

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65619, File No. SR-BATS-2011-032)

October 25, 2011

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change by BATS Exchange, Inc. to Adopt Rules Applicable to Auctions Conducted by the Exchange for Exchange-Listed Securities

I. Introduction

On August 22, 2011, BATS Exchange, Inc. (“BATS” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt rules governing auctions conducted on the Exchange for securities listed on BATS (“Exchange Auctions”). The proposed rule change was published for comment in the Federal Register on September 12, 2011.<sup>3</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt rules to govern Exchange Auctions. Specifically, the Exchange proposes to conduct: (1) an opening auction (“Opening Auction”) and determine an official opening price for dissemination to the consolidated tape; (2) a closing auction (“Closing Auction”) and determine an official closing price for dissemination to the consolidated tape; (3) an auction in the event of an initial public offering (“IPO Auction”); and (4) an auction in the event of a halt of trading in a security (“Halt Auction”). The Opening Auction, IPO Auction, Halt Auction, and Closing Auction operated by BATS will be a single-price Dutch auction to

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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> See Securities Exchange Act Release No. 65266 (September 6, 2011), 76 FR 56249 (September 12, 2011) (“Notice”).

match buy and sell orders at the price at which the most shares would execute. In addition, the Exchange seeks to establish order types to participate in the Opening and Closing Auction and to offer a new data feed to Exchange data recipients<sup>4</sup> in connection with Exchange Auctions, (“BATS Auction Feed”).<sup>5</sup>

A. BATS Auction Feed

The Exchange represents that the BATS Auction Feed would provide data recipients with uncompressed real-time data regarding the current status of price and size information related to Exchange Auctions.<sup>6</sup> In addition, the Exchange represents that the BATS Auction Feed would be made available to all data recipients equally and without charge via subscription through an established connection to the Exchange through extranets, direct connection, and Internet-based virtual private networks.<sup>7</sup>

B. Order Types To Participate in Auctions

The Exchange proposes to offer the following order types in connection with Opening Auctions: “Market-On-Open” or “MOO” order, “Limit-On-Open” or “LOO” order, and a “Late-Limit-On-Open” or “LLOO” order. The Exchange proposes to offer the following order types in connection with Closing Auctions: “Market-On-Close” or “MOC” order, “Limit-On-Close” or “LOC” order, and a “Late-Limit-On-Close” or “LLOC.” In addition, the Exchange seeks to offer a “Regular Hours Only” or “RHO” order, which would be a BATS order that is designated

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<sup>4</sup> The Exchange represents that Exchange data recipients include Members of the Exchange as well as non-Members that have entered into an agreement with the Exchange that permits them to receive Exchange data. See Notice supra note 3, at 76 FR 56250 n. 4.

<sup>5</sup> See Notice supra note 3, at 76 FR 56249 n.4.

<sup>6</sup> See id.

<sup>7</sup> See id.

for execution only during Regular Trading Hours,<sup>8</sup> which includes the Opening Auction, the Closing Auction, and IPO/Halt Auctions.

C. Opening Auction

The Exchange will conduct an Opening Auction for all BATS listed securities. The Exchange will permit Users<sup>9</sup> to submit orders to the Exchange starting at 8:00 a.m., the beginning of the Pre-Opening Session.<sup>10</sup> Any Eligible Auction Orders<sup>11</sup> designated for the Opening Auction would be queued until 9:30 a.m. at which time they would be eligible to be executed in the Opening Auction. BATS proposes to disseminate and update the BATS Auction Feed associated with the Opening Auction at 9:28 a.m. and every five seconds thereafter via electronic means.

D. Closing Auction

The Exchange will conduct a Closing Auction for all BATS listed securities. The Exchange would permit Users to submit orders to the Exchange starting at 8:00 a.m., the beginning of the Pre-Opening Session. Any Eligible Auction Orders designated for the Closing Auction would be queued until 4:00 p.m. at which time they would be eligible to be executed in the Closing Auction. BATS proposes to disseminate and update the BATS Auction Feed

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<sup>8</sup> BATS Rule 1.5(w) defines “Regular Trading Hours” is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

<sup>9</sup> BATS Rule 1.5(c) defines “User” as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

<sup>10</sup> BATS Rule 1.5(r) defines the “Pre-Opening Session” as the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

<sup>11</sup> Proposed BATS Rule 11.23(a)(8) defines “Eligible Auction Orders” as any MOO, LOO, LLOO, MOC, LOC, or LLOC order that is entered in compliance with its respective cutoff for an Opening or Closing Auction, any RHO order prior to the Opening Auction, and any limit or market order not designated to exclusively participate in the Opening and Closing Auction entered during the Quote-Only Period of an IPO or Halt Auction.

associated with the Closing Auction at 3:55 p.m. and every 5 seconds thereafter via electronic means.

E. IPO and Halt Auctions

For trading in a BATS listed security in an IPO or following a trading halt in that security, the Exchange proposes to conduct an IPO or Halt Auction. The Quote-Only Period<sup>12</sup> with respect to a Halt Auction would commence five minutes prior to such Halt Auction and with respect to an IPO Auction would commence fifteen minutes plus a short random period prior to such IPO Auction. Any Eligible Auction Orders associated with an IPO or Halt Auction would be queued until the end of the Quote-Only Period at which time they would be eligible to be executed in the associated auction. The Exchange proposes to require that all orders associated with IPO or Halt Auctions be received prior to the end of the Quote-Only Period in order to participate in the auction. The Exchange would permit Eligible Auction Orders associated with an IPO or Halt Auction to be cancelled at any time prior to execution. Coinciding with the beginning of the Quote-Only Period for a security, the Exchange further proposes to disseminate and update the BATS Auction Feed associated with the IPO or Halt Auction every five seconds thereafter via electronic means.

III. Discussion

After careful consideration of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder

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<sup>12</sup> The Quote-Only Period is a period of time prior to an IPO or Halt Auction during which the Exchange will permit Users to submit orders but the Exchange will not execute any transactions in the applicable security (i.e., there are no Continuous Book executions occurring while orders are collected). See Notice supra note 3, at 76 FR 56252.

applicable to a national securities exchange.<sup>13</sup> The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act,<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

BATS notes that the current proposal is integral to its listing rules,<sup>15</sup> and would provide companies with an alternative venue to list and trade securities in an orderly fashion at the open and close of trading, as well as in the context of an IPO or halted trading in the security.<sup>16</sup> The Exchange believes that operation of Exchange Auctions for securities listed on the Exchange will assist in the price discovery process and help to ensure a fair and orderly market for securities listed on the Exchange.<sup>17</sup>

The Commission notes that the Exchange has proposed to operate Exchange Auctions as a single price Dutch auction to match buy and sell orders at the price at which most shares would execute. The Exchange has designed Exchange Auctions to be conducted within specified periods of time and in accordance with specified order entry, cancelation, pricing, and execution priority parameters. The Exchange may adjust the timing of or suspend Exchange Auctions with

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<sup>13</sup> 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).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> The Commission notes that the Exchange separately proposed, and the Commission approved, rules for the qualification, listing, and delisting of companies on the Exchange. See Securities Exchange Act Release No. 34-65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>16</sup> See Notice, supra note 3, 76 FR at 56253.

<sup>17</sup> See id. at 56253

prior notice to Members whenever, in the judgment of the Exchange, it would be required by the interests of a fair and orderly market.<sup>18</sup> The Exchange also has designed the BATS Auction Feed to disseminate information regarding the current status of price and size information related to auctions being conducted. The Exchange has represented that the BATS Auction Feed will be available to data recipients equally and without charge.<sup>19</sup>

The Commission believes that the proposal is designed to assist the price discovery process, should help minimize price volatility, and should promote a fair and orderly market for securities listed on the Exchange. The Commission believes that the BATS Auction Feed should enhance transparency and promote competition among orders by facilitating the public dissemination of current trading interest in a particular security during Exchange Auctions.

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<sup>18</sup> See Proposed BATS Rule 11.23(g).

<sup>19</sup> The Commission notes that should the Exchange determine to charge fees associated the BATS Auction Feed, the Exchange would submit a proposed rule change to the Commission in order to implement those fees.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-BATS-2011-032) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).