

also will be available for inspection and copying at the principal office of Nasdaq. 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2010-074 and should be submitted on or before December 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63090; File No. SR-BATS-2010-027]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. To Amend BATS Rule 21.9, Entitled "Order Routing"

October 13, 2010.

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 October 4, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") 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, on behalf of the BATS Options Market ("BATS Options"), proposes to amend BATS Rule 21.9, entitled "Order Execution," to modify the existing general description of

Exchange routing functionality and to describe available routing strategies in greater detail.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, at the Commission's Web site at <http://www.sec.gov>, 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 21.9, which describes its order routing processes, to modify the existing general description of Exchange routing functionality and to describe available routing strategies in greater detail. Also, subject to User instructions, the Exchange currently allows orders that have been routed and then posted to the Exchange's order book to be re-routed if the order is subsequently locked or crossed by another options exchange ("RECYCLE Option"). The Exchange proposes to add a reference to the "RECYCLE Option" in its Rule, consistent with the general goal of the proposed changes to align the routing strategies offered by the Exchange with the rule text by providing additional specificity. The Exchange also wishes to make clear that, unless otherwise specified, the RECYCLE Option may be combined with any of the System routing strategies specified in Rule 21.9.

The Exchange is also amending Rule 21.9 to include a definition of "System routing table," defined as the proprietary process for determining the specific options exchanges to which the Exchange System routes orders and the order in which it routes them. The definition reflects the fact that the Exchange, like other options exchanges, maintains different routing tables for different routing strategies and modifies

them on a regular basis to reflect assessments about the destination markets. Such assessments consider factors such as a destination's latency, fill rates, reliability, and cost. Accordingly, the definition specifies that the Exchange reserves the right to maintain a different routing table for different routing strategies and to modify routing tables at any time without notice.

Although the current rule language for Exchange routing strategies describes the available variations of strategies in general terms, the Exchange believes that understanding of these strategies would be enhanced by describing the different versions as separately named routing strategies.

Below is a description of the various routing strategies proposed pursuant to new paragraph (a)(2) of Rule 21.9.

- **CYCLE.** CYCLE is a routing strategy offered by the Exchange under which an order checks the System for available shares and then is sent sequentially to destinations on the System routing table for the full remaining size of such order.

- **Parallel D.** Parallel D is a routing strategy offered by the Exchange under which an order checks the System for available shares and then is sent to destinations on the System routing table. The System may route to multiple destinations at a single price level simultaneously through Parallel D routing.

- **Parallel 2D.** Parallel 2D is a routing strategy offered by the Exchange under which an order checks the System for available shares and then is sent to destinations on the System routing table. The System may route to multiple destinations and at multiple price levels simultaneously through Parallel 2D routing.

- **Parallel T.** Parallel T is a routing strategy offered by the Exchange under which an order checks the System for available displayed shares and then is sent only to Protected Quotations and only for displayed size. The System may route to multiple destinations and at multiple price levels simultaneously through Parallel T routing.

- "Destination Specific Orders" and "Directed ISOs" are routed orders described in Rule 21.1.

In addition to the changes described above, the Exchange is proposing additional modifications to paragraph (a)(1) of Rule 21.9 to further align Rule 21.9 with the corollary routing rule applicable to the Exchange's equity securities platform.

###### 2. Statutory Basis

The rule change proposed in this submission is consistent with the

<sup>25</sup> 17 CFR 200.30-3(a)(57).

<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)(iii).

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.<sup>5</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed change to provide additional clarity and specificity to the Exchange's Rules regarding routing strategies further enhances transparency with respect to Exchange routing offerings. Furthermore, the Exchange believes that the routing strategies that it offers provide market participants with greater flexibility in routing orders without developing complicated order routing strategies on their own. Finally, many of the Exchange's Members that trade options on or through BATS Options also actively trade on the Exchange's equity securities platform. The Exchange believes that aligning the rules between its options and equities platform will help to alleviate potential confusion for such Members.

#### *B. Self-Regulatory Organization's Statement on 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 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: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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 Act<sup>7</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii)<sup>10</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. The Exchange believes that its routing strategies benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs.<sup>11</sup> In addition, the Exchange notes that the proposal is consistent with the Exchange's existing equities routing rule as well as the existing rules of another national securities exchange.<sup>12</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.<sup>13</sup>

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 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 proposed rule change 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

<sup>9</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 requirement.

<sup>10</sup> *Id.*

<sup>11</sup> See SR-BATS-2010-027, Item 7.

<sup>12</sup> See SR-BATS-2010-027, Item 7 and 8. See also BATS Rule 11.13 and The NASDAQ Stock Market LLC Rule 4758.

<sup>13</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).

No. SR-BATS-2010-027 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-2010-027. 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 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 Web site 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 a.m. and 3 p.m. 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-2010-027 and should be submitted on or before November 9, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 200.30-3(a)(12).