ See Notice, supra note 3, 79 FR at 56423.

beginning with the order with the oldest time stamp, and placed on the BATS Book, routed, cancelled, or executed in accordance with the terms of the order.²⁹ The Exchange notes that, because an RHO order is not executable until the Opening Process (rather than upon entry), any order subject to the Contingent Open Process that is placed on the BATS Book would receive a time stamp that reflects the time that the order was placed on the BATS Book during the Opening Process and not the time that the order was entered for queuing.³⁰

In addition, the Exchange has proposed that, in the event of a Halt, all outstanding orders in the System³¹ will remain on the BATS Book except where a User has designated that its orders be cancelled.³² While a non-BATS-listed security is subject to a Halt, the Exchange would accept and queue orders, prior to the resumption of trading in the security, for participation in the Re-Opening Process.³³ The Re-Opening Process would occur in the same manner as the Opening Process described above, with the following exceptions: (1) non-RHO orders would be eligible for participation in the re-opening, but IOC, FOK, BATS Post Only Orders, Partial Post Only at Limit Orders, and Minimum Quantity Orders would be cancelled or rejected, as applicable, and any ISO that is not IOC or FOK would be converted into a non-ISO and be queued for participation in the re-opening; and (2) the re-opening would occur at the midpoint of: (i) the first NBBO subsequent to the first reported trade on the listing exchange following the resumption of trading after a Halt; or (ii) the NBBO when the first two-sided quotation is published by the listing exchange following the resumption of trading after a Halt if

²⁹ See proposed Rule 11.24(d).

³⁰ See Notice, supra note 3, 79 FR at 56423.

³¹ System is defined in Rule 1.5(aa).

³² See proposed Rule 11.18(f).

³³ See proposed Rule 11.24(e).

no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.³⁴ The Exchange has proposed that, where neither of the above conditions required to establish the price of the re-opening have occurred, the security may be re-opened for trading at the discretion of the Exchange and orders will be handled in the same manner as they are in the Contingent Open Process.³⁵

III. Discussion and Commission Findings

After careful review, 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.³⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,³⁷ 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 the proposal is consistent with the Act because it is designed to create a more orderly process for opening and re-opening trading in non-BATS-listed securities, and to facilitate price formation. Specifically, the Exchange believes that the proposed Opening Process will create a more orderly opening for non-BATS-listed securities and

³⁴ See proposed Rule 11.24(e)(1). The Exchange has proposed to wait until the sooner of the first execution on the listing market or one second following the publication of the first two-sided quotation by the listing exchange because no continuous trading occurs on any exchange during a Halt and, according to the Exchange, waiting will provide time for the market to become more fully established before determining the price at which the Re-Opening Process will occur.

³⁵ See proposed Rule 11.24(e)(2).

³⁶ 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).

³⁷ 15 U.S.C. 78f(b)(5).

help facilitate the price formation process at the beginning of Regular Trading Hours because allowing Users to enter orders during the Pre-Opening Session for queuing and participation in the Opening Process should help prevent the submission of a flood of orders immediately following the beginning of Regular Trading Hours.³⁸ For similar reasons, the Exchange believes that the proposed Re-Opening Process will create a more orderly re-opening in non-BATS-listed securities following a Halt and help facilitate price formation.³⁹ In addition, the Exchange states that allowing certain RHO orders (ISOs designated RHO) and all non-RHO orders to interact (and, in the case of non-RHO orders, to be added to the BATS Book where there is no contra-side interest) during the period between 9:30 a.m. Eastern Time and the occurrence of the Opening Process will create a more orderly opening and facilitate the price formation process because Users will have the option to enter orders that will either participate in the Opening Process or immediately interact with liquidity from the Pre-Opening Session, allowing trading to continue while the Exchange is waiting for the conditions necessary to complete the Opening Process.⁴⁰

The Exchange also believes that certain features of the Opening Process and Re-Opening Process are consistent with the Act. The Exchange states that the proposed exclusion of BATS Post Only Orders, Partial Post Only at Limit Orders, ISOs, and Minimum Quantity Orders from participation in the Opening Process is consistent with Section 6(b)(5) of the Act because such

³⁸ See Notice, supra note 3, 79 FR at 56423-24. The Exchange further states that, because the Opening Process price will be the midpoint of the NBBO, the Opening Process will occur at a price that is based on the best available pricing under current market conditions, which also will help create a more orderly opening and facilitate the price formation process. Id. at 56424.

³⁹ Id. at 56424.

⁴⁰ Id.

order types do not make sense in the context of queuing orders for the Opening Process.⁴¹ Moreover, according to the Exchange, its proposal to allow an ISO marked RHO to execute against eligible Pre-Opening Session interest during the period between 9:30 a.m. Eastern Time and the occurrence of the Opening Process, and then convert the unexecuted portion of the order into a non-ISO for queuing for participation in the Opening Process, is consistent with the requirements of Regulation NMS.⁴² According to the Exchange, after 9:30 a.m. Eastern Time, there may be a protected bid or offer displayed by the Exchange that a User who has submitted an ISO designated RHO would like to execute against, and this aspect of the proposal would permit such an execution to occur prior to the ISO being converted into a non-ISO and queued for participation in the Opening Process.⁴³

In addition, the Exchange states that the proposed Contingent Opening Process is designed 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 because it will help to ensure that the Exchange opens trading in a fair and orderly manner by providing a means for opening trading in a non-BATS-listed security when there is no two-sided NBBO in the security for fifteen minutes after the beginning of Regular Trading Hours.⁴⁴ The Exchange believes that fifteen minutes is a reasonable amount of time to wait for the establishment of a two-sided NBBO because it marks a point at which the market in a security has had a sufficient amount of time to develop while simultaneously providing a reasonable cut-off point at which

⁴¹ Id.

⁴² Id.; see also 17 CFR 242.600.

⁴³ See Notice, supra note 3, 79 FR at 56424.

⁴⁴ Id.

the Exchange may open the security for Regular Trading Hours trading.⁴⁵ The Exchange also believes that handling all orders queued for participation in the Opening Process in time sequence after fifteen minutes will help to ensure that trading opens in as fair and orderly a manner as possible.⁴⁶

Lastly, the Exchange states that the proposed Opening Process will provide Users with greater control and flexibility when entering orders in non-BATS-listed securities by allowing them to enter orders for participation in Regular Hours Trading during the Pre-Opening Session, rather than permitting them to enter such orders only after Regular Trading Hours have begun.⁴⁷ According to the Exchange, allowing Users that do not want to participate in the Pre-Opening Session to enter RHO orders prior to Regular Trading Hours will simplify the order entry process for such Users and remove impediments to a free and open market.⁴⁸

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,⁴⁹ 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.

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Id.

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Id.

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Id.

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Id.

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15 U.S.C. 78f(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵⁰ that the proposed rule change, SR-BATS-2014-037, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Brent J. Fields
Secretary

⁵⁰ 15 U.S.C. 78s(b)(2).

⁵¹ 17 CFR 200.30-3(a)(12).