

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66307; File No. SR-BATS-2011-051)

February 2, 2012

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of Proposed Rule Change to Implement a Competitive Liquidity Provider Program

I. Introduction

On December 16, 2011, BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to implement a Competitive Liquidity Provider Program. The proposed rule change was published for comment in the Federal Register on December 29, 2011.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

BATS proposes to create a new category of market participants, known as Competitive Liquidity Providers (“CLPs”), to enhance liquidity on the Exchange in Exchange-listed securities through participating in a Competitive Liquidity Provider Program (“CLP Program”).

The securities eligible to be included in the CLP Program would include any security that is listed on the Exchange pursuant to Exchange Rules 14.8 (relating to Tier I securities), 14.9 (relating to Tier II securities) or 14.11 (relating to exchange traded funds and other exchange traded products (collectively, “ETPs”)), unless and until such security has had a consolidated

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 66034 (December 22, 2011), 76 FR 82011 (“Notice”).

average daily volume (“CADV”)⁴ of equal to or greater than 2 million shares for two consecutive calendar months during the first two years the security is subject to the CLP Program, or until the security has been subject to the CLP Program for two years. In addition, the Exchange proposes to permit ETPs that are initially listed on the Exchange to remain in the CLP Program for six months regardless of CADV.

To qualify as a CLP, a member must be a registered market maker in good standing with the Exchange.⁵ The Exchange would also require each member seeking to qualify as a CLP to have and maintain: (1) adequate technology to support electronic trading through the systems and facilities of the Exchange; (2) one or more unique identifiers that identify to the Exchange CLP trading activity in assigned CLP securities; (3) adequate trading infrastructure to support CLP trading activity, which includes support staff to maintain operational efficiencies in the CLP program and adequate administrative staff to manage the member’s participation in the CLP program; (4) quoting and volume performance that demonstrates an ability to meet the CLP quoting requirement in each assigned security on a daily and monthly basis; (5) a disciplinary history that is consistent with just and equitable business practices; and (6) the business unit of the member acting as a CLP must have in place adequate information barriers between the CLP unit and the member’s customer, research and investment banking business.

To become a CLP, a member must submit a CLP application form with all supporting documentation to the Exchange. Exchange personnel in the Exchange’s membership department would process such applications. Exchange personnel would determine whether an applicant is qualified to become a CLP based on the qualifications described above. After an applicant submits a CLP application to the Exchange, with supporting documentation, the Exchange shall

⁴ CADV will be measured by statistics provided through the consolidated tape plans.

⁵ See Exchange Rules 11.5 – 11.8.

notify the applicant member of its decision. After Exchange approval, the applicant must establish connectivity with relevant Exchange systems before such applicant would be permitted to trade as a CLP on the Exchange. In the event an applicant is disapproved by the Exchange, such applicant may seek review under Chapter X of the Exchange's rules governing adverse action and/or reapply for CLP status at least three calendar months following the month in which the applicant received the disapproval notice from the Exchange.⁶ A CLP may withdraw from the CLP Program by giving notice to the Exchange. Such withdrawal shall become effective within 30 days of the CLP's notice, or when the Exchange reassigns that CLP's securities to another CLP, whichever comes sooner.

The Exchange would measure the performance of a CLP in assigned securities by calculating Size Event Tests ("SETs") during Regular Trading Hours⁷ on every day on which the Exchange is open for business. The Exchange will measure each CLP's quoted size at the NBB and NBO⁸ at least once per second during such trading hours to determine SETs. The CLP with the greatest aggregate size at the NBB and NBO at each SET would be considered to have a "winning SET."

The Exchange proposes to adopt both daily and monthly quoting requirements. First, a CLP must have at least 10% of the winning SETs on any trading day in order meet its daily quoting requirement and to be eligible for any daily quotation rebate provided by the Exchange (each such CLP, an "Eligible CLP"). Eligible CLPs would be ranked according to the

⁶ Chapter X of the Exchange's rules provides any persons who are or are about to be aggrieved by an adverse action taken by the Exchange with a process to apply for an opportunity to be heard and to have the complained of action reviewed.

⁷ The term "Regular Trading Hours" is defined in Exchange Rule 1.5(w) as the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

⁸ Exchange Rule 1.5(o) defines "NBB" as the national best bid, and "NBO" as the national best offer.

number of winning SETs each trading day, and only the Eligible CLP ranked number one, and in some cases the Eligible CLP ranked number two, would receive the daily rebate. In addition to providing a daily rebate to CLPs that have the highest demonstrated size at the NBB and NBO during the trading day, the Exchange also plans to propose incentives by providing special pricing for executions that occur in any auction operated by the Exchange pursuant to Exchange Rule 11.23. The financial incentives to be proposed by the Exchange would specify the amount and allocation of rebates provided to CLPs as well as the parameters for receiving special pricing in Exchange auctions.

Second, a CLP must be quoting at the NBB or the NBO 10% of the time the Exchange calculates SETs to meet its monthly quoting requirement. For purposes of calculating whether a CLP is in compliance with its CLP quoting requirements, the CLP must post displayed liquidity in round lots in its assigned securities at the NBB or the NBO. A CLP may post non-displayed liquidity; however, such liquidity will not be counted as credit towards the CLP quoting requirements. The CLP would not be subject to any minimum or maximum quoting size requirement in assigned securities apart from the requirement that an order be for at least one round lot. The CLP quoting requirements would be measured by utilizing the unique identifiers for CLP trading activity. A CLP that fails to meet its monthly quoting requirements in any of its assigned securities for three consecutive months may be subject to disqualification from the CLP Program.

CLPs may only enter orders electronically directly into Exchange systems and facilities. All CLP orders must only be for the proprietary account of the member.

The Exchange, in its discretion, would assign to the CLP one or more securities consisting of Exchange-listed securities for CLP trading purposes. The Exchange would

determine the number of Exchange-listed securities within the group of securities assigned to each CLP. The Exchange, in its discretion, would assign one or more CLPs to each security subject to the CLP Program, depending upon the trading activity of the security. The Exchange would restrict the CLPs assigned to any newly issued security that is listed on the Exchange pursuant to Exchange Rule 14.11, which relates to ETPs, to those members that have actively participated in the development or funding of such product. This restriction would remain in effect for six months following the initial offering of the ETP on the Exchange after which time there would be no limitation on the members that can be assigned as CLPs for such a product.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the 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.⁹ In particular, the proposed change is consistent with Section 6(b)(5) of the Act,¹⁰ because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest.¹¹

The Commission believes that the CLP Program may benefit investors because it is reasonably designed to provide greater liquidity for the securities that participate in the CLP Program. The securities eligible for the CLP Program are generally newly listed securities that could particularly benefit from potentially greater liquidity as a result of enhanced quoting obligations.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ In approving the proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

As proposed by the Exchange, each CLP must comply with a monthly quoting requirement in order to remain a CLP, and must comply with a daily quoting requirement in order to be eligible for the financial incentives of the CLP Program. With respect to the monthly quoting requirement, a CLP must be quoting at the NBB or NBO 10% of the time that the Exchange is calculating SETs. With respect to the daily quoting requirement, the CLP with the greatest aggregate size at the NBB and NBO at each SET would be considered to have the winning SET, with the CLP with the greatest number of winning SETs (and, in some instances, the CLP with second-greatest number of winning SETs) each day receiving the daily rebate. Thus, this proposal would incentivize both quoting frequency at the NBBO and quoted size at the NBBO, potentially improving the market quality of the securities that participate in the CLP Program.

The Commission also finds that this program is reasonably designed to encourage listings on the Exchange. This may promote competition among listing venues, and an issuer seeking to list its securities could benefit from the potential impact such competition has on listing fees or quoting obligations across venues.

The Commission also finds that the proposal is not unfairly discriminatory. Registration as an Exchange market maker is available to all Exchange members that satisfy the requirements of Exchange Rule 11.7, and all Exchange market makers are eligible to apply to become CLPs. The Commission finds further that the proposal to establish procedures for the registration, withdrawal, and disqualification of CLPs, and the CLP quoting requirements, are consistent with the requirements of Section 6(b)(5) of the Act. The Exchange's proposed rules provide an objective process by which a member could become a CLP and for appropriate oversight by the Exchange to monitor for continued compliance with the terms of these provisions. The

Commission also notes that these provisions, including the CLP quoting requirements, are similar to those of at least one other exchange.¹² As a result, the Commission believes that these aspects of the proposal are consistent with the requirements of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-BATS-2011-051) be, and it hereby is, approved.

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

Kevin M. O'Neill
Deputy Secretary

¹² See NYSE Rule 107B (governing Supplemental Liquidity Providers).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).