

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77105; File No. SR-BATS-2015-102]

Self-Regulatory Organizations: BATS Exchange Inc.; Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Partial Amendment No. 2, To Adopt Rule 11.27 Regarding the Data Collection Requirements of the Tick Size Pilot

February 10, 2016.

I. Introduction

On November 13, 2015, BATS Exchange, Inc. (“BATS” or “Exchange”) filed with Securities and Exchange Commission (“SEC” or “Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt rules related to the data collection requirements set forth in the Regulation NMS Plan (“Plan”) to Implement a Tick Size Pilot Program (“Tick Size Pilot”).³ The proposed rule change was published for comment in the **Federal Register** on December 1, 2015.⁴ The Commission has received one comment letter in response to the Notice and a response letter from BATS.⁵ On January 13, 2016, the Commission designated a longer period for Commission action on the proposal.⁶ On February 4, 2016, BATS filed Partial Amendment No. 2 to the proposal.⁷ This order approves the proposed rule change, as modified by Partial Amendment No. 2.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (order approving the Tick Size Pilot) (“Approval Order”).

⁴ See Securities Exchange Act Release No. 76524 (November 25, 2015), 80 FR 75141 (“Notice”).

⁵ See Letters from Mary Lou Von Kaenel, Managing Director, Financial Information Forum dated December 4, 2015, to Robert W. Errett, Deputy Secretary, Commission (“FIF Letter”), and Chris Solgan, Associate General Counsel, BATS Exchange, Inc. dated February 1, 2015 to Brent J. Fields, Secretary, Commission (“BATS Response Letter”).

⁶ See Securities Exchange Act Release No. 76891, 81 FR 3218 (January 20, 2016).

⁷ In Partial Amendment No. 2, BATS amends (1) proposed Rule 11.24(b)(4)(A) by deleting an erroneous cross-reference and replacing the phrase “pipe-delineated” with the phrase “required by their DEA” and (2) proposed Rule 11.27.03 by replacing the phrase “dually listed securities” with “securities that trade in a foreign market.” On February 1, 2016, BATS filed Partial Amendment No. 1 to the proposal and subsequently withdrew Partial Amendment No. 1.

II. Background

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC (“Nasdaq”), New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC, and NYSE Arca, Inc. (collectively “Participants”), filed with the Commission, pursuant to Section 11A of the Act⁸ and Rule 608 of Regulation NMS thereunder,⁹ the Plan to Implement the Tick Size Pilot.¹⁰ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.¹¹ The Plan was published for comment in the **Federal Register** on November 7, 2014,¹² and approved by the Commission, as modified, on May 6, 2015.¹³ On November 6, 2015, the Commission issued an exemption to the Participants from implementing the Plan until October 3, 2016.¹⁴

The Tick Size Pilot is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of certain small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its members, as applicable, with the provisions of the Plan.¹⁵ In addition to developing quoting and trading requirements for the Tick Size Pilot, the Plan requires Participants to collect and submit to the Commission a variety of data, including market quality statistics and market maker participation statistics and profitability data.¹⁶ BATS has filed the proposed rule change, as modified by Partial Amendment No. 2, to require its members to comply with the applicable data collection requirements of the Plan and to provide interpretive guidance

⁸ 15 U.S.C. 78k-1.

⁹ 17 CFR 242.608.

¹⁰ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

¹¹ See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

¹² See Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423.

¹³ See Approval Order, *supra* note 3.

¹⁴ See Securities Exchange Act Release No. 76382, 80 FR 70284 (November 13, 2015).

¹⁵ Rule 608(c) of Regulation NMS, 17 CFR 242.608(c). See also Plan Sections II.B. and IV.

¹⁶ The data collection requirements for the Plan are specified in Appendices B and C. See Approval Order, 80 FR at 27552-53, *supra* note 3.

and clarification of certain data collection provisions.¹⁷

III. Description of the Proposed Rule Change, as Modified by Partial Amendment No. 2

BATS proposes Rule 11.27(b) to establish the rules necessary for compliance with applicable data collection and transmission requirements of the Plan. In addition, proposed Rule 11.27(b) contains Interpretations and Policies designed to clarify certain aspects of the data collection requirements.

A. Rule Text for Proposed Rule 11.27(b)

The Exchange proposes Rule 11.27(b)¹⁸ to facilitate compliance with the data collection and transmission requirements set forth by Appendices B and C of the Plan. Proposed Rule 11.27(b)(1) provides that a BATS member that operates a Trading Center¹⁹ shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a BATS member that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

Proposed Rule 11.27(b)(2) provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-

¹⁷ FINRA, on behalf of the Plan Participants submitted a letter to Commission requesting exemption from certain provisions of the Plan related to data collection. See letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission (“Exemption Request”). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, has granted BATS a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. See letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, BATS, dated February 10, 2016 (“SEC Exemption Letter”).

¹⁸ BATS has proposed Rule 11.27(a) to establish rules related to the quoting and trading requirements of the Plan. See Securities Exchange Act Release No. 76552 (December 3, 2015), 80 FR 76591 (December 9, 2015). On January 21, 2016, the Commission extended the period for Commission action to March 8, 2016. See Securities Exchange Release Act No. 76945, 81 FR 4734 (January 27, 2016).

¹⁹ Capitalized terms used in this Order are defined in the Plan, unless otherwise specified herein.

Pilot Data Collection Securities²⁰ and Pilot Securities on a Trading Center Operated by the Exchange. Proposed Rule 11.27(b)(2) also provides that the Exchange shall transmit such data to the SEC in a pipe-delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period (“Pre-Pilot Period”); and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. Proposed Rule 11.27(b)(2) also provides that the Exchange shall make such data publicly available on the Exchange Web site on a monthly basis at no charge and will not identify the member that generated the data.²¹

The Exchange proposes Rule 11.27(b)(3) related to daily Market Maker participation statistics to facilitate compliance with Appendix B.IV of the Plan. Proposed Rule 11.27(b)(3)(A) provides that a BATS member that is a Market Maker shall collect and transmit to their Designated Examining Authority (“DEA”) data relating to Item IV of Appendix B of the Plan, with respect to activity conducted on any Trading Center in Pre-Pilot Data Collection Securities and Pilot Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement dates. Proposed Rule 11.27(b)(3)(A)(i) would also require that Market Makers transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4: (i) For transactions in each Pre-Pilot Data Collection Security for the Pre-Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

Proposed Rule 11.27(b)(3)(B) provides that the Exchange shall transmit the data collected by the DEA pursuant to Rule 11.27(b)(3)(A) relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe-delimited format within 30

calendar days following month end.²² Proposed Rule 11.27(b)(3)(B) provides that the Exchange shall also make such data publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.²³

The Exchange proposes Rule 11.27(b)(4) related to Market Maker profitability to facilitate the data collection and transmission requirements of Appendix C.I of the Plan. Proposed Rule 11.27(b)(4)(A) requires a BATS member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions of Pilot Securities on any Trading Center that have settled or reached the settlement date.²⁴ Proposed Rule 11.27(b)(4)(A) also requires BATS members that are Market Makers to provide such data in a format required by their DEA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the Pre-Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange proposes Rule 11.27(b)(5) related to the daily Market Maker registration statistics to facilitate compliance with Appendix B.III of the Plan. Proposed Rule 11.27(b)(5) provides that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in pipe-delimited format within 30 calendar days following month end: (i) For transactions in each Pre-Pilot Data Collection Security for Pre-Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

B. Interpretations and Policies Under Proposed Rule 11.27(b)

The Exchange proposes Interpretations and Policies under proposed Rule 11.27(b) in order to clarify certain aspects related to the data collection and transmission requirements of the Plan.

Proposed Interpretations and Policy .01 provides that, unless otherwise specified, the terms used in proposed

Rule 11.27 shall have the same meaning as provided in the Plan.

Proposed Interpretations and Policy .02 relates to the identification of Retail Investor Orders for purposes of Appendix B.II(n) reporting. The Plan provides that market and Marketable Limit Order Retail Investor Orders shall be identified in a separate field with a “Y/N.” The Exchange proposes in Interpretations and Policy .02 to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report “Y” to their DEA for those Retail Investor Orders that rely on the exceptions to Test Groups Two and Three, and “N” for all other instances.²⁵

Proposed Interpretations and Policy .03 proposes to include a field, “Affected by Limit-Up Limit-Down bands” for purposes of Appendix B.I. Proposed Rule Interpretations and Policy 03 specifies that a Trading Center shall report “Y” to its DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down (“LULD”) band²⁶ in effect at the time of order receipt, and shall report a value of “N” to its DEA when the ability of an order to execute has not been affected by the LULD bands in effect at the time of order receipt. In addition, proposed Rule Interpretations and Policy 03 provides that the Participants shall classify all orders that may trade in a foreign market as: (1) Fully executed domestically; or (2) fully or partially executed on a foreign market.²⁷ For the purposes of Appendix B.II, proposed Rule Interpretation and Policy 03 sets forth that the Participants shall classify all orders in Pilot and Pre-Pilot Data Collection Securities that may trade in a foreign market as: (1) Directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the member.²⁸

In proposed Interpretation and Policy .04, BATS proposes to modify the reporting requirements under Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).²⁹ Specifically, BATS proposes

²⁵ BATS has requested an exemption from the Plan related to the provision. See Exemption Request, *supra* note 17.

²⁶ See National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (“Limit-Up Limit-Down Plan”).

²⁷ See Partial Amendment No. 2, *supra* note 7.

²⁸ See Partial Amendment No. 2, *supra* note 7.

²⁹ Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires

²⁰ As discussed herein, BATS proposes to establish data collection requirements for securities designated as Pre-Pilot Data Collection Securities for the period that begins six months prior to the Pilot Period.

²¹ BATS has requested an exemption from the Plan related to this provision. See Exemption Request, *supra* note 17.

²² BATS has requested an exemption from the Plan related to this provision. See Exemption Request, *supra* note 17.

²³ BATS has requested an exemption from the Plan related to this provision. See Exemption Request, *supra* note 17.

²⁴ See Partial Amendment No. 2, *supra* note 7.

the following: Appendix B.I.a(14A): The cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt; Appendix B.I.a(15): The cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21A): The cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt; and Appendix B.I.a(22): The cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt.³⁰

Proposed Interpretation and Policy .05 changes the time of calculating certain data to the time of order receipt, instead of the time of order execution, as currently set forth by Appendix B.I.a(31)–(33).³¹

Proposed Interpretation and Policy .06 specifically identifies certain order types for purposes of reporting under Appendix B of the Plan (with numbers for reporting). In particular, not held orders, assigned the number (18); clean cross orders, assigned the number (19); auction orders, assigned the number (20); and orders that cannot otherwise be classified, including orders received when the NBBO is crossed, assigned the number (21) shall be identified in the data reports.

Proposed Interpretation and Policy .07 sets forth that, for purposes of Appendix B of the Plan, the Exchange would not deem a member to be a Trading Center where that member only executes orders otherwise on a national securities exchange for the purpose of: (i) Correcting a bona fide error related to the execution of a customer order; (ii) purchasing a security from a customer at a nominal price solely for the purposes of liquidating the customer's position; or (iii) completing the fractional share portion of an order.³²

reporting of the cumulative number of shares or orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares or orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

³⁰ BATS has requested an exemption from the Plan related to these provisions. See Exemption Request, *supra* note 17.

³¹ BATS has requested an exemption from the Plan related to these provisions. See Exemption Request, *supra* note 17.

³² The Exchange noted that where a member purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would be subject to

Proposed Interpretation and Policy .08 sets forth that April 4, 2016 is the date a Trading Center must begin the data collection pursuant to the Plan; and that the Exchange or a Trading Center's DEA must provide information to the SEC within 30 days following month end and make certain data publicly available pursuant to Appendix B and C of the Plan shall commence at the beginning of the Pilot Period.³³

Proposed Interpretation and Policy .09 specifies that for purposes of Appendix C.I., Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily last in first out (LIFO) basis using reported trade price and shall include only trades executed on the subject trading day.³⁴ Further, the daily LIFO calculation shall not include any positions carried over from previous trading days. In addition, proposed Interpretation and Policy .09 provides that for purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, Participants will calculate the volume-weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume will be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. Proposed Interpretation and Policy .09 also provides that in calculating unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

Proposed Interpretation and Policy .10 defines "Pre-Pilot Data Collection Securities" as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II, III and IV of Appendix B and Item I of Appendix C of the Plan for the Pre-Pilot Period. Proposed Interpretation and Policy .10 provides that the Participants shall compile the list of Pre-Pilot Data Collection

proposed Rule 11.27 and need to report pursuant to Appendix B of the Plan.

³³ BATS has requested an exemption from the Plan related to this provision. See Exemption Request, *supra* note 17.

³⁴ BATS has requested an exemption from the Plan related to this provision. See Exemption Request, *supra* note 17.

Securities by selecting all NMS stocks with (1) a market capitalization of \$5 billion or less, (2) a Consolidated Average Daily Volume (CADV) of 2 million shares or less and (3) a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. Further, the Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. Finally, the Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period.

Proposed Interpretation and Policy .11 specifies that the effectiveness of proposed Rule 11.27 would coincide with the pilot period for the Plan, including any extensions.

IV. Discussion and Commission Findings

After careful review of the proposal and the comment letter, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁵ Specifically, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,³⁶ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(8) of the Act,³⁷ which requires that the Exchange's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has previously stated that the Tick Size Pilot set forth in the Plan should provide a data-driven

³⁵ 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).

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ 15 U.S.C. 78f(b)(8).

approach to evaluate whether certain changes to the market structure for Pilot Securities would be consistent with the Commission's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.³⁸ As discussed below, the Commission believes that BATS's proposal is consistent with the requirements of the Act, and would further the purpose of the Plan to provide measurable data.

BATS, as a Participant in the Plan, has an obligation to comply, and enforce compliance by its members, with the terms of the Plan. Rule 608(c) of Regulation NMS provides that "[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members."³⁹ BATS proposed Rule 11.27(b) would impose compliance obligations on its members with the data collection requirements set forth in Appendices B and C to the Plan. The Commission also believes the proposal is consistent with the Act because it is designed to assist BATS in meeting its regulatory obligations pursuant to and Rule 608(c) of Regulation NMS⁴⁰ and the Plan.⁴¹

A. Proposed Rule 11.27(b)⁴²

BATS proposes Rule 11.27(b)(1) that provides that a BATS member that operates as a Trading Center must establish, maintain and enforce written policies and procedures that are reasonably designed to meet the requirements under Appendix B.I and B.II of the Plan, and that a BATS member that is a Market Maker must establish, maintain and enforce written

policies and procedures that are that are reasonably designed to meet the requirements under Appendix B.IV and C.I of the Plan.⁴³ The Commission finds that these provisions are consistent with the Act because they implement provisions of the Plan.

BATS proposes Rule 11.27(b)(2), related to trading activity in Pre-Pilot Data Collection Securities and Pilot Securities on a Trading Center operated by the Exchange, to meet the data collection and transmission requirements of Appendix B.I and B.II of the Plan. In its comment letter, FIF expressed confidentiality concerns with respect to the possibility that data made publicly available by BATS could potentially be reverse engineered such that the counterparties of a trade could be identified. FIF stated that because some Pilot Securities are thinly traded by a limited number of market participants the identifying characteristics related to the data, even if unattributed, could be discerned.⁴⁴ FIF stated that great care to ensure confidentiality of detailed information must be taken and requested that the industry be enlisted in the defining the form and content of the data made publicly available on the Participants' Web sites.⁴⁵ BATS, in its response, noted that the Plan, as approved by the Commission, sets forth the requirements for the data that is to be made publicly available by the Participants and the format in which such data shall be made available.⁴⁶ BATS, however, also acknowledged member concerns about data confidentiality and stated its intent to work diligently to ensure that the data is made available consistent with the requirements of the Plan.

The Commission notes that the Plan provides for the public dissemination of Tick Size Pilot data but states that "[t]he data made publicly available shall not identify the trading center that generated the data."⁴⁷ The Commission also notes that Participants are scheduled to start collecting data on April 4, 2016, but the Participants have requested not to make the data publicly

available until August 30, 2016.⁴⁸ The Commission notes that this could give Participants the opportunity to evaluate the data to determine whether the FIF's concerns related to the disclosure of the identity of Trading Centers exist, and if so whether additional measures are necessary to prevent the disclosure of attributed Trading Center data. The Commission finds that proposed Rule 11.27(b)(2) is consistent with the Act because it implements provisions of the Plan.

BATS proposed Rule 11.27(b)(3) and (b)(4) related, respectively to (i) daily Market Maker participation statistics to meet the data collection and transmission requirements of Appendix B.IV of the Plan and (ii) Market Maker profitability to meet the data collection and transmission requirements for Appendix C.I and C.II of the Plan.⁴⁹ In its comment letter, FIF relayed the concerns related to Exchange access to the disaggregated Market Maker data and the form of its receipt from FINRA before publication under these provisions.⁵⁰ Further, FIF requested clear assurances that such data would not be used for commercial or competitive purposes.⁵¹ BATS confirmed that it did not intend to use the data collected pursuant to the Plan for commercial or competitive purposes.⁵²

The Commission finds that proposed Rules 11.27(b)(3) and (b)(4) are consistent with the Act because they will implement provisions of the Plan.

Rule 11.27(b)(5) provides that the Exchange will collect and transmit to the SEC daily Market Maker registration statistics under Appendix B.III of the Plan. The Commission finds that this proposal is consistent with the Act because it implements provisions of the Plan and enhances the utility of the Tick Size Pilot data.

³⁸ See Approval Order, 80 FR at 27515–16, *supra* note 3.

³⁹ 17 CFR 242.608(c).

⁴⁰ 17 CFR 242.608(c).

⁴¹ Sections II.B and IV of the Plan each require Participants to comply with, and enforce compliance by its members, with the Plan. See Approval Order, 80 FR at 27548, *supra* note 3.

⁴² In its comment letter, FIF expressed its assumption that this proposed rule change would be a template for other Participants that will also have to establish rules for member compliance with the data collection and reporting provisions of the Plan. The FIF emphasized that it was important that the rules of the Participants work together to avoid conflict and noted that the FINRA Data Collection Proposal appeared to be in alignment with the instant proposal. FIF noted that its comment letter sought to raise points specific to this filing, and reinforce other relevant points relevant to this proposal that were previously raised in its comment letter related to File No. SR-FINRA-2015-048 ("FINRA Data Collection Proposal"). See FIF Letter at 1, *supra* note 5.

⁴³ In its comment letter, FIF requested verification that there would be no additional requirements for data submission to BATS beyond that which will be reported through FINRA (or another DEA) to cover Appendices B and C. See FIF Letter at 2, *supra* note 5. BATS noted that its members would not be required to provide additional information to BATS other than that required to be reported to its DEA related to Appendices B and C. See BATS Response Letter at 5, *supra* note 5.

⁴⁴ FIF Letter at 3, *supra* note 5.

⁴⁵ FIF Letter at 3, *supra* note 5.

⁴⁶ BATS Response Letter at 7, *supra* note 5.

⁴⁷ This requirement is contained in Section VII.A of the Plan. See Approval Order, 80 FR at 27551, *supra* note 3.

⁴⁸ See Exemption Request, *supra* note 17. The Commission notes that it has granted BATS a limited exemption from Rule 608(c) of Regulation NMS related to this provision. See SEC Exemption Letter, *supra* note 17.

⁴⁹ In its comment letter, FIF requested confirmation that a firm that becomes a Trading Center or Market Maker during the Pre-Pilot Period or Pilot Period would not have to retroactively provide data. See FIF Letter at 6, *supra* note 5. BATS, in response, clarified that there would be no retroactive reporting requirement for Trading Centers that become Market Makers during the Pre-Pilot or Pilot Period, and that Market Makers would only need to report data on those days for which they trade as a Registered Market Maker. See BATS Response Letter at 6, *supra* note 5.

⁵⁰ FIF Letter at 3, *supra* note 5.

⁵¹ FIF Letter at 3, *supra* note 5.

⁵² See BATS Response Letter at 7, *supra* note 5.

B. Interpretations and Policies Under Proposed Rule 11.27(b)

The Exchange also proposes Interpretations and Policies under proposed Rule 11.27(b) to clarify certain aspects of the data collection requirements in the Plan. The Commission believes that the proposed Interpretations and Policies are consistent with the requirements of the Act, and should further the purpose of the Plan to provide robust, meaningful data that will allow the Commission and the public to evaluate the potential impact of the Tick Size Pilot of the trading and liquidity of Pilot Securities. Further, the proposed Interpretation and Policies should clarify certain aspects of the data collection requirement in the Plan, which in turn could serve to enhance the quality and utility of the Tick Size Pilot data to be collected and analyzed.

Proposed Interpretation and Policy .01 clarifies that terms used in the rule shall have the same meaning as provided in the Plan, unless otherwise specified. The Commission believes that this proposed Rule is consistent with the Act as it clarifies the language of the BATS rule.

Proposed Interpretation and Policy .02 clarifies reporting obligations with respect to the Retail Investor Orders under Appendix B.II.(m).⁵³ As proposed, Trading Centers will only be required to identify those Retail Investor Orders that rely on the exceptions provided in Test Groups Two and Three rather than all orders that may satisfy the Retail Investor Order definition. The Commission finds that this provision is consistent with the Act because it clarifies existing Plan language in a way that maintains the usefulness of the data while also reducing implementation costs.⁵⁴

Proposed Interpretation and Policy .03 proposes to add a reporting field to signify whether the ability of an order to be executed has been affected by LULD bands.⁵⁵ In addition, BATS proposes that Participants will classify

⁵³ The Commission notes that FIF reiterated its comment to the FINRA Data Collection Proposal related to the Retail Investor Order flag. See FIF Letter at 4, *supra* note 5. The Commission believes comments related to OATS are specific to the FINRA Data Collection Proposal.

⁵⁴ The Commission notes that it has granted BATS an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 17.

⁵⁵ FIF requested confirmation as to whether FINRA would determine whether the Limit-Up Limit-Down flag is applicable. See FIF Letter at 4, *supra* note 5. BATS stated that it does not propose to require additional reporting by its members that operate a Trading Center beyond what has already been set forth in OATS Reporting Technical Specifications published by FINRA.

all orders Pilot and Pre-Pilot Data Collection Securities that may trade in a foreign market for purposes of Appendix B.II.⁵⁶ The Commission finds that these additional discrete data reporting elements are consistent with the Act. In particular, these provisions should enhance certain Tick Size Pilot data elements and provide guidance to reporting Trading Centers.

Proposed Interpretation and Policy .04 provides that certain data elements should be reported based upon modified time ranges. The proposed rules would add finer increments to the Plan reporting requirements and isolate microsecond and millisecond reporting requirements into separate data elements.⁵⁷ According to the Participants, not all Participants or non-Participant Trading Centers currently capture or report all orders and trades in either microseconds or milliseconds.⁵⁸

The Commission notes that the proposal merely shifts the time reporting elements into separate reporting lines to accommodate different reporting capabilities.⁵⁹ The data reported under BATS' rule are consistent with the intent of the Plan. Accordingly, the Commission finds that the proposal is consistent with the Act.

Proposed Interpretation and Policy .05 sets forth that certain data should be calculated at the time of order receipt instead of the time of order execution as currently set forth by Appendix B.I.a(31)–(33). In the Exemption Request, the Participants suggested that the time of order receipt is more consistent with the goal of observing the effect to the Tick Size Pilot on liquidity.⁶⁰ The Commission finds that the proposal is consistent with the Act because it should make the data more useful for measuring the impact of the

⁵⁶ FIF sought confirmation that proposed Interpretation and Policy .03 only applied to Participants, and Trading Centers were not be responsible for providing such information to the Exchange. See FIF Letter at 4, *supra* note 5. In response, BATS confirmed that was the case. However, BATS noted that Trading Centers would be required to include information regarding orders routed to foreign venues to OATS. See BATS Response Letter at 8, *supra* note 5.

⁵⁷ In its comment letter, FIF raised concerns about OATS reporting capabilities. See FIF Letter at 5, *supra* note 5. In response, BATS stated that it understood that a member would not be required to report in an increment of time that is not accepted or permitted by FINRA systems. See BATS Response Letter at 8–9, *supra* note 5. The Commission believes comments related to OATS are specific to the FINRA Data Collection Filing.

⁵⁸ See Exemption Request *supra* note 17.

⁵⁹ The Commission notes that it has granted BATS an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 17.

⁶⁰ See Exemption Request, *supra* note 17.

Tick Size Pilot.⁶¹ In addition, the Commission notes that the time of order receipt is used in other rules for which data is calculated, which should lessen the implementation burden for gathering these data elements.⁶²

Proposed Interpretation and Policy .06 clarifies certain reporting obligations under Appendix B by requiring that certain additional order types (*i.e.*, not held orders, auction orders, and clean cross orders) be reported separately in discrete data lines. The Commission believes that this proposed rule is consistent with the Act as it clarifies existing Plan language. The Commission notes that these orders are currently included under Appendix B to the Plan. The Commission believes this provision merely clarifies for reporting purposes how these orders would be identified, which should facilitate reporting and provide for better analysis.⁶³

Proposed Interpretation and Policy .07 sets forth circumstances where the Exchange would not deem a member to be a Trading Center for purposes of Appendix B of the Plan. Specifically, this provision sets forth that members that execute orders over-the-counter for the purpose of correcting bona fide errors of customer orders, purchase securities from customers at a nominal price solely for the purposes of liquidating customers' positions or completing a fractional share portion of an order, would not be considered a Trading Center for purposes of Appendix B of the Plan. The Commission finds that this proposal is consistent with the Act as it further clarifies what is required under the Plan. As noted in the Approval Order, the data requirements are reasonably designed to provide measurable data that should facilitate the ability of the Commission, the public, and market participants to review and analyze the effect of tick size on the trading, liquidity, and market quality of Pilot Securities.⁶⁴ The Commission believes that excluding the discrete trading activity identified above is appropriate

⁶¹ The Commission notes that it has granted BATS an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 17.

⁶² See *e.g.* 17 CFR 242.605.

⁶³ In its comment letter, FIF inquired about the introduction of additional new order types that might result in additional data collection and reporting requirements under the Plan. See FIF Letter at 5, *supra* note 5. In response, BATS stated that it did not intend to propose any new order types for purposes of the Plan, but that it did anticipate submitting a proposed rule change to amend the operation of certain order types within each Test Group. See BATS Response Letter at 10, *supra* note 5.

⁶⁴ See Approval Order, *supra* note 3.

and will not harm the usefulness of the data.

Proposed Interpretation and Policy .08 sets April 4, 2016 as the date a Trading Center must begin the data collection pursuant to the Plan and sets forth that the Exchange or a Trading Center's DEA must provide information to the SEC within 30 days following month end and make certain data publicly available. In its comment letter, the FIF pointed out a discrepancy as the Notice has language stating that Appendix B and Appendix C data would be published and reported to the SEC by the Exchange or the member's DEA commencing six months prior to the beginning of the Pilot Period but the text of proposed Interpretation and Policy .08 states that such data would be published and reported to the SEC commencing at the beginning of the Pilot Period.⁶⁵ In response, BATS explained that the Participants had submitted the Exemption Request which included a request to delay the initial reporting of data to the Commission to August 30, 2016.⁶⁶ BATS also explained that if the Commission did not grant the request, the Exchange would publish and report the data collected pursuant to Appendix B and C consistent with provisions of the Plan (*i.e.*, six months prior to the beginning of the Pilot Period).⁶⁷ As noted above, pursuant to Rule 608(e) of Regulation NMS,⁶⁸ the Commission has granted BATS a limited exemption from the Plan requirements related to proposed Interpretation and Policy .08.⁶⁹ Accordingly, the Commission believes that this provision is consistent with the Act and reinforces and clarifies important dates and obligations under the Plan.

Proposed Interpretation and Policy .09 specifies the method by which Participants may calculate daily Market Maker realized profitability statistics. Specifically, the provision would allow an alternative methodology that yields a LIFO-like result as opposed to a LIFO-like methodology required under Appendix C.I.(b) under the Plan. The Commission believes that proposed Interpretation and Policy .09 is consistent with the Act because the proposed calculation result will provide measurable data that is consistent with what was originally sought to be captured under the Plan. Therefore, the proposal will continue to allow analysis

of the impact of the Tick Size Pilot on Market Maker Profitability.⁷⁰

Proposed Interpretation and Policy .10 defines the term "Pre-Pilot Data Collection Securities" for purposes of the data collection requirements under the Plan that are required to begin six months before the Pilot Period. Specifically, BATS proposes to expand the number of securities for which data will be collected during the Pre-Pilot Period to help to ensure there is a complete data set for Pilot Securities when the Pilot Period begins on October 3, 2016. In its comment letter, FIF requested information related to how listing exchanges would disclose Pre-Pilot Data Collection Securities and Pilot Securities.⁷¹ In response, BATS stated that it understood that the primary listing markets, the NYSE and Nasdaq, would publish the lists of Pre-Pilot Data Collection Securities and Pilot Securities listed on their respective exchanges on their Web site. BATS also stated that it understood that FINRA would consolidate and publish all Pre-Pilot Data Collection Securities and Pilot Securities on its Web site.⁷² BATS noted that it does not currently list any securities that are eligible to participate in the Plan, but would promptly publish any such security that became eligible to be a Pre-Pilot Data Collection Securities or Pilot Security on its Web site.

The Commission finds that the proposal to identify Pre-Pilot Data Collection Securities for which Tick Size Pilot data will be collected during the Pre-Pilot Period is consistent with the Act. The Commission understands that it could be costly for Trading Centers to backfill the data requirements to collect the Pre-Pilot Period data if Trading Centers were forced to wait until the list of Pilot Securities is determined as specified under the Plan. Therefore, BATS proposal to establish a slightly broader universe of securities that likely will be subject to the Tick Size Pilot is reasonable for purposes of collecting data during the Pre-Pilot Period. The Commission believes the proposal should help to ensure that there is a complete data set for Pilot Securities when the Pilot Period commences and should help to reduce the cost and complexity of implementing the data collection requirements.

Proposed Interpretation and Policy .11 specifies that the rule's effectiveness shall be contemporaneous with the pilot

period. Accordingly, the rule will become effective once the Pre-Pilot Period begins.⁷³ The Commission believes that this proposed rule is consistent with the Act and reinforces and clarifies important dates and obligations under the Plan.

The Commission finds that BATS proposed rules to implement the Tick Size Pilot data collection requirements, including the Interpretations and Policies, are consistent with the Act. The proposal clarifies and implements the data collection requirements set forth in the Plan.

V. Solicitation of Comments of Partial Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning Partial Amendment No. 2, including whether the proposed rule change, as modified by Partial Amendment No. 2, 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 email to rule-comments@sec.gov. Please include File Number SR-BATS-2015-102 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 Number SR-BATS-2015-102. This file number should be included on the subject line if email 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

⁶⁵ See FIF Letter at 5-6, *supra* note 5.

⁶⁶ See BATS Letter at 5, *supra* note 5, *see also* Exemption Request, *supra* note 17.

⁶⁷ See BATS Letter at 5, *supra* note 5.

⁶⁸ 17 CFR 242.608(e).

⁶⁹ See SEC Exemption Letter, *supra* note 17.

⁷⁰ The Commission notes that it has granted BATS an exemption from Rule 608(c) related to this provision. See SEC Exemption Letter, *supra* note 17.

⁷¹ See FIF Letter at 2-3, *supra* note 5.

⁷² See BATS Response Letter at 4, *supra* note 5.

⁷³ See also BATS Rule 11.29.08.

10:00 a.m. and 3:00 p.m. Copies of such filing also will 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-2015-102 and should be submitted on or before March 9, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 2

The Commission finds good cause, pursuant to section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Partial Amendment No. 2, prior to the 30th day after the date of publication of Partial Amendment No. 2 in the **Federal Register**. Partial Amendment No. 2 amends (1) proposed Rule 11.24(b)(4)(A) by deleting an erroneous cross-reference and replacing the phrase “pipe-delineated” with the phrase “required by their DEA” and (2) proposed Rule 11.27.03 by replacing the phrase “dually listed securities” to “securities that trade in a foreign market”.

The change to proposed Rule 11.24(b)(4)(A) is of a clarifying, technical nature. The change to proposed Interpretation and Policy .03 clarifies that foreign routing information will only be required for securities that trade in a foreign market. The Commission believes that these changes provide greater clarity on the application of the proposal. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 2, on an accelerated basis, pursuant to section 19(b)(2) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act⁷⁴ that the proposed rule change, as modified by Partial Amendment No. 2 (SR-BATS-2015-102) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁵

Brent J. Fields,
Secretary.

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⁷⁴ 15 U.S.C. 78s(b)(2).

⁷⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Rule 607, SEC File No. 270-561, OMB Control No. 3235-0634, Request for a New OMB Control No.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation E (17 CFR 230.601 to 230.610a) exempts from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (“Securities Act”) securities issued by a small business investment company (“SBIC”) which is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (“Investment Company Act”) or a closed-end investment company that has elected to be regulated as a business development company (“BDC”) under the Investment Company Act, so long as the aggregate offering price of all securities of the issuer that may be sold within a 12-month period does not exceed \$5,000,000 and certain other conditions are met. Rule 607 under Regulation E (17 CFR 230.607) entitled, “Sales material to be filed,” requires sales material used in connection with securities offerings under Regulation E to be filed with the Commission at least five days (excluding weekends and holidays) prior to its use.¹ Commission staff reviews sales material filed under rule 607 for materially misleading statements and omissions. The requirements of rule 607 are designed to protect investors from the use of false or misleading sales material in connection with Regulation E offerings.

Respondents to this collection of information include SBICs and BDCs making an offering of securities under Regulation E. Each respondent’s

¹ Sales material includes advertisements, articles or other communications to be published in newspapers, magazines, or other periodicals; radio and television scripts; and letters, circulars or other written communications proposed to be sent given or otherwise communicated to more than ten persons.

reporting burden under rule 607 relates to the burden associated with filing its sales material electronically. The burden of filing electronically, however, is negligible and there have been no filings made under this rule, so this collection of information does not impose any burden on the industry. However, we are requesting one annual response and an annual burden of one hour for administrative purposes. The estimate of average burden hours is made solely for purposes of the Paperwork Reduction Act and is not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

The requirements of this collection of information are mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: February 10, 2016.

Brent J. Fields,
Secretary.

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SMALL BUSINESS ADMINISTRATION

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