

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76162; File No. SR-BATS-2015-86)

October 15, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Rule 2.4, Mandatory Participation in Testing of Backup Systems

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 October 2, 2015, 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 filed a proposal to adopt business continuity and disaster recovery plans (“BC/DR plans”) testing requirements for certain Exchange Members⁵ in connection with Regulation Systems Compliance and Integrity (“Regulation SCI”), as

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).

⁵ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

further described below.⁶

The text of the proposed rule change is available at the Exchange's website at 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

As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems ("ATs"), plan processors, and exempt clearing agencies (collectively, "SCI entities"), and will require these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain "[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that

⁶ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) ("SCI Adopting Release").

are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.”⁷ The Exchange takes pride in the reliability and availability of its systems. Historically, Exchange systems have been up and available more than 99.9% of the time; yet as a precaution, the Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR plans consistent with the Rule. As set forth below, in connection with Regulation SCI, the Exchange is proposing to require certain Members to participate in testing of the operation of the Exchange’s BC/DR plans.

With respect to an SCI entity’s BC/DR plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”⁸ Paragraph (b) of Rule 1004 further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months.”⁹ In order to comply with Rule 1004 of Regulation SCI, the Exchange proposes to adopt Rule 2.4, governing mandatory participation in testing of Exchange backup

⁷ 17 CFR 242.1001(a)(2)(v).

⁸ 17 CFR 242.1004(a).

⁹ 17 CFR 242.1004(b).

systems, as described below.

First, in paragraph (a) of Rule 2.4, the Exchange proposes to include language from paragraph (a) of Rule 1004 of Regulation SCI to summarize the Exchange's obligation pursuant to such rule. Specifically, the Exchange proposes to state that “[p]ursuant to Regulation SCI and with respect to the Exchange’s business continuity and disaster recovery plans, including its backup systems, the Exchange is required to establish standards for the designation of Members that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.” The Exchange further proposes that paragraph (a) indicate that the “Exchange has established standards and will designate Members according to those standards” as set forth in the proposed Rule. In addition, the Exchange proposes to make clear that all Members are permitted to connect to the Exchange’s backup systems as well as to participate in testing of such systems. Proposed paragraph (a) is consistent with the Commission’s adoption of Regulation SCI, which encouraged “SCI entities to permit non-designated members or participants to participate in the testing of the SCI entity’s BC/DR plans if they request to do so.”¹⁰

Second, in paragraph (b) of Rule 2.4, the Exchange proposes to specify the criteria that will result in a Member receiving a designation requiring it to connect to the Exchange’s backup systems and to participate in functional and performance testing as announced by the Exchange, which shall occur at least once every 12 months. Specifically, proposed paragraph (b) would require all Members that account for a meaningful percentage of the Exchange’s volume and Members that participate as Lead

¹⁰ See SCI Adopting Release, supra note 6 at 72350.

Market Makers (“LMMs”) with respect to one or more securities listed on the Exchange to connect to the Exchange’s backup systems and to participate in functional and performance testing.

The Exchange notes that it encourages all Members to connect to the Exchange’s backup systems and to participate in testing of such systems. In fact, the Exchange provides logical ports free of charge to all Members that connect to Exchange backup systems in order to help reduce the economic burden of maintaining connectivity to Exchange backup systems. However, in adopting the requirements of Rule 2.4(b), including both the requirement to maintain connectivity to Exchange backup systems and to participate in mandatory testing of such systems, the Exchange intends to subject to the Rule only those Members that the Exchange believes are necessary to maintain fair and orderly markets at the Exchange. The Exchange believes that designating Members to participate in mandatory testing because they either account for a meaningful percentage of the Exchange’s overall volume or maintain exclusive responsibilities with respect to Exchange-listed securities is a reasonable means to ensure the maintenance of a fair and orderly market on the Exchange. The Exchange notes that it has not proposed initially to extend the requirement to Members that are registered as “Competitive Liquidity Providers” or “CLPs”, based on the fact that such Members do not have exclusive responsibilities with respect to Exchange-listed securities but instead are participating in a competitive incentive program with multiple market makers per product.

In addition to paragraphs (a) and (b) described above, the Exchange also proposes to adopt Interpretation and Policy .01, which would provide additional detail regarding the notice that will be provided to Members that have been designated pursuant to

subparagraph (b) of the Rule as well as the Exchange's method for measuring the volume threshold. As proposed, Interpretation and Policy .01 would state that for purposes of identifying Members that account for a meaningful percentage of the Exchange's overall volume, the Exchange will measure volume executed on the Exchange on a quarterly basis. The percentage of volume that the Exchange considers to be meaningful for purposes of this Interpretation and Policy .01 will be determined by the Exchange and will be published in a circular distributed to Members. The Exchange will publish the first circular consistent with this proposal prior to the Regulation SCI compliance date of November 3, 2015. The proposed Interpretation and Policy would also require the Exchange to notify individual Members quarterly that are subject to proposed paragraph (b) based on the prior calendar quarter's volume. Finally, as proposed, if a Member has not previously been subject to the requirements of proposed paragraph (b), then such Member would have until the next calendar quarter before such requirements are applicable. The Exchange believes the proposed notice requirements are necessary to provide Members with proper advance notice in the event they become subject to proposed Rule 2.4(b). The proposed timeframes would also provide Members with adequate time to become compliant with such Rule due to the necessary infrastructure changes it may take to connect to the Exchange's backup systems for a Member that is not already connected.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular,

¹¹ 15 U.S.C. 78f(b).

in that it is 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 proposal will ensure that the Members necessary to ensure the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI.

Specifically, the proposal will adopt criteria with respect to the designation of Members that are required to participate in the testing of the Exchange's BC/DR plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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."¹³ The Exchange believes that this proposal is consistent with such authority and legal responsibility.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is not a competitive proposal but rather is necessary

¹² 15 U.S.C. 78f(b)(5).

¹³ See SCI Adopting Release, supra note 6 at 72350.

for the Exchange's compliance with Regulation SCI.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁵ The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given 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.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 C.F.R. 240.19b-4.

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR-BATS-2015-86 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 No. SR-BATS-2015-86. 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, 100 F Street, NE, Washington, DC 20549, on

official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also 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 No. SR-BATS-2015-86 and should be submitted on or before [21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Robert W. Errett
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).