

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59934; File No. SR-BATS-2009-013)

May 15, 2009

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.13, entitled “Order Execution.”

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 May 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 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 is proposing to amend BATS Rule 11.13, entitled “Order Execution,” to provide Users⁵ of the Exchange with another option with respect to the Exchange’s method of

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).

⁵ As defined in BATS Rule 1.5(bb).

processing the unfilled balance of a limit order that returns to the Exchange after being routed away to one or more away Trading Centers⁶ for execution.

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 provide Users of the Exchange with another option with respect to the Exchange's method of processing the unfilled balance of a limit order that returns to the Exchange after being routed away to one or more away Trading Centers for execution. In connection with this additional option, the Exchange has also proposed various clarifying changes related to the functionality of the current processing options.

The Exchange currently allows Users to submit various types of limit orders to the Exchange that are processed pursuant to Rules 11.13(a)(1) and 11.13(a)(2)(B), as set forth below. Rule 11.13(a)(1) describes the process by which an incoming order would execute

⁶ As defined in BATS Rule 2.11.

against the BATS Book.⁷ To the extent an order has not been executed in its entirety against the BATS Book, Rule 11.13(a)(2)(B) then describes the process of routing marketable limit orders⁸ to one or more Trading Centers, including a description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. Currently, the Exchange either converts such unfilled balance to a BATS Only order, and processes it in accordance with Rule 11.9(c)(4) or again checks the BATS Book for liquidity, then routes the order to away Trading Centers until the Exchange has confirmed that no available liquidity exists on the BATS Book or at away Trading Centers and the order's limit price has been reached.

The Exchange believes that the proposed changes to Rule 11.13 make the process described above more clear. In addition, the Exchange proposes to offer Users a third option for processing of the unfilled balance that returns to the Exchange. As proposed, the new Rule 11.13(a)(2)(B) will allow Users to instruct the Exchange to execute the order against the BATS Book and route the order to away Trading Centers up to the limit price of the order. At the limit price, the Exchange will attempt to execute the order against the BATS Book one time and attempt to fill the order at one or more away Trading Centers, and then cancel any unfilled balance of the order back to the User. This differs from the second option because under the new, proposed option, after routing the order away at the limit price, the Exchange will not again check the BATS Book for available liquidity before canceling the order back to the User.

⁷ As defined in BATS Rule 1.5(d).

⁸ Market orders are also routed away, pursuant to Rule 11.13(a)(2)(A), however the Exchange is not proposing any changes to the treatment of routed market orders at this time.

2. Statutory Basis

The rule change proposed in this submission 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) of the Act.⁹ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁰ 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 interest, by allowing Users to instruct the Exchange to attempt to execute their orders at the applicable limit price against the BATS Book and then at one or more away Trading Centers, but then to promptly cancel the remaining balance back. This functionality will allow the Exchange to seek to execute the order as promptly as possible but will also provide Users with a faster response as to whether their orders have been executed.

(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)

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)(iii)¹⁴ 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. BATS states that implementation of the order type described in this filing will provide BATS Users with another option with respect to the handling of orders routed away from the Exchange that is completely optional, and will not require any programming changes by BATS Users unless they choose to use the new functionality.¹⁵ 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 this minor variation to the order handling used by the Exchange today pursuant to the Exchange's existing rules. In addition, the Commission notes that the proposal does not raise any new substantive issues. The

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 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.

¹⁴ Id.

¹⁵ See SR-BATS-2009-013, Item 7.

Commission hereby grants the Exchange's request and designates the proposal operative upon filing.¹⁶

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.

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-2009-013 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-2009-013. 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

¹⁶ 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).

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-2009-013 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.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).