

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59258; File No. SR-BATS-2009-001)

January 15, 2009

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.9, entitled “Orders and Modifiers.”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 12, 2009, BATS Exchange, Inc. (“BATS” or the “Exchange”) 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 Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.9, entitled “Orders and Modifiers,” to provide Exchange system functionality that will cancel any portion of a market order submitted to the Exchange (a “BATS market order”) that would execute at a price that is more than 50 cents or 5 percent worse than the NBBO at the time the order initially reaches the Exchange (the “Initial NBBO”), whichever is greater.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available at the Exchange's website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to protect market participants from executions at prices that are significantly worse than the NBBO at the time of order entry by providing Exchange system functionality that will cancel any portion of a BATS market order that would execute at a price that is 50 cents or 5 percentage points worse than the Initial NBBO, whichever is greater. Any portion of a BATS market order that would otherwise execute outside of these thresholds will be immediately cancelled back to the User.<sup>5</sup> The Exchange believes that Users who submit market orders to the Exchange generally intend to receive executions for the full size of their orders at or near the Initial NBBO and are not always aware that there may not be enough liquidity at that price to fill the entire size of their orders. The Exchange believes that the market order thresholds proposed in this rule filing will help avoid executions of BATS market

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<sup>5</sup> As defined in Exchange Rule 1.5(bb).

orders at prices that are significantly worse than the Initial NBBO, particularly in thinly-traded securities. The following example demonstrates how the BATS market order thresholds would operate:

- A User submits a routable BATS market order<sup>6</sup> (i.e., not designated as a “BATS Only” order) to buy 1,000 shares of ABC;
- The Initial NBBO in security ABC is \$8.00 (bid) by \$8.05 (offer), 100 shares each, both published by “Market Center A”;
- The Exchange has 100 shares of liquidity at the \$8.05 offer price and also has resting orders on its book to sell 100 shares at \$8.15, 100 shares at \$8.20 and 1,000 shares at \$8.60; and
- Other than the \$8.05 offer published by Market Center A there are no offers to sell the security at or between \$8.05 and \$8.60 at other market centers.

Under the circumstances described above, with the Initial NBBO of \$8.00 (bid) by \$8.05 (offer), the BATS market order would be executed as follows:

- 100 shares executed at the \$8.05 price on the Exchange;
- 900 shares routed to Market Center A as an immediate or cancel order with a price of \$8.05;
- 100 shares executed at Market Center A (presuming this offer was still available and there was no additional non-displayed liquidity at that price);
- 800 shares returned to the Exchange;
- 100 shares executed at the Exchange at the \$8.15 price level;

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<sup>6</sup> If the order is not routable then it would be executed on the Exchange only if such executions would not trade through the protected quotations of other market centers. If the order is a routable order, then such order will be executed in accordance with BATS Rule 11.13(a), however, orders will not be routed away for execution at prices outside of the market order thresholds proposed in this rule filing, which applies both to market orders executed on the Exchange and to market orders that are to be routed away.

- 100 shares executed at the Exchange at the \$8.20 price level.

Under this example, 400 shares of the BATS market order would be executed. The remaining 600 shares of the BATS market order would be cancelled back to the User because the liquidity on the Exchange at the \$8.60 price level exceeds the BATS market order thresholds set forth in proposed Rule 11.9(a)(2), and such order is not eligible for routing outside of such thresholds. Such BATS market order could only be executed or routed by the Exchange up to and including a price of \$8.55 (\$0.50 worse than the Initial NBBO).

For those Users who intend to trade against liquidity at multiple price points from the Initial NBBO beyond the BATS market order thresholds proposed in this rule filing, those Users can clearly and unambiguously specify that intent by submitting a marketable limit order to the Exchange. For example, using the scenario described above, if the User submitted a limit order to buy 1,000 shares of security ABC with a limit price of \$9.00, such order would be executed up to its full size, either on the Exchange (provided that the Exchange would not trade through protected quotations) or at away market centers if the order was routable.

## 2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>7</sup> In particular, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

interest, by helping to avoid executions of market orders on the Exchange at prices that are significantly worse than the NBBO at the time an order is initially received by the Exchange. The Exchange believes that the Initial NBBO is a fair representation of then-available prices and accordingly provides for an appropriate pricing mechanism such that BATS market orders should not be executed at a significantly worse price. Also, the Exchange believes that this proposal is consistent with existing exchange rules that allow for the breaking of trades deemed clearly erroneous by reference to objective thresholds away from the NBBO.<sup>9</sup> Accordingly, the modifications to BATS Rule 11.9 promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes 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 Changes and Timing for Commission Action

Because the foregoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission

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<sup>9</sup> See, e.g., NASDAQ Rule 11890.

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow BATS Users to immediately benefit from the protections provided by BATS market orders. The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this notice requirement.

<sup>13</sup> Id.

<sup>14</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2009-001 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2009-001. 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 Web site (<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 changes 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 inspection and copying 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 also will be available for inspection and copying at the principal office of BATS. 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-2009-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).