SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77291; File No. SR-BATS-2015-108)

March 3, 2016

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Partial Amendment
No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change to Adopt BATS
Rule 11.27(a) to Implement the Quoting and Trading Requirements of the Regulation NMS Plan
to Implement A Tick Size Pilot Program

I.   Introduction

On November 30, 2015, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the

Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of

the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposal to adopt

BATS Rule 11.27(a) to implement the quoting and trading requirements of the Plan to

Implement Tick Size Pilot Program ("Plan") submitted to the Commission pursuant to Rule 608

of Regulation NMS under the Act ("Tick Size Pilot").[3] The proposal was published for

comment in the Federal Register on December 9, 2015.[4] The Commission received three

comment letters on the proposal and a response letter from BATS.[5] On January 21, 2016, the

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

[3]   See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (order approving the Tick Size Pilot)("Approval Order").

[4]   See Securities Exchange Act Release No. 76552 (December 3, 2015),80 FR 76591 ("BATS Proposal").

[5]   See letters from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 18, 2015 ("SIFMA Letter"); Mary Lou Von Kaenel, Managing Director, Financial Information Forum, dated December 22, 2015 ("FIF Letter"); Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange, Inc. and John K. Kerin, CEO, Chicago Stock Exchange, Inc., dated January 15, 2016 ("NYSE Letter"); and Andrew Madar, Associate General Counsel, Financial Industry Regulatory Authority, Inc. ("FINRA") and Chris Solgan, Assistant General Counsel, BATS, dated February 23, 2016 ("BATS Response Letter").

Commission designated a longer period for Commission action on the proposal, until March 8, 2016.[6] On March 2, 2016, BATS filed Partial Amendment No. 1.[7] This order approves the proposal, as modified by Partial Amendment No. 1.

II.   Background

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., FINRA, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"[8]), filed with the Commission, pursuant to Section 11A of the Act[9] and Rule 608 of Regulation NMS thereunder,[10] the Plan to Implement the Tick Size Pilot.[11] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[12]

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[6]   See Securities Exchange Act Release No. 76945, 81 FR 4734 (January 27, 2016).

[7]   In Partial Amendment No. 1, BATS proposes to: (1) add an exception to permit members to fill a customer order in a Pilot Security in Test Group Two or Test Group Three at a non-nickel increment to comply with BATS Rule 12.6 under limited circumstances; (2) add an exception to the Trade-at Prohibition for certain error correction transactions; (3) modify the stopped order exception to the Trade-at Prohibitions to better align it with the stopped order exception for Rule 611 of Regulation NMS; and (4) clarify the use of Trade-at Intermarket Sweep Orders in connection with the Trade-At Prohibition.

[8]   The Commission notes that on February 5, 2016, National Stock Exchange, Inc. ("NSX") filed a Plan amendment with the Commission to become a Plan Participant pursuant to Section II.C of the Plan. This amendment is effective upon filing pursuant to Rule 608(b)(3)(iii) of Regulation NMS.

[9]   15 U.S.C. 78k-1.

[10]   17 CFR 242.608.

[11]   See letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[12]   See Securities Exchange Act Release No. 72460, 79 FR 36840 (June 30, 2014).

The Plan was published for comment in the Federal Register on November 7, 2014,[13] and approved by the Commission, as modified, on May 6, 2015.[14] On November 6, 2015, the Commission issued an exemption to the Participants from implementing the Plan until October 3, 2016.[15]

The Tick Size Pilot is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of certain small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its members, as applicable, with the provisions of the Plan.[16] The Plan requires Participants to develop quoting and trading requirements for the Tick Size Pilot as well as collect, publish, and submit to the Commission a variety of data elements such as market quality statistics and market maker profitability.[17] BATS is proposing to adopt BATS Rule 11.27(a) and certain Interpretations and Policies to implement the quoting and trading requirements of the Tick Size Pilot.[18]

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[13] See Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423.

[14] See Approval Order, supra note 3.

[15] See Securities Exchange Act Release No. 76382, 80 FR 70284 (November 13, 2015).

[16] Rule 608(c) of Regulation NMS. 17 CFR 242.608(c). See also Plan Sections II.B and IV.

[17] The data collection requirements for the Plan are specified in Appendices B and C. See Approval Order, supra note 3. BATS has adopted rules to implement the data collection requirements under the Plan. See BATS Rule 11.27(b); see also Securities Exchange Act Release No. 77105 (February 10, 2016), 81 FR 8112, (February 17, 2016).

[18] NYSE, on behalf of the Plan Participants, submitted a letter to the Commission requesting exemption from certain provisions of the Plan related to the quoting and trading requirements as they apply to Pilot Securities that have a price under $1.00. See letter from Elizabeth K. King, General Counsel & Corporate Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 ("October Exemption Request"). In addition, FINRA, on behalf of the Plan Participants, submitted a letter to the Commission requesting additional exemptions from certain provisions of the Plan related to the quoting and trading requirements. See letter from Marcia E. Asquith, Senior Vice

III.   Description of the Proposed Rule Change

      A.   Policies and Procedures to Comply with the Plan

Proposed BATS Rule 11.27(a) would establish the rules necessary for compliance with

the applicable quoting and trading requirements specified in the Plan for BATS and its

members.[19]

Proposed BATS Rule 11.27(a)(1) provides that members shall establish, maintain, and

enforce written policies and procedures that are reasonably designed to comply with the

applicable quoting and trading requirements of the Plan. Proposed BATS Rule 11.27(a)(2) sets

forth that BATS system will not display, quote or trade in violation of the applicable quoting and

trading requirements for a Pilot Security specified in the Plan or its proposed rule, unless the

quotation or transaction is specifically exempted under the Plan.

      B.   Compliance and Pilot Securities Under $1.00 during the Pilot Period

Proposed BATS Rule 11.27(a)(3) sets forth the procedures for Pilot Securities whose

price drops below $1.00 during the Pilot Period.[20] If the price of a Pilot Security drops below

$1.00 during regular trading hours on any trading day, the Pilot Security will continue to trade

according to the quoting and trading requirements of its originally assigned Test Group within

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President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 ("February Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, has granted BATS a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letters and noted herein. See letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, Executive Vice President, General Counsel and Secretary, BATS, dated March 3, 2016 ("SEC Exemption Letter").

[19]   BATS proposed that its Rule 11.27(a) be in effect during a pilot period to coincide with the Pilot Period of the Plan, including any extensions. See Proposed BATS Rule 11.27(a) Interpretations and Policies .03.

[20]   BATS has requested an exemption from the Plan related to this provision. See October Exemption Request, supra note 18.

the Plan. If a Pilot Security has a Closing Price[21] below $1.00 on any trading day, the Pilot

Security would be moved from its respective Test Group into the Control Group, and would be

quoted and traded at any price increment that is currently permitted for the remainder of the Pilot

Period. Proposed BATS Rule 11.27(a)(3) further provides, that notwithstanding anything to the

contrary, all Pilot Securities will continue to be subject to BATS Rule 11.27(b), which sets forth

BATS' data collection requirements for Tick Size Pilot.

      C.   <u>Quoting and Trading Rules for Test Group One</u>

Proposed BATS Rule 11.27(a)(4) describes the quoting and trading requirements for Pilot

Securities in Test Group One. Specifically, BATS proposes that no member may display, rank,

or accept from any person any displayable or non-displayable bids or offers, orders, or

indications of interest in increments other than $0.05 for Pilot Securities in Test Group One.

Orders priced at either the midpoint of the national best bid and national best offer ("NBBO") or

best protected bid and best protected offer ("PBBO") and orders entered into a Participant-

operated retail liquidity program may be ranked and accepted in increments of less than $0.05.

The provision also sets forth that Pilot Securities in Test Group One would continue to be able to

trade at any price increment that is currently permitted by applicable Participant, Commission,

and BATS rules.

      D.   <u>Quoting and Trading Rules for Test Group Two</u>

Proposed BATS Rule 11.27(a)(5) describes the quoting and trading requirements of Pilot

Securities in Test Group Two. Specifically, BATS proposes that no member may display, rank,

or accept from any person any displayable or non-displayable bids or offers, orders, or

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[21]   Capitalized terms used in this Order are defined in the Plan, unless otherwise specified herein. Further, BATS has proposed to use the Plan's defined terms in its Rule 11.27(a). <u>See</u> Proposed BATS Rule 11.27(a) Interpretations and Policies .01.

indications of interest in increments other than $0.05 for Pilot Securities in Test Group Two.[22]

Further, BATS proposes that absent any enumerated exceptions, no member organization may

execute an order in any increment other than $0.05 for Pilot Securities in Test Group Two.[23]

Proposed BATS Rule 11.27(a)(5)(C) provides that Test Group Two Pilot Securities may

trade in increments less than $0.05 in the following circumstances: (1) at the midpoint between

the NBBO or the PBBO: (2) for Retail Investor Orders that are provided with price improvement

that is at least $0.005 better than the PBBO; and (3) Negotiated Trades. In Partial Amendment

No. 1, BATS proposed a fourth exception to the Test Group Two requirement that Pilot

Securities trade in $0.05 increments. Specifically, BATS proposed that a member may execute

a customer order at an increment other than $0.05, following the execution of a permissible

proprietary trade by that member, in order to comply with BATS Rule 12.6.[24]

E.   Quoting and Trading Rules for Test Group Three

Proposed BATS Rule 11.27(a)(6) describes the quoting and trading requirements of Pilot

Securities in Test Group Three. BATS proposes for Pilot Securities in Test Group Three that no

member may display, rank, or accept from any person any displayable or non-displayable bids or

offers, orders, or indications of interest in increments other than $0.05.[25] Proposed BATS Rule

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[22]   Similar to the exception in Test Group One, orders priced to trade at the midpoint of the
        NBBO or PBBO and orders entered into a Participant-operated retail liquidity price
        program may be ranked and accepted in increments of less than $0.05. See Proposed
        BATS Rule 11.27(a)(5)(A).

[23]   Proposed BATS Rule 11.27(a)(5)(B) applies to all trades, including Brokered Cross
        Trades. A Brokered Cross Trade is defined in the Plan as a trade that a broker-dealer that
        is a member of a Participant executes directly by matching simultaneous buy and sell
        orders for a Pilot Security. See Plan Section I.G.

[24]   See Partial Amendment No. 1, supra note 7. BATS has requested an exemption from the
        Plan related to this provision. See February Exemption Request, supra note 18.

[25]   Similar to the exceptions for Test Group One and Test Group Two, orders priced to trade
        at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail

11.27(a)(6)(B) states that for Test Group Three Pilot Securities no member would be permitted to execute an order, including Brokered Cross Trades, in an increment other than $0.05 unless there was an exception enumerated by proposed BATS's Rule 11.27(a)(6)(C). Proposed BATS Rule 11.27(a)(6)(C) sets forth four exceptions for trading of Test Group Three Pilot Securities to occur in increments of less than $0.05: (1) at the midpoint between the NBBO or the PBBO; (2) for Retail Investor Orders that are provided with price improvement at least $0.005 better than the PBBO; (3) for Negotiated Trades; and (4) for executions of a customer order to comply with BATS Rule 12.6 following the execution of a proprietary trade by the member at an increment other than $0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.[26]

Proposed BATS Rule 11.27(a)(6)(D)(i) sets forth that, absent an exception set forth in proposed BATS Rule 11.27(a)(6)(D)(ii), no member that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during regular trading hours (i.e., the "Trade-at Prohibition"). Under the Trade-at Prohibition, a member that operates a Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed, that is at a price equal to the traded-at Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. A member that operates a Trading Center that was not displaying a quotation at a price equal to the traded-at Protected Quotation, via either a processor or an SRO quotation feed, is prohibited from price-matching protected quotations unless at least one of the exceptions applies.

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liquidity program may be ranked and accepted in increments of less than $0.05. See Proposed BATS Rule 11.27(a)(6)(A).

[26] See Partial Amendment No. 1, supra note 7. BATS has requested an exemption from the Plan related to this provision. See February Exemption Request, supra note 18.

Proposed BATS Rule 11.27(a)(6)(D)(ii) sets forth the exceptions to the Trade-at

Prohibition for members that operate Trading Centers as follows:

(a) the order is executed within the same independent aggregation unit[27] of the member

that operates the Trading Center that displayed the quotation via either a processor or an

SRO quotation feed, to the extent such member uses independent aggregation units, at a

price equal to the traded-at Protected Quotation that was displayed before the order was

received, but only up to the full displayed size of that independent aggregation unit's

previously displayed quote. Further, proposed BATS Rule 11.27(a)(6)(D)(ii)(a) also

specifies that a Trading Center that is displaying a quotation as agent or riskless principal

may only execute as agent or riskless principal and a Trading Center displaying a

quotation as principal (excluding riskless principal) may execute as principal, agent or

riskless principal;

(b) the order that is of Block Size[28] at the time of origin and is not an aggregation of non-

block orders; broken into orders smaller than Block Size prior to submitting the order to a

Trading Center for execution; or executed on multiple Trading Centers;

(c) the order is a Retail Investor Order that is executed with at least $0.005 price

improvement;

(d) the order is executed when the Trading Center displaying the Protected Quotation that

was traded-at was experiencing a failure, material delay, or malfunction of its systems or

equipment;

(e) the order is executed as part of a transaction that was not a "regular way" contract;

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[27]   BATS proposes that, "Independent aggregation unit" has the same meaning as provided under Rule 200(f) of Regulation SHO. See 17 CFR 242.200(f).

[28]   "Block Size" is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000.

(f) the order is executed as part of a single-priced opening, reopening, or closing

transaction by the Trading Center;

(g) the order is executed when a Protected Bid is priced higher than a Protected Offer in

the Pilot Security;

(h) the order is identified as a Trade-at Intermarket Sweep Order ("ISO");[29]

(i) the order is executed by a Trading Center that simultaneously routed Trade-at ISOs to

execute against the full displayed size of the Protected Quotation with a price that is

better than, or equal to, the limit price of the limit order identified as a Trade-at ISO;

(j) the order is executed as part of a Negotiated Trade;

(k) the order is executed when the Trading Center displaying the Protected Quotation that

was traded at had displayed within one second prior to execution of the transaction that

constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for

the Pilot Security with a price that was inferior to the price of the Trade-at transaction.;

(l) the order is executed by a Trading Center, which at the time of order receipt, had

guaranteed an execution at no worse than a specified price (a "stopped order") where: (1)

the stopped order was for the account of a customer; (2) the customer agreed to the

specified price on an order-by-order basis; and (3) the price of the Trade-at transaction

was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot

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[29] See Partial Amendment No. 1, supra note 7. In Partial Amendment No. 1, BATS
proposes to define a Trade-At ISO as a limit order for a Pilot Security that meets the
following requirements: 1. when routed to a Trading Center, the limit order is identified
as a Trade-at ISO; and 2. simultaneously with the routing of the limit order identified as a
Trade-at ISO, one of more additional limit orders, as necessary, are routed to execute
against the full size of any protected bid, in the case of a limit order to sell, or the full
displayed size of any protected offer, in the case of a limit order to buy, for the Pilot
Security with a price that is better than or equal to the limit price of the limit order
identified as a Trade-at ISO. These additional routed orders also must be marked as
Trade-at ISOs. See Proposed BATS Rule 11.27(a)(7)(A)(i).

Security at the time of execution or, for a stopped sell order, equal to or greater than the

National Best Offer in the Pilot Security at the time of execution, as long as such order is

priced at an acceptable increment;[30]

(m) the order is for a fractional share order of a Pilot Security, provided that such

fractional share order was not the result of breaking an order[31] for one or more whole

shares of a Pilot Security into orders for fractional shares or was not otherwise effected to

evade the requirements of the Tick Size Pilot; or

(n) the order is to correct a bona fide error, which is recorded by the Trading Center in its

error account. BATS proposes to define a bond fide error as: 1. the inaccurate

conveyance or execution of any term of an order including, but not limited to, price,

number of shares or other unit of trading; identification of the security; identification of

the account for which securities are purchased or sold; lost or otherwise misplaced order

tickets; short sales that were instead sold long or vice versa; or the execution of an order

on the wrong side of a market; 2. the unauthorized or unintended purchase, sale, or

allocation of securities, or the failure to follow specific client instructions; 3. the incorrect

entry of data into relevant systems, including reliance on incorrect cash positions,

withdrawals, or securities positions reflected in an account; or 4. a delay, outage, or

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[30] See Partial Amendment No. 1, supra note 7. BATS has requested an exemption from the Plan related to this provision. See February Exemption Request, supra note 18.

[31] Additionally, no member shall break an order into smaller orders or otherwise effect or execute an order to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan. See Proposed BATS Rule 11.27(a) Interpretations and Policies .02.

failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.[32]

IV.   Summary of Comments

As noted above, the Commission received three comment letters concerning the proposed rule change[33] and a response letter from BATS. [34] All three commenters discussed various aspects of the Trade-at Prohibition. The commenters noted differences between the Trade-at Prohibition rules proposed by BATS and NYSE.[35] One commenter noted that the NYSE's proposal would limit a Trading Center from price matching a Protected Quotation to when the Trading Center is displaying in a principal capacity, while the BATS Proposal would not restrict price matching to a Trading Center's principal capacity.[36]

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[32]   See Partial Amendment No. 1, supra note 7. BATS has requested an exemption from the Plan related to this provision. See February Exemption Request, supra note 18.

[33]   See supra note 5. The Commission notes that the SIFMA Letter and the FIF Letter also addressed the proposed rule changes submitted by FINRA and NYSE to implement the quoting and trading requirements of the Tick Size Pilot. See SIFMA Letter and FIF Letter. Also see Securities Exchange Act Release No. See Securities Exchange Act Release No. 77218 (February 23, 2016), 81 FR 10290 (February 29, 2016)(order approving the "FINRA Proposal") and Securities Exchange Act Release No. 73229 (October 22, 2015), 80 FR 66065 (October 28, 2015)(notice of the "NYSE Proposal").

[34]   As noted above, BATS and FINRA submitted a joint response to comment letters. See BATS Response Letter, supra note 5.

[35]   See SIFMA Letter and FIF Letter. For example, these two commenters highlighted two distinctions between the NYSE Proposal and the BATS Proposal. The commenters noted that the BATS Proposal does not limit the Retail Investor Order exception to the Trade-at Prohibition to only orders submitted by an exchange program whereas the NYSE Proposal does include this limitation. Additionally, the commenters noted that the BATS Proposal allows for a Trade-at Prohibition for orders that were displayed as either an agency, riskless principal, or principal capacity whereas the NYSE proposal only allows for orders that were displayed on a principal basis. One commenter indicated that if the differences persisted it would be "virtually impossible" for its members to comply with the Plan. See SIFMA Letter.

[36]   See SIFMA Letter.

One commenter expressed support for BATS's Trade-at Prohibition proposal.[37]

However, one commenter, NYSE, stated that the BATS Proposal was inconsistent with the goals

of the Plan because it would incentivize a migration of trading to dark venues.[38] This

commenter stated that the BATS Proposal would allow an alternative trading system ("ATS") to

execute matched trades of any of its participants at the Traded-at Protected Quotation if the ATS

is displaying on an agency basis, a quotation of another participant at the Protected Quotation.[39]

The commenter noted that all participant orders displayed by an ATS are agency orders of the

ATS and that trades matched by ATS participants without display are also agency orders of that

ATS. Therefore, the commenter believes that the BATS Proposal would allow trades by ATS

participants at the Trade-at Protected Quotation without that participant displaying a Protected

Quotation. The commenter believes that the proposal allows ATS participants to "free-ride" on

the displayed Protected Quotation of other ATS participants.[40] The commenter stated that if

implemented, trading would continue in dark pools at a price of displayed liquidity and that the

proposal would result in similar trading behaviors between Test Group Three and Test Group

Two.[41]

In its response, BATS disagreed with NYSE's characterization of the display exception's

operation as set forth in the BATS Proposal, and confirmed that a broker-dealer would not be

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[37]   See SIFMA Letter. For example, SIFMA stated that it believed that the Commission
should approve BATS's proposal.

[38]   The commenter also indicated that the proposal did not follow the procedure outlined by
the Plan's Operating Committee. See NYSE Letter.

[39]   See NYSE Letter.

[40]   See NYSE Letter.

[41]   See NYSE Letter.

permitted to trade based on interest that it is not responsible for displaying.[42] BATS noted that it

would view a broker-dealer that matches orders in the over-the-counter ("OTC") market, as

principal, agent or riskless principal, to have "executed" such orders as a Trading Center for

purposes of proposed BATS Rule 11.27(a), regardless of whether such broker-dealer ultimately

executes and reports such trade through an OTC trade reporting facility, an ATS or another

Trading Center. Accordingly, if a broker-dealer has displayed, as principal, a buy order at the

protected bid on an exchange or Electronic Communications Network ("ECN") prior to its

receipt of a customer sell order, it could internalize that customer sell order, up to its displayed

size, in reliance on the proposed BATS Rule 11.27(a)(6)(D)(ii)(a) exceptions. If, however, that

broker-dealer has not displayed a principal buy order at the protected bid, but matches its

customer order with an order for its own account and submits the paired orders to an ECN where

another broker-dealer is displaying a buy order at the protected bid, the broker-dealer submitting

the paired orders could not rely on the proposed display exceptions. While the ECN, as a

Trading Center, could execute the displayed order as agent with offsetting interest because it was

displaying an agency quotation at the protected bid, the broker-dealer submitting the paired

orders could not, as a Trading Center, trade with its customer order, because it was not

displaying a principal quotation at the protected bid. Accordingly, such a transaction could not

be effected consistent with the Trade-at Prohibition under the BATS proposal.

One commenter discussed other provisions related to the Trade-at Prohibition.[43]

Specifically, the commenter stated the definition of Block Size order, used for the Block Size

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[42] As noted above, BATS and FINRA submitted a joint response to comments. See BATS
Response Letter, supra note 5.

[43] See FIF Letter. The Commission notes that FIF asked several interpretative questions
and provided explanatory examples in its comment letter on the FINRA proposal that

exception to the Trade-at Prohibition, would prevent a Trading Center from facilitating a block

cross trade.[44] The commenter requested that the proposal be amended to permit the aggregation

of non-block orders as long as at least one component of the order was of the defined Block

Size.[45] In response, BATS opined that such an exception was inconsistent with the Plan. BATS

believes that permitting the aggregation of non-block orders or the combination of Block Size

orders with non-block size orders would undermine the Block Size exception by making it

overly broad..

The commenter suggested that the exceptions to the Trade-at Prohibition contained in this

proposal should be more closely aligned with the exemptions granted to Rule 611 of Regulation

NMS.[46] Specifically, the commenter referenced the Rule 611 exemptions for (1) certain error

correction transactions and (2) certain print protection transactions.[47] BATS agreed with the

commenter, in part, and amended this proposal to include an exception for certain error

correction transactions for the Trade-at Prohibition.[48] BATS, however, did not believe that it

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were not raised within the FIF Letter related to the BATS proposal. However, these issues were discussed in the BATS Response Letter and discussed in the FINRA Order.

[44]   According to the commenter, a "block cross trade" is block size order that includes smaller orders. The commenter noted that the three additional qualifications contained within the BATS proposal are meant to ensure the purpose of the Trade-at Prohibition is not undermined. See FIF Letter. See also Proposed BATS Rule 11.27(a)(6)(D)(ii)(b).

[45]   See FIF Letter.

[46]   17 CFR 242.611.

[47]   The commenter noted Commission orders related to Rule 611 of Regulation NMS. Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 (http://www.sec.gov/rules/exorders/2007/34-55884.pdf); Order Exempting Certain Print Protection Transactions from Rule 611 (http://www.sec.gov/rules/exorders/2007/34-55883.pdf). See FIF Letter.

[48]   See Partial Amendment No. 1, supra note 7.

was appropriate to provide a print protection transaction exception for the Trade-at Prohibition that correlates to the exemption for Rule 611 of Regulation NMS..[49]

The commenter also noted there was a distinction between the stopped order exception applicable to Rule 611 of Regulation NMS exception and the proposed stopped order exception for the Trade-at Prohibition. The commenter provided an example where an order would satisfy Rule 611 of Regulation NMS but would not satisfy the proposed Trade-at Prohibition exception. In response, BATS amended and harmonized the respective stopped trade exceptions to harmonize the stopped order exception.[50]

Finally, one commenter requested clarification on the treatment of a variety of order types, including Good Till Canceled orders entered in non-nickel increments before the Pilot Period, indications of interest priced to execute at the midpoint, and market maker peg orders. BATS noted that Test Group One permits indications of interest priced to execute at the midpoint. With regard to the other orders, BATS noted that the Participants are drafting FAQs to address the commenter's questions.

V.   Discussion and Findings

After carefully considering the proposed rule change, the comments submitted, and BATS's response to the comments, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[51] Specifically, the Commission finds that the proposed rule change is

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[49]   See Partial Amendment No. 1, supra note 7.

[50]   See Partial Amendment No. 1, supra note 7.

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

consistent with Section 6(b)(5) of the Act,[52] which requires, among other things, that the rules of

an exchange be designed to prevent fraudulent and manipulative acts and practices, 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, and are not designed to permit unfair discrimination between customers, issuers,

brokers or dealers. In addition, the Commission finds that the proposed rule change is consistent

with Section 6(b)(8) of the Act,[53] which requires that the rules of an exchange not impose any

burden on competition that is not necessary or appropriate.

The Commission stated in the Approval Order that the Tick Size Pilot should provide a

data-driven approach to evaluate whether certain changes to the market structure for Pilot

Securities would be consistent with the Commission's mission to protect investors, maintain fair,

orderly and efficient markets, and facilitate capital formation.[54] As discussed below, the

Commission believes that BATS's proposal is consistent with the requirements of the Act and

would further the purpose of the Plan to provide meaningful data.

BATS, as a Participant in the Plan, has an obligation to comply, and enforce compliance

by its members, with the terms of the Plan. Rule 608(c) of Regulation NMS provides that

"[e]ach self-regulatory organization shall comply with the terms of any effective national market

system plan of which it is a sponsor or participant. Each self-regulatory organization also shall,

absent reasonable justification or excuse, enforce compliance with any such plan by its members

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[52]   15 U.S.C. 78f(b)(5).

[53]   15 U.S.C. 78f(b)(8).

[54]   See Approval Order, supra note 3.

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and persons associated with its members."[55] Proposed BATS Rule 11.27(a) would impose

compliance obligations on its members with the quoting and trading requirements set forth in

Section VI of the Plan. As discussed below, the Commission also believes the proposal is

consistent with the Act because it is designed to assist BATS in meeting its regulatory

obligations pursuant to Rule 608 of Regulation NMS and the Plan.

A.   Policies and Procedures to Comply with the Plan

Proposed BATS Rule 11.27(a)(1) provides that BATS members must establish, maintain,

and enforce written policies and procedures that are reasonably designed to meet the applicable

quoting and trading requirements of the Plan. Proposed BATS Rule 11.27(a)(2) states that

BATS's system will not display, quote, or trade in violation of the applicable quoting and trading

requirements for a Pilot Security specified in the Plan and its rule. As noted above, Sections II.B

and IV of the Plan provide that each Participant must establish, maintain and enforce written

policies and procedures that are reasonably designed to comply with the quoting and trading

requirements of the Plan and adopt rules requiring compliance by its members with the terms of

the Plan. Accordingly, proposed BATS Rules 11.27(a)(1) and (2) are consistent with the Act as

they implement these Plan provisions.

B.   Compliance and Pilot Securities Under $1.00 during the Pilot Period

Proposed BATS Rule 11.27(a)(3) provides a mechanism to address instances where the

price of a Pilot Security assigned to a Test Group falls below $1.00. Specifically, if the price of a

Pilot Security assigned to a Test Group falls below $1.00 during a trading day, the Pilot Security

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[55]   17 CFR 242.608(c). See also Section II.B of the Plan which provides that each
Participant will adopt rules requiring compliance by its members with provisions of the
Plan. In addition, Section IV of the Plan requires all Participants and members of
Participants to establish maintain and enforce written policy and procedures that are
reasonably designed to comply with the applicable quoting and trading requirements
specified in Section VI of the Plan for the Pilot Securities.

would remain in its assigned Test Group. If, however, a Pilot Security has a Closing Price below

$1.00 during any trading day, that Pilot Security would be moved out of its respective Test

Group and into the Control Group.[56] The Commission notes that the selection criteria for Pilot

Securities were developed to minimize the likelihood of the inclusion of securities that trade with

a share price of $1.00 or less. However, the Commission understands that there could be

instances over the course of the Pilot Period where a Pilot Security's price falls below $1.00.

According to the Participants, a $0.05 quoting and/or trading increment could be harmful to

trading for such low priced Pilot Securities. Accordingly, the Commission believes that this

provision is consistent with the Act because it should help to ensure that the universe of Pilot

Securities remains constant over the Pilot Period while also addressing trading concerns for Pilot

Securities that experience a fall in price.

Proposed BATS Rule 11.27(a) Interpretations and Policies .03 specifies that the rule's

effectiveness shall be contemporaneous with the pilot period. The Commission believes that this

proposed rule is consistent with the Act because it reinforces and clarifies important dates and

obligations under the Plan.

C. Quoting and Trading Rules for Test Group One and Test Group Two

Proposed BATS Rule 11.27(a)(4) provides that no member may display, rank, or accept

from any person any displayable or non-displayable bids or offers, orders, or indications of

interest in any Pilot Security in Test Group One in increments other than $0.05. However,

proposed BATS Rule 11.27(a)(4) also provides that orders priced to execute at the midpoint of

the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be

ranked and accepted in increments of less than $0.05. Finally, proposed BATS Rule 11.27(a)(4)

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[56] The Commission notes that it has granted BATS an exemption from Rule 608(c) related
to this provision. See SEC Exemption Letter, supra note 18.

provides that Pilot Securities in Test Group One may continue to trade at any price increment

that is currently permitted by applicable Participant, SEC and BATS rules. The Commission

finds that proposed BATS Rule 11.27(a)(4) is consistent with the Act because it implements

provisions of the Plan.

Proposed BATS Rule 11.27(a)(5) provides that no member may display, rank, or accept

from any person any displayable or non-displayable bids or offers, orders, or indications of

interest in any Pilot Security in Test Group Two in increments other than $0.05. However,

proposed BATS Rule 11.27(a)(5) also provides that orders priced to execute at the midpoint of

the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be

ranked and accepted in increments of less than $0.05. Proposed BATS Rule 11.27(a)(5)(B)

further provides that no member may execute an order in a Test Group Two Pilot Security in an

increment other than $0.05, unless an exception applies. Pilot Securities in Test Group Two may

trade in increments less than $0.05 when trading: (i) at the midpoint between the NBBO or the

PBBO; (ii) Retail Investor Orders that are provided price improvement that is at least $0.005

better than the PBBO; (iii) Negotiated Trades; and (iv) customer orders to comply with BATS

Rule 12.6 following the execution of a proprietary trade that is permissible pursuant to Plan

exception.[57] The Commission finds that proposed BATS Rules 11.27(a)(5)(C)(i), (ii) and (iii)

are consistent with the Act because they implement provisions of the Plan.

In Partial Amendment No. 1, BATS proposes to add a trading increment exception in

BATS Rule 11.27(a)(5)(C)(iv), which would allow the execution of a customer order following a

proprietary trade by a BATS member at an increment less than $0.05 in the same security, on the

same side and at the same price as (or within the prescribed amount of) a customer order owed a

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[57]   See Partial Amendment No. 1, supra note 7.

fill pursuant to BATS Rule 12.6, where the triggering proprietary trade was permissible pursuant to an exception under the Plan. BATS believes that this customer order protection exception should facilitate the ability of its members to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan. Based on the foregoing, the Commission finds that proposed BATS Rule 11.27(a)(5)(C)(iv) is consistent with the Act.[58]

D.   Quoting and Trading Rules for Test Group Three

Proposed BATS Rule 11.27(a)(6)(A) provides that no member may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Three in increments other than $0.05. Proposed BATS Rule 11.27(a)(6)(A) also provides that for Test Group Three Pilot Securities orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. Proposed BATS Rule 11.27(a)(6)(B) specifies that the $0.05 trading increment will apply to all trades, including Brokered Cross Trades; and that trades for Test Group Three Pilot Securities may not occur in increments of less than $0.05 unless there is an applicable exception listed in proposed Rule BATS Rule 11.27(a)(6)(C). Pursuant to proposed Rule BATS Rule 11.27(a)(6)(C), Test Group Three Pilot Securities may trade in increments less than $0.05 when trading: (i) at the midpoint between the NBBO or the PBBO; (ii) Retail Investor Orders that are provided price improvement that is at least $0.005 better than the PBBO and; (iii) Negotiated Trades; and (iv)

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[58]   The Commission notes that it has granted BATS an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, supra note 18.

customer orders to comply with BATS Rule 12.6 following the execution of a proprietary trade

that is permissible pursuant to Plan exception.[59]

The Commission finds that proposed BATS Rule 11.27(a)(6)(A), proposed BATS Rule

11.27(a)(6)(B), and proposed BATS Rules 11.27(a)(6)(C)(i), (ii) and (iii) are consistent with the

Act because they implement provisions of the Plan. In addition, as discussed above,[60] the

Commission finds that proposed BATS Rule 11.27(a)(6)(C)(iv) is consistent with the Act.

1.   Quoting and Trading Rules for Test Group Three: Trade-at Prohibition

Proposed BATS Rule 11.27(a)(6)(D) describes the Trade-at Prohibition and the

exceptions applicable thereto.[61] Specifically, proposed BATS Rule 11.27(a)(6)(D)(i) sets forth

that absent any of the exceptions listed in subparagraph (D)(ii), no member that operates a

Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a

Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a

Protected Offer during regular trading hours (i.e., the Trade-at Prohibition). Proposed BATS

Rule 11.27(a)(6)(D)(i) also states that under the Trade-at Prohibition, a member that operates a

Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed,

that is at a price equal to the traded-at Protected Bid or Protected Offer is permitted to execute

orders at that level, but only up to the amount of its displayed size. Finally, proposed BATS

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[59]   See Partial Amendment No. 1, supra note 7.

[60]   See Section V.C above related to the discussion of proposed BATS Rule
         11.27(a)(5)(C)(iv). The Commission notes that it has granted BATS an exemption from
         Rule 608(c) related to this provision. See SEC Exemption Letter, supra note 18.

[61]   The Commission notes that the BATS Response Letter contains detailed responses to a
         number of interpretive questions that were raised by a commenter in regards to the BATS
         and FINRA Proposals. See supra note43. The Commission understands that the
         Participants are developing interpretative guidance on the quoting and trading rules under
         the Plan and expects that Participants will continue to work with market participants on
         the implementation of the quoting and trading rules of the Tick Size Pilot.

Rule 11.27(a)(6)(D)(i) states that a member that operates a Trading Center that was not displaying a quotation at a price equal to the traded-at Protected Quotation, via either a processor or an SRO quotation feed, is prohibited from price-matching protected quotations unless an exception applies.

Proposed BATS Rule 11.27(a)(6)(D)(ii) lists the exceptions to the Trade-at Prohibition. The proposed exceptions set forth in BATS Rules 11.27(a)(6)(D)(ii)(c) through (g), (j), (k), and (m) mirror the exceptions set forth in the Plan.[62] The Commission finds these exceptions to be consistent with the Act because they implement Plan provisions.

In proposed BATS Rule 11.27(a)(6)(D)(ii)(a), BATS proposes to implement the display exception to the Trade-at Prohibition. As proposed, BATS has added several details about its operation and implementation. For example, BATS proposes that a Trading Center that uses independent aggregation units execute orders within the same independent aggregation unit that displayed the quotation. In addition, BATS proposes to specify that Trading Centers that display a quotation as agent or riskless principal may only execute as agent or riskless principal. If the Trading Center is displaying a quotation as principal (excluding riskless principal), the Trading Center may execute as principal, agent or riskless principal.

As noted above, one commenter suggested that BATS's proposal would create an incentive for trading in Test Group Three to migrate to dark venues.[63] According to the commenter, BATS's proposal would permit a non-displayed Trading Center to submit matched trades to an ATS that was displaying on an agency basis the quotation of another ATS subscriber.[64] BATS responded that it did not believe this scenario could occur under its

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[62]   See Section VI.D(3) through (7), (10), (11) and (13) of the Plan.

[63]   See NYSE Letter.

[64]   Id.

proposal, and confirmed that the broker-dealer submitting the matched trade could not, as a

Trading Center trade with its customer order because it was not displaying a principal quotation.

The Commission finds that BATS's proposed Rule 11.27(a)(6)(D)(ii)(a) to be consistent with the

Act. The Commission believes that BATS's proposed rule clarifies the operation of the display

exception in a manner consistent with the goals of the Plan. First, a Trading Center would only

be able to execute an order in the same capacity in which it has displayed a quotation.

Accordingly, a Trading Center could not rely on an agency quotation to execute on a principal

basis. Further, a Trading Center that uses independent aggregation units would be restricted in

its ability to rely on quotations displayed by other independent aggregation units. As noted

above, a Trading Center that utilizes independent aggregation units may only execute an order in

the independent aggregation unit that displayed the quotation. The Commission believes that

these additional rules implement the display exception to the Trade-at Prohibition in a manner

that should incent the display of liquidity.[65]

Proposed BATS Rule 11.27(a)(6)(D)(ii)(b) sets forth the exception to the Trade-at

Prohibition for orders of Block Size. BATS proposes additional provisions with respect to Block

Size orders including that orders at the time of origin may not be: (1) an aggregation of non-

block orders; (2) broken into orders smaller than Block Size prior to submitting the order to a

Trading Center for execution; or (3) executed on multiple Trading Centers.

As noted above, one commenter suggested that these additional provisions would limit

firms' ability to facilitate block cross trades.[66] BATS responded that the additional criteria

would clarify this Trade-at Prohibition exception. Further, BATS noted that permitting the

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[65]   See Approval Order, supra note 3. In the Approval Order, the Commission stated that the
         Trade-at Prohibition should test whether market participants are incentivized to display
         more liquidity in a wider tick environment.

[66]   See FIF Letter.

aggregation of non-block orders or permitting members to combine a block order with non-block orders would overly expand the scope of the exception.

The Commission believes that the additional criteria for the Block Size exception are consistent with the Act. In the Approval Order, the Commission modified the Block Size definition for the purposes of the Plan to more closely reflect the trading characteristics of potential Pilot Securities.[67] The Commission believes proposed BATS Rule 11.27(a)(6)(D)(ii)(b) appropriately limits the scope and applicability of the Block Size exception, and should help to exclude trades and order handling scenarios that were not contemplated or intended to be considered for an exception for the Trade-at Prohibition.

Proposed BATS Rule 11.27(a)(6)(D)(ii)(h) sets forth the exception to the Trade-at Prohibition for orders identified as Trade-at ISO. In Partial Amendment No. 1, BATS proposes to clarify the definition of a Trade-at ISO for purposes of the exception. Specifically, BATS proposes to define Trade-At ISO as a limit order for a Pilot Security that meets the following requirements: (1) when routed to a Trading Center, the limit order is identified as a Trade-at ISO; and (2) simultaneously with the routing of the limit order identified as a Trade-at ISO, one of more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at ISO. These additional routed orders also must be marked as Trade-at ISO.[68]

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[67]   See Approval Order, supra note 3.

[68]   See Proposed BATS Rule 11.27(a)(7)(A)(i).

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According to BATS, the use of the term ISO as set forth in the Plan could be unclear in Test Group Three.[69] As noted in BATS's Partial Amendment No. 1, an ISO may mean that the sender of the ISO has swept better-priced protected quotations, so that the recipient of that ISO may trade through the price of the protected quotation (in compliance with Rule 611 of Regulation NMS[70]), or it could mean that the sender of the ISO has swept protected quotations at the same price at which it wishes to execute (in addition to any better-priced quotations), so that the recipient of that ISO may trade at the price of the protected quotation (as an exception to the Trade-at Prohibition). Accordingly, since the meaning of an ISO may differ under Rule 611 of Regulation NMS and the Trade-at Prohibition under the Plan, BATS proposes Rule 11.27(a)(6)(D)(ii)(h) to reflect that the order is a Trade-at ISO so that a receiving Trading Center in a Test Group Three Pilot Security would know, upon receipt of that Trade-at ISO, that the Trading Center that sent the Trade-at ISO had already executed against the full size of displayed quotations at that price (e.g., the recipient of that Trade-at ISO could permissibly trade at the price of the protected quotation). In addition, BATS proposes to make a corresponding change to BATS Rule 11.27(a)(6)(D)(ii)(i).

The Commission believes that proposed BATS Rule 11.27(a)(6)(D)(ii)(h) and BATS Rule 11.27(a)(6)(D)(ii)(i) are consistent with the Act because they clarify the use and operation of ISOs under the Plan. The definition in the Plan provided that an ISO received under the Plan

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[69] Section VI.D(8) of the Plan provides an exception to the Trade-at Prohibition for ISOs. In addition, Section I(MM) defined a Trade-at ISO as a limit order for a Pilot Security that meets the following requirements: (1) when routed to a Trading Center, the limit order is identified as an ISO; and (2) simultaneously with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO. These additional routed orders also must be market as ISO.

[70] 17 CFR 242.611.

would indicate to the recipient that orders to execute against the full displayed size at a price equal to the ISO's limit price had been routed. However, the Commission understands that the use of the term ISO in connection with the exception to the Trade-at Prohibition could cause confusion. Therefore, the Commission believes that BATS's proposal should clarify the use of ISOs under the Plan and facilitate their implementation.

Proposed BATS Rule 11.27(a)(6)(D)(ii)(l) sets forth an exception to the Trade-at Prohibition for stopped orders. A stopped order is defined as an order executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price where: (1) the stopped order was for the account of a customer; (2) the customer agreed to the specified price on an order-by-order basis; and (3) the price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution, as long as such order is priced at an acceptable increment.

As noted above, one commenter raised questions about how the stopped order exception would operate as an exception to the Trade-at Prohibition.[71] In Partial Amendment No. 1, BATS amended the rule text of proposed BATS Rule 11.27(a)(6)(D)(ii)(l) to clarify its operation under the Trade-at Prohibition. The Commission finds that proposed BATS Rule 11.27(a)(6)(D)(ii)(l), as modified by Partial Amendment No. 1, is consistent with the Act because it implements the Plan provision is a manner that clarifies its operation for these order types.[72]

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[71]   See FIF Letter.

[72]   The Commission notes that it has granted BATS an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, supra note 18.

In Partial Amendment No. 1, BATS proposes an additional exception to the Trade-at Prohibition.[73] Specifically, proposed BATS Rule 11.27(a)(6)(D)(ii)(n) sets forth an exception to the Trade-at Prohibition for "bona fide errors."[74] Proposed BATS Rule 11.27(a)(6)(D)(ii)(n) provides an exception to the Trade-at Prohibition where the order is to correct a bona fide error, which is recorded by the Trading Center in its error account. The proposed definition for a "bona fide error" is: (i) the inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a

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[73] This additional exception was requested by a commenter. See FIF Letter.

[74] The Commission notes that one commenter suggested that there should be a print protection exception to the Trade-at Prohibition that corresponds to the print protection exemption that is applicable to Rule 611 of Regulation NMS. See FIF Letter. The Commission does not agree that a print protection exception would be consistent with the Trade-At Prohibition in the Plan. First, the print protection exemption applicable to Rule 611 is inconsistent with the Trade-at Prohibition because the Rule 611 print protection exemption explicitly contemplates protection for both displayed and reserve (undisplayed) size of orders. In this regard, the Commission believes that such an exception for the Trade-at Prohibition often will be unnecessary because a print protection exception for the Trade-at Prohibition would need to be premised upon a displayed customer order, which already is excepted from the Trade-at Prohibition if it satisfies the requirements of proposed BATS Rule 11.27(a)(6)(D)(i) and the Plan. Moreover, providing a print protection exemption from the Trade-At Prohibition would create the potential for trading scenarios that would result in better-priced, displayed orders being bypassed for the execution of inferior, same-priced orders. The Commission believes such a result is inconsistent with the Plan in general, and the Trade-at Prohibition in particular. Finally, the Commission notes that BATS represents that the print protection exemption applicable to Rule 611 of Regulation NMS is rarely used by its members.

communication system used to transmit market data prices or to facilitate the delivery or

execution of an order. In order to utilize this exception to the Trade-at Prohibition, the following

conditions must be met: (1) the bona fide error must be evidenced by objective facts and

circumstances, the Trading Center must maintain documentation of such facts and

circumstances, and the Trading Center must record the transaction in its error account; (2) the

Trading Center must establish, maintain, and enforce written policies and procedures that are

reasonably designed to address the occurrence of errors and, in the event of an error, the use and

terms of a transaction to correct the error in compliance with this exception; and (3) the Trading

Center must regularly surveil to ascertain the effectiveness of its policies and procedures to

address errors and transactions to correct errors and takes prompt action to remedy deficiencies

in such policies and procedures.[75]

The Commission finds that the exception to the Trade-at Prohibition for the correction of

bona fide errors is consistent with the Act.[76] The Commission believes that this exception

should promote efficiency and the best execution of investor orders. As noted in the

Commission's order exempting such orders from Rule 611 of Regulation NMS, the exemption

will allow Trading Centers to execute error correction transactions at the appropriate prices to

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[75]   See Partial Amendment No. 1, supra note 7. See also Securities Exchange Act Release
         No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[76]   The Commission notes that the conditions for a bona fide error exception for the Trade-at
         Prohibition would be consistent with the corresponding bona fide error exemption for
         Rule 611 and would apply only to the error correction transaction itself and would not,
         for example, apply to any subsequent trades effected by a Trading Center to eliminate a
         proprietary position connected with the error correction transaction or a broker dealer's
         mere failure to execute a not-held order in accordance with a customer's expectations.
         See also Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June
         14, 2007).

correct bona fide errors without having to qualify for one of the exceptions to the Trade-at Prohibition.[77]

The Commission finds that the BATS proposal to implement the Tick Size Pilot quoting and trading requirements, including the Interpretations and Policies, are consistent with the Act. The proposal clarifies and implements the quoting and trading requirements set forth in the Plan.

VI.   Solicitation of Comments of Partial Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Partial Amendment No. 1, including whether the proposed rule change, as modified by Partial Amendment No. 1, 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-2015-108 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 Number SR-BATS-2015-108. 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

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[77]   The Commission notes that it has granted BATS an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, supra note 18.

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 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-2015-108 and should be submitted on or before [insert date 21 days

from publication in the Federal Register].

VII.   Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No.
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The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve

the proposed rule change, as modified by Partial Amendment No. 1, prior to the 30th day after the

date of publication of Partial Amendment No. 1 in the Federal Register. Partial Amendment No.

1 amends four of the requirements set forth in this proposed rule change. First, BATS proposes

to add an exception to permit members to fill a customer order in a Pilot Security in Test Group

Two or Three at a non-nickel increment to comply with BATS Rule 12.6 (Prohibition Against

Trading Ahead of Customer Orders) under limited circumstances. Second, BATS is amending

the proposal to adopt an exception to the Trade-at Prohibition for certain error correction

transactions. Third, BATS is proposing to modify the stopped order exception to the Trade-at

Prohibition to clarify its operation under the Plan. Finally, BATS is proposing to clarify the use

of ISOs in connection with the Trade-at Prohibition.

BATS believes that the change to allow members to fill a customer order at a non-nickel increment to comply with BATS Rule 12.6 under limited circumstances best facilitates the ability of members to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan. BATS believes adding an exception to the Trade-at Prohibition for error correction transactions is appropriate as this exception is equally applicable to the Trade-at Prohibition as to Rule 611 of Regulation NMS, and that adopting this exception appropriately aligns the requirements of the Trade-at Prohibition with Rule 611 of Regulation NMS. Similarly, BATS believes that amending the stopped order exception will result in more consistent treatment under Regulation NMS and the Plan, which should ease compliance burdens for members. Finally, BATS believes that amending the reference to ISOs in connection with the Trade-at Prohibition is consistent with the Act because it will better align that reference to the definition of "Trade-At Intermarket Sweep Order" as set forth in the Plan.

Based on the foregoing, the Commission believes that the changes to: (1) add an exception to BATS Rule 11.27(a)(5)(C)(iv) and 11.27(a)(6)(C)(iv) to permit members to fill a customer order in a Pilot Security at a non-nickel increment to comply with BATS Rule 12.6 under limited circumstances, (2) create an exception to the Trade-at Prohibition for certain error correction transactions, (3) modify the stopped order exception to the Trade-at Prohibition, and (4) to clarify the use of ISOs in connection with the Trade-at Prohibition are all consistent with the Act. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VIII.   Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[78] that the

proposed rule change, as modified by Partial Amendment No. 1 (SR-BATS-2015-108) be, and it

hereby is, approved on an accelerated basis.

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

authority.[79]

Robert W. Errett
Deputy Secretary

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[78]   15 U.S.C. 78s(b)(2).

[79]   17 CFR 200.30-3(a)(12).