

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76832; File No. SR-BATS-2015-119)

January 5, 2016

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.22, Data Products, to Describe IPO Auction Viewer

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 December 23, 2015, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend Rule 11.22 to describe a new market data product known as IPO Auction Viewer. The proposed rule change is based on Nasdaq Stock Market LLC’s (“Nasdaq”) Rule 7015(j).⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵ See also Securities Exchange Act Release No. 75863 (September 9, 2015), 80 FR 55406 (September 15, 2015) (SR-Nasdaq-2015-082) (Order Approving Proposed Rule Change to Introduce an Additional Data Element to the IPO Indicator Service).

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

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

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

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

1. Purpose

The Exchange proposes to amend Rule 11.22 describing a new market data product known as IPO Auction Viewer, which would be provided free of charge. IPO Auction Viewer would be a data feed that is available to designated associated persons of a Member⁶ that is acting as the Stabilizing Agent for an IPO Security. "IPO Security" would be defined under proposed paragraph (l)(2)(A) to Exchange Rule 11.22 as "a BATS listed security in an initial public offering for which the initial pricing procedures described in Rule 11.23(d) are available."⁷ The proposed rule change also adds to Rule 11.22(l) definitions of "IPO Auction", "Stabilizing", and "Stabilizing Agent". "IPO Auction" would be defined under proposed

⁶ The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).

⁷ Exchange Rule 11.23(d) sets forth the Exchange's procedures for conducting an auction for a BATS listed security in an initial public offering.

paragraph (l)(2)(B) as “the initial pricing procedures described in Rule 11.23(d).” “Stabilizing” would be defined under proposed paragraph (l)(2)(C) as “Stabilizing as defined in Rule 100 of Regulation M of the Securities Exchange Act of 1934, including engaging in syndicate covering transactions.” Lastly, “Stabilizing Agent” would be defined under proposed paragraph (l)(2)(D) as “a Member that will engage in Stabilizing with respect to an IPO Security on the day of its initial public offering.”

IPO Auction Viewer would assist Members who are acting as a Stabilizing Agent in monitoring the orders they have entered for execution in the auction process for an IPO Security. The auction process under Exchange Rule 11.23(d) is designed to provide an orderly, single priced opening of securities subject to an intra-day halt, including securities that are the subject of an IPO. Prior to the execution of the auction process for an IPO Security (“IPO Auction”), Members enter orders eligible for participation in the IPO Auction, and the Exchange disseminates certain information regarding buying and selling interest and indicative execution price information. The quotation only period with respect to an IPO Auction currently commences fifteen (15) minutes plus a short random period prior to the IPO Auction (“Quote-Only Period”).⁸ Coinciding with the beginning of the Quote-Only Period for a security and updated every five seconds thereafter, the Reference Price,⁹ Indicative Price,¹⁰ Auction Only Price,¹¹ and the lesser of Reference Buy Shares¹² and Reference Sell Shares¹³ associated with the

⁸ See Exchange Rule 11.23(a)(17).

⁹ See Exchange Rule 11.23(a)(19).

¹⁰ See Exchange Rule 11.23(a)(10).

¹¹ See Exchange Rule 11.23(a)(2).

¹² See Exchange Rule 11.23(a)(18).

¹³ See Exchange Rule 11.23(a)(21).

IPO Auction will be disseminated.¹⁴ The IPO Auction executes and regular market trading commences in the IPO Security at the conclusion of the IPO Auction.¹⁵ The representative of the underwriting syndicate that serves as lead underwriter also serves as the Stabilizing Agent for the IPO Security.

As discussed above, the Stabilizing Agent has responsibility for monitoring the submission of buying and selling interest into the IPO Auction and informing the Exchange when the IPO Security is ready to initiate trading. Thus, the Stabilizing Agent stands ready during the course of the day to commit its capital in support of the IPO Security, buying from investors that wish to sell the IPO Security to realize short-term gains (or to minimize short-term losses). The Stabilizing Agent thereby serves to dampen volatility in the IPO Security and promote the maintenance of a fair and orderly market. Because the function performed by the Stabilizing Agent is unique on the day of the IPO, the Exchange has concluded that providing additional information about pre-opening interest in the stock to the Stabilizing Agent will help it to optimize the opening of the stock and manage its own risk, thereby assisting it in promoting a fair and orderly market for the IPO Security. Accordingly, the Exchange is proposing to introduce the IPO Auction Viewer, a specialized data product that will be made available solely to the Stabilizing Agent.

Access to the IPO Auction Viewer will be limited through a secure entitlement process to designated individuals employed by the Stabilizing Agent. On the day of an IPO, beginning with the start of the Quote-Only Period described in Exchange Rule 11.23(d)(1)(A) and ending upon the completion of the IPO Auction for an IPO Security, the IPO Auction Viewer will display

¹⁴ See Exchange Rule 11.23(d)(1) and (2).

¹⁵ See Exchange Rule 11.23(d)(3).

aggregated buying and selling interest information for the IPO Security, reflecting all orders on the BATS Book, and consisting of the aggregate size of all orders at each permissible price level. The aggregated information provided through this data element would include all Eligible Auction Orders¹⁶ and size. Information provided through the IPO Auction Viewer will be updated every five seconds, along with updates to the Reference Price, Indicative Price, Auction Only Price, and the lesser of Reference Buy Shares and Reference Sell Shares.¹⁷ Access to IPO Auction Viewer shall terminate immediately upon the completion of the IPO Auction for the IPO Security.

The IPO Auction Viewer will provide no information other than that described above, unless the Exchange submits a proposed rule change to add additional data to it. In particular, the IPO Auction Viewer will not provide any information regarding Eligible Auction Orders other than in the aggregated format described above, and will not provide any information regarding the identity of Members posting orders. The Exchange believes that providing this information to the Stabilizing Agent will provide the Stabilizing Agent with insights into the scope of demand for, and supply of, the IPO Security, in a manner that will allow it to make more informed decisions about the appropriate time to initiate the opening of the IPO Security through the IPO Auction. In addition, the information will allow the Stabilizing Agent to respond in a more informed way to questions from its customers and other participants regarding expectations that an Order to buy or sell with a stated price and size may be executable in the IPO Auction. Finally, the information will assist the Stabilizing Agent in making decisions about the appropriate level of capital to commit to support the IPO Security once trading commences.

¹⁶ See Exchange Rule 11.23(a)(8).

¹⁷ See Exchange Rule 11.23(d)(1)(A).

Once the IPO Auction executes, the IPO Auction Viewer will cease to be available, both with respect to the state of the BATS Book during the continuous market and with respect to retrospective information about the state of the BATS Book leading up to the IPO Auction. Thus, the Stabilizing Agent will not be provided with any information not available to other market participants once continuous market trading in the IPO Security commences.

Since the aggregated information provided through the IPO Auction Viewer is unique and directly available only to the Stabilizing Agent, the Exchange believes that it is appropriate to adopt safeguards in order to ensure that the aggregated information is not misused.¹⁸ Accordingly, the Exchange's proposed rule will require the Stabilizing Agent receiving the IPO Auction Viewer to maintain and enforce written policies and procedures reasonably designed to achieve the following purposes:

- Restrict electronic access¹⁹ to aggregated information only to associated persons of the Stabilizing Agent who need to know the information in connection with establishing the opening price of an IPO Security and Stabilizing the IPO Security;
- Except as may be required for purposes of maintaining books and records for regulatory purposes, prevent the retention of aggregated information following the completion of the IPO Auction for the IPO Security; and
- Prevent persons with access to aggregated information from engaging in transactions in the IPO Security other than transactions in the IPO Auction; transactions on behalf of a

¹⁸ The Exchange notes that the usage of the information provided through the IPO Auction Viewer must be consistent with Regulation M, including Commission Guidance Regarding Prohibited Conduct in Connection with IPO Allocations (Securities Exchange Act Rel. No. 33-8565) (April 7, 2005).

¹⁹ As discussed below, electronic access to the IPO Auction Viewer will be available on a displayed basis only.

customer; or Stabilizing. Thus, for example, the Stabilizing Agent or its affiliates would not be permitted to use the information to engage in proprietary trading other than in support of bona fide Stabilizing activity.

However, for the avoidance of doubt regarding appropriate uses of the aggregated information, the proposed rule will also provide that nothing contained in the rule shall be construed to prohibit the Member acting as the Stabilizing Agent from (i) engaging in Stabilizing consistent with that role, or (ii) using the information provided from the IPO Auction Viewer to respond to inquiries from any person, including, without limitation, other Members, customers, or associated persons of the Stabilizing Agent, regarding the expectations of the Member acting as the Stabilizing Agent with regard to the possibility of executing stated quantities of an IPO Security at stated prices in the IPO Auction.

The aggregated information provided through the IPO Auction Viewer will be available solely for display on the screen of a computer for which an entitlement has been provided by the Exchange. Under no circumstances may a Member redirect aggregated information to another computer or reconfigure it for use in a non-displayed format, including, without limitation, in any trading algorithm. If a Member becomes aware of any violation of the restrictions contained in the proposed rule, it must report the violation promptly to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

²⁰ 15 U.S.C. 78f.

²¹ 15 U.S.C. 78f(b)(5).

equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange believes that the proposed rule change will promote the goals of the Act by assisting the Stabilizing Agent for an IPO Security in promoting a fair and orderly market. Specifically, by providing unique, aggregated information concerning all orders on the BATS Book prior to the commencement of an IPO Auction, the IPO Auction Viewer will give the Stabilizing Agent information that will assist it in achieving a range of goals. Further, by being able to share aggregated information with other Members and customers, the Stabilizing Agent will enable greater participation in the IPO Auction because it will be able to provide more certain information about the ability of investors to execute orders at particular sizes and prices. Moreover, being able to compare information about potential interest in participating in the IPO Auction with more detailed information about the state of the BATS Book will enable the Stabilizing Agent to determine with more certainty the appropriate time to allow the IPO Auction to execute. Finally, having greater knowledge about the range of trading interest in the BATS Book prior to the execution of the IPO Auction will enable the Stabilizing Agent to make more informed decisions about the extent of capital it may need to commit after the commencement of trading in order to stabilize the price of the IPO Security and thereby dampen volatility that might undermine investor confidence.

The Exchange further believes that the restrictions it proposes to impose on the use of the IPO Auction Viewer will protect against possible misuse of the provided information. Notably, the information will be provided only prior to the completion of the IPO Auction and may not be retained thereafter, except to the extent necessary for record-retention purposes. The information

will be disseminated in a display format only and may not be redirected or reconfigured for non-display usage (such as usage by a trading algorithm). Moreover, electronic access to the information will be available only to certain designated individuals with a role in conducting Stabilizing activities, and persons with access may not engage in transactions other than Stabilizing or transactions in the IPO Auction or on behalf of a customer. The Exchange further believes that the safeguards it proposes around the use of such aggregated information by its Members will provide added assurance to Members and the investing public that the IPO Auction Viewer will not be misused.

In addition, the Exchange notes that although the IPO Auction Viewer will be available only to Stabilizing Agents, this limitation is consistent with the protection of investors because the Stabilizing Agent plays a unique role on the day of an IPO because it must decide when the IPO Security should commence trading and must commit capital in support of the IPO Security once trading begins. Because the IPO Auction Viewer will assist the Stabilizing Agent in performing these functions, which are performed by no other broker, the Exchange believes that it is reasonable to limit access to the IPO Auction Viewer to the Stabilizing Agent. Moreover, because the IPO Auction Viewer will cease to be available once regular trading in the IPO Security commences and the information provided therein will quickly become stale, the Exchange does not believe that access to the information will provide the Stabilizing Agent with any unfair advantage.

The Exchange believes that the proposal to add certain defined terms to Rule 11.22(l) is consistent with the Act because the definitions are intended to promote a clear understanding of the rule text by delineating the products addressed by the rule and the scope of activities to which they pertain. The Exchange further believes that the proposal to make the IPO Auction Viewer

available to eligible recipients at no charge is consistent with Section 6(b)(4) of the Act²² because it will not result in any increase in the costs incurred by a Stabilizing Agent to receive the additional information. The Exchange further believes that the proposal is consistent with an equitable allocation of fees and not unfairly discriminatory because additional information is being provided to a limited group of potential users in order to assist in the promotion of fair and orderly markets during an IPO. Accordingly, the absence of an additional fee is designed to encourage eligible Members to accept the information in order to ensure that the goals of the proposal are advanced to the greatest extent possible.

Lastly, the Exchange notes that the proposed IPO Auction Viewer is based on Nasdaq's IPO Book Viewer, which was recently approved by the Commission.²³ However, the Exchange notes that while the proposed IPO Auction Viewer would be identical to Nasdaq's IPO Book Viewer in many respects, the products would differ in the following two ways. First, Nasdaq's IPO Book Viewer provides the total number of orders while the proposed IPO Auction Viewer would not but instead would only provide the number of shares. Second, the proposed IPO Auction Viewer would group the aggregate size of all orders at each permissible price increment, while Nasdaq limits the grouping to price increments of \$0.05, \$0.10, or \$0.25, depending on the election of the User. All other aspects of IPO Auction Viewer under Exchange Rule 11.22(l) would be identical to Nasdaq Rule 7015(j).

The Exchange views these differences as immaterial because the Exchange does not believe that either distinction would provide an inappropriate level of detail but rather that these differences are simply the result of different designs. Notwithstanding these differences, the

²² 15 U.S.C. 78f(b)(4).

²³ See supra note 5.

Exchange believes the proposed IPO Auction Viewer would provide the Stabilizing Agent the necessary information to: (i) enable greater participation in the IPO Auction because it will be able to provide more certain information about the ability of investors to execute orders at particular sizes and prices; (ii) compare potential interest in participating in the IPO Auction, enabling it to determine with more certainty the appropriate time to allow the IPO Auction to execute; and (iii) make more informed decisions about the extent of capital it may need to commit after the commencement of trading in order to stabilize the price of the IPO Security and thereby dampen volatility.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that by being able to share aggregated information with other Members and customers, the Stabilizing Agent will enable greater participation in the IPO Auction because it will be able to provide more certain information about the ability of investors to execute orders at particular sizes and prices, thus increasing competition. In addition, given that the proposal will result in a Stabilizing Agent's usage of the information being subject to greater restrictions, the Exchange does not believe that there can be any reasonable objection to the proposal on competitive grounds.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) significantly affect the

protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁴ and paragraph (f)(6) of Rule 19b-4 thereunder,²⁵ the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BATS-2015-119

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4.

on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-BATS-2015-119. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2015-119 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.²⁶

Robert W. Errett
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).