

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76231; File No. SR-BATS-2015-91)

October 22, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 20.6, Nullification and Adjustment of Options Transactions including Obvious Errors

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 October 20, 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 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 Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal for the Exchange’s equity options platform (“BATS Options”) to extend the pilot program that suspends certain obvious error provisions of Rule 20.6 during limit up-limit down states in securities that underlie options traded on the Exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

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

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

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

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

1. Purpose

Earlier this year, the Exchange adopted new Rule 20.6 related to the adjustment and nullification of transactions that occur on the Exchange's equity options platform ("BATS Options").⁵ Interpretation and Policy .01 to Rule 20.6 is designed to address certain issues related to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or the "Plan").⁶ Specifically, pursuant to a pilot program set forth in Interpretation and Policy .01 to Rule 20.6, the Exchange excludes from certain provisions of Rule 20.6 transactions executed during a "Limit State" or "Straddle State," as such terms are defined in the Plan.

⁵ See Securities Exchange Act Release No. 74556 (March 20, 2015), 80 FR 16031 (March 26, 2015) (SR-BATS-2014-067).

⁶ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the "Limit Up-Limit Down Release").

The purpose of this filing is to extend the effectiveness of the pilot program of Interpretation and Policy .01 of Rule 20.6 to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan. The Exchange also proposes to amend a cross-reference contained within Interpretation and Policy .01, as described below.

The Exchange believes the benefits to market participants from Interpretation and Policy .01 should continue on a pilot basis. The Exchange continues to believe that adding certainty to the execution of orders in Limit or Straddle States will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the obvious error provisions of Rule 20.6 would likely apply in many instances during Limit States and Straddle States. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a Limit State or Straddle State. Thus, the Exchange believes that the protections of the current rule should continue while the industry gains further experience operating the Plan. Rather than extending the pilot program to a specific date, the Exchange proposes to extend the pilot to coincide with the operation of the Plan, which is also a pilot program.⁷

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions

⁷ Currently, the pilot period for the Plan is proposed to be extended to April 22, 2016. See Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015).

during Limit and Straddle States, and (3) review any complaints from Members and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

In connection with this proposal, each month the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
 - executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
 - high execution price, low execution price;
 - number of trades for which a request for review for error was received during Straddle and Limit States;
 - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise).

Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The Exchange agrees to provide the analysis and data to the Commission to help evaluate the impact of the pilot program no later than five months prior to the pilot expiration, including any extensions. If the Plan extension is approved, the next data assessment will be due on December 18, 2015.

As noted above, pursuant to the pilot program, the Exchange excludes from certain provisions of Rule 20.6 transactions executed during a Limit State or Straddle State, as such terms are defined in the Plan. The Exchange, however, retains authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of Rule 20.6 and to bust or adjust transactions pursuant to provisions governing Significant Market Events, as defined in the Rule, trading halts, erroneous prints and quotes in the underlying security, and in connection with stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security.

Subsequent to the adoption of new Rule 20.6, the Exchange adopted a provision, paragraph (k), which governs erroneous trades occurring from disruptions and/or malfunctions of Exchange systems. The Exchange proposes to extend the authority to nullify transactions pursuant to paragraph (k) even in the event of a Limit State or Straddle State for the underlying security, thereby excluding such provision from the pilot program. The Exchange notes that other options exchanges that have a provision governing erroneous trades occurring from disruptions and/or malfunctions of Exchange systems have also excluded such provision from the pilot program.⁸

2. Statutory Basis

The Exchange believes that its proposal 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 proposal is consistent with Section 6(b)(5) of the Act¹⁰ because it 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit or Straddle State from certain aspects of Rule 20.6. The Exchange believes the application of the

⁸ See, e.g., NYSE MKT Rule 975NY, Interpretation and Policy .03, which excludes paragraph (l) of Rule 975NY from the pilot program; see also, CBOE Rule 6.25, Interpretation and Policy .01, which excludes Interpretation and Policy .05 from the pilot program.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ Id.

current rule will be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and that the resulting actions (i.e., nullified trades or adjusted prices) may not be appropriate given market conditions. Extension of this pilot to coincide with the pilot period for the Limit Up-Limit Down Plan would ensure that limit orders that are filled during a Limit or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan. The Exchange also believes it is necessary and appropriate in the interest of promoting fair and orderly markets to retain authority to nullify erroneous trades occurring from disruptions and/or malfunctions of Exchange systems without regard to whether the underlying security was in a Limit State or Straddle State. As noted above, this will ensure consistency with the rules of other options exchanges.¹²

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

¹² See supra note 7.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

Because the 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)(iii) thereunder.¹⁴

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

designates the proposed rule change to be operative upon filing.¹⁵

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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. Please include File Number SR-BATS-2015-91 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-2015-91. 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

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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, D.C. 20549 on official business days between the hours of 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-2015-91, 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.¹⁶

Brent J. Fields
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).