

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74987; File No. SR-BATS-2015-37)

May 18, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change, and Amendment No. 1 Thereto, to Amend Rule 11.2 to State that the BATS Exchange, Inc. Will Not Designate for Trading Any Security Admitted to Unlisted Trading Privileges on the Exchange Unless that Security Satisfies Certain Liquidity Requirements

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 5, 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. On May 15, 2015, the Exchange filed Amendment No. 1 to the proposal. Amendment No. 1 amended and replaced the original proposal in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, 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 11.2 to state that the Exchange will not designate for trading any security admitted to unlisted trading privileges on the Exchange unless that security satisfies certain liquidity requirements, as further described below.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

With limited exception, the current equity market structure under Regulation NMS applies the same rules with respect to, among other things, tick sizes, order protection, locked and crossed markets, and access fees to all exchange-listed securities. The Exchange believes that Regulation NMS, along with technological advancements, has produced great efficiencies to the equity market, resulting in intense competition between exchanges and broker-dealers. The Exchange believes the net result for most exchange-listed securities has been decreases in transaction costs, including decreases in explicit commissions and the narrowing of effective spreads investors pay to enter and exit positions. However, the Exchange recognizes that not all exchange-listed securities have benefited to the same extent under the current one-size fits all approach to the equity market. In particular, investors continue to experience difficulty trading illiquid securities, including paying higher effective spreads and difficulty sourcing liquidity across multiple exchanges and non-exchange trading venues while minimizing market impact.

The Exchange believes the market quality of securities that are today illiquid could benefit from a concentration of quoted liquidity on the listing exchange. By concentrating quoted liquidity on the listing exchange, for the reasons discussed below, the Exchange believes

liquidity providers will quote more competitively, resulting in more efficient price formation and a narrower national best bid or offer (“NBBO”), as well as the display of more quoted size at price levels outside the NBBO (“depth of book”). In turn, the Exchange believes that these enhancements to market quality could ultimately increase investor and member interest in such securities resulting in greater average daily trading volume. As such, as described below, the Exchange is proposing to adopt rules to clarify the circumstances under which the Exchange would voluntarily provide advance notice to the industry that it is ceasing to quote and trade certain specific illiquid securities until such securities meet and sustain an average daily volume threshold indicative of increased liquidity.

In particular, the Exchange proposes to amend Rule 11.2 to state that the Exchange may determine not to designate for trading any security admitted to unlisted trading privileges on the Exchange if that security falls below certain consolidated average daily volume requirements, as further described below. Rule 11.2 currently states that any class of securities listed or admitted to unlisted trading privileges on the Exchange pursuant to Chapter XIV of the Exchange’s rules³ shall be eligible to become designated for trading on the Exchange. The Rule further states that all securities designated for trading are eligible for odd-lot, round-lot and mixed-lot executions, unless otherwise indicated by the Exchange or limited pursuant to Exchange rules. The Exchange proposes to include these existing provisions of Rule 11.2 within subparagraph (a) of the proposed rule in order to separately propose additional provisions under subparagraphs (b), (c), and (d).

³ Chapter XIV of the Exchange’s rules discusses the securities eligible to be designated for trading on the Exchange. Exchange Rule 14.11(j), in particular, states that the Exchange may extend unlisted trading privileges to NMS Stock (as defined in Rule 600 of Regulation NMS under the Act) that is listed on another national securities exchange.

The Exchange proposes to add new subparagraph (b) to Rule 11.2, which would state that the Exchange may determine not to designate for trading any security admitted to unlisted trading privileges on the Exchange pursuant to Chapter XIV of the Exchange's rules when that security's consolidated average daily trading volume is equal to or less than 2,500 shares during the preceding 90 calendar days.⁴ The Exchange further proposes to add new subparagraph (c) to Rule 11.2, which would state that any security not designated for trading by the Exchange pursuant to subparagraph (b) of this Rule may be designated for trading by the Exchange if its consolidated average daily trading volume exceeds 5,000 shares over any 90 calendar day period since the security was not designated for trading pursuant to subparagraph (b). The Exchange also proposes to make clear that new subparagraph (c) is not intended to limit the Exchange's ability to designate any security for trading pursuant to the Exchange's general authority under subparagraph (a) of Rule 11.2. The Exchange also proposes to add new subparagraph (d) to Rule 11.2, which would require the Exchange to provide notice at least one trading day in advance of any securities it is making unavailable for trading pursuant to subparagraph (b) of Rule 11.2, and any securities it is making available for trading under subparagraph (c) of Rule 11.2.

While the Exchange is proposing to retain discretion over whether it will in fact determine not to quote and trade securities that meet the criteria described in proposed new subparagraphs (b) and (c) of Rule 11.2, the Exchange notes that nothing in its rules or applicable securities regulation requires it to designate for trading any class of securities listed or admitted to unlisted trading privileges on the Exchange pursuant to Chapter XIV of the Exchange's rules. The Exchange believes that adopting such a provision in its rules could enhance market quality

⁴ Based on internal statistics, the Exchange anticipates that limiting the rule's applicability to those securities with a consolidated average daily trading volume of 2,500 shares or less during the preceding 90 calendar days will affect approximately 700 securities.

for securities falling below the consolidated average daily volume threshold by facilitating the concentration of quoted liquidity on the listing exchange.⁵ In determining whether to exercise its discretion under proposed new subparagraphs (b) and (c) of Rule 11.2, the Exchange would consider such factors as member and investor feedback as well as whether the other non-listing exchanges have decided to cease quoting and trading in the effected securities. The Exchange further believes that adoption of a rule requiring it to provide advance notice to its members of any securities the Exchange is choosing not to trade under proposed new subparagraph (b) of Rule 11.2 and any securities it is making available for trading pursuant to proposed new subparagraph (c) of Rule 11.2 will help avoid confusion by providing transparency and certainty to members and investors regarding the securities the Exchange is or is not designating for quoting and trading on the Exchange.

The Exchange believes that limiting the impact of paragraph (b) of the proposed rule change to securities with a consolidated average daily trading volume that is equal to or less than 2,500 shares during the preceding 90 calendar days is reasonable because such securities tend to be illiquid, as reflected by larger quoted and effective spreads, with smaller quoted size at both the NBBO and throughout the depth of book than more actively-traded securities. Similarly, the Exchange believes that considering to designate for trading those securities that have not been trading on the Exchange pursuant to paragraph (b) once such securities have a consolidated average daily trading volume that exceeds 5,000 shares over a 90 calendar day period since the security was not designated for trading pursuant to proposed subparagraph (b) of Rule 11.2 is reasonable because such activity may demonstrate that such securities are now trading more

⁵ The Exchange understands that the EDGX Exchange, Inc., EDGA Exchange, Inc., and BATS Y-Exchange, Inc. will separately file substantially similar proposed rule changes with the Commission.

effectively. The Exchange believes that its proposed rule changes may facilitate an improvement in market quality for the effected securities.⁶ In particular, the Exchange believes that by concentrating the quoted liquidity in such securities on the listing exchange, liquidity providers will be incented to quote on such exchange more competitively, resulting in narrower bid-ask spreads and greater quoted depth of book. The Exchange believes liquidity providers would be so incented because concentrating the quoted liquidity in such securities on the listing exchange would: (i) reduce liquidity providers' risk of adverse selection inherent in quoting in a fragmented market, (ii) provide greater certainty of execution on the one exchange at which liquidity providers are quoting, and (iii) enhance competition for order book priority at the NBBO and throughout the depth of book. Although the Exchange would be voluntarily foregoing potential market share by not quoting and trading securities subject to the Rule, the Exchange believes the aforementioned enhancements in market quality may increase investor interest in trading such securities, which in turn would generate increased volume and ultimately benefit the Exchange once such securities become eligible for trading on the Exchange under the rule in the future.

⁶ Based on an internal study, the Exchange believes a majority of the securities that would be covered by the Rule's criteria are small-cap companies (*i.e.*, companies with a market capitalization of \$250 million or less). Suggesting that the current U.S. equity market often fails to provide sufficient liquidity for the securities of small-cap companies, the Commission's Advisory Committee on Small and Emerging Companies ("Advisory Committee") recommended to the Commission concentrating the market for such securities through the creation of a separate U.S. equity market. *See Recommendations Regarding Separate U.S. Equity Market for Securities of Small and Emerging Companies*, by the Advisory Committee on Small and Emerging Companies, dated February 1, 2013. The Advisory Committee also stated that other actions with respect to trading venues may also be warranted to facilitate liquidity in small and emerging companies. *Id.*

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”)⁷ and further the objectives of Section 6(b)(5) of the Act⁸ because they are designed 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest.

The Exchange notes that nothing in its rules or any applicable securities regulation requires it to designate for trading any class of securities listed or admitted to unlisted trading privileges on the Exchange pursuant to Chapter XIV of the Exchange’s rules. However, the Exchange believes adopting a rule to clarify the circumstances under which the Exchange would voluntarily provide advance notice to the industry that it is ceasing to quote and trade certain specific illiquid securities until such securities meet and sustain a consolidated average daily volume threshold indicative of increased liquidity 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 by facilitating the concentration of displayed liquidity on the listing exchange for effected securities, which the Exchange believes could enhance the market quality of such securities.⁹ The Exchange believes that concentrating displayed liquidity on the listing exchange in certain illiquid securities may enhance market quality of such securities by enabling liquidity providers to more efficiently form competitive prices at the NBBO, and to provide

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See supra note 6.

greater quoted depth of book. In addition, the Exchange believes that if displayed liquidity is concentrated on the listing exchange in such securities, the listing exchange may have flexibility to innovate with alternative market structures, such as variable tick sizes or periodic batch auctions that are not currently possible under Regulation NMS when multiple exchanges are quoting and trading the securities, and which may further enhance the market quality of the effected illiquid securities.¹⁰

The proposed rule change promotes just and equitable principles of trade because it will provide certainty and transparency to members and investors with respect to which securities the Exchange will or will not designate for quoting and trading on the Exchange, thereby avoiding confusion.

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

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that nothing in its rules or any applicable securities regulation require it to designate for trading any class of securities listed or admitted to unlisted trading privileges on the Exchange pursuant to Chapter XIV of the Exchange's rules. The Exchange believes enacting such a provision in its rules would not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. While the Exchange will be voluntarily

¹⁰ The Exchange is not proposing or advocating any form of trade-at prohibition, which, depending on its various iterations, would generally act to prevent trading off-exchange without first executing against all equal or better priced protected quotations. Rather, the Exchange is proposing and advocating a reduction in the number of displayed venues on which certain illiquid securities will be quoted and traded, which the Exchange believes will concentrate the quoting activity serving to enhance quote competition and thereby increase market quality by narrowing the NBBO and increasing the quoted depth of book for effected securities, without regard to off-exchange trading.

foregoing potential market share by not quoting and trading securities subject to the rule, the Exchange believes the proposal will enhance market quality in such securities by increasing quoting competition among liquidity providers on the listing exchange, which will result in better prices at the NBBO and greater depth of book. The Exchange further believes these enhancements in market quality may increase investor interest in trading such securities, which in turn would improve competition by generating increased volume which would also ultimately benefit the Exchange once such securities become eligible for trading on the Exchange under the rule in the future.

(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 changes.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by 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-2015-37 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-BATS-2015-37. 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 the 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 Number SR-BATS-2015-37 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.¹¹

Robert W. Errett
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).