

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69038; File No. SR-BATS-2013-016)

March 5, 2013

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Modify the BATS Options Market Maker Obligation Rule

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 March 1, 2013, 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 Substance of the Proposed Rule Change

The Exchange filed a proposal for the BATS Options Market (“BATS Options”) to amend Rule 22.6(d) in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or “Plan”).⁵ The Exchange is also proposing to amend Rule 22.6(d) to suspend the obligation of market makers registered with BATS (“Market Makers”) to

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).

⁵ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

enter continuous bids and offers during a halt, suspension, or pause in trading of the underlying security (collectively, a “Trading Halt”).

The text of the proposed rule change is available on the Exchange’s website at <http://www.batstrading.com>, at the principal office of the Exchange, on the Commission’s website 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently requires Market Makers to enter continuous bids and offers for the options series to which it is registered in at least 75% of the options series in which the Market Maker is registered. The purpose of this proposed rule change is to amend BATS Rule 22.6(d) to suspend a Market Maker’s continuous quoting obligations when the underlying security is subject to a “Limit State” or “Straddle State” as defined Limit in the Up-Limit Down Plan and during a Trading Halt.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan. Under the Plan, a Limit State will be declared if the national best

offer equals the lower price band and does not cross the national best bid, or the national best bid equals the upper price band and does not cross the national best offer. A Straddle State is when the national best bid (offer) is below (above) the lower (upper) price band and the security is not in a Limit State, and trading in that security deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility. Accordingly, when the underlying security is in a Limit State or Straddle State, there will not be a reliable price for the security to serve as a benchmark for the price of the related option. While, in theory, the liquidity provided by requiring Market Makers to continue to quote during a Limit or Straddle State could help to stabilize a volatile market, without a reliable benchmark for pricing an option, Market Makers would likely respond to the uncertainty by entering very wide quotes, which would not provide any additional stability and could potentially lead to additional uncertainty. As such, the Exchange is proposing to eliminate the continuous quoting requirements of Rule 22.6(d) when the underlying security is in a Limit State or Straddle state. Specifically, the Exchange is proposing to exclude the time during which the underlying security is in a Limit State or Straddle state when evaluating whether a Market Maker has met the continuous quoting requirements of Rule 22.6(d). The Exchange believes that this relief will help to maintain a fair and efficient marketplace for the execution of options.

The Exchange is also proposing to amend Rule 22.6(d) to provide an exception to the continuous quoting requirements for Market Makers during a Trading Halt. Currently, the Exchange does not provide an exemption for its requirement that a Market Maker enter continuous bids and offers for the options series to which it is registered. Much like when an underlying security is in a Limit State or a Straddle State, there is no reliable price during a Trading Halt to serve as a benchmark for the price of the related option because the only

available price is the last trade prior to the Trading Halt. Based on this concern and for the same reasons discussed above, the Exchange is proposing to exempt Market Makers from existing continuous quoting requirements during a Trading Halt.

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.⁶ In particular, the proposal is consistent with Section 6(b)(5) of the Act,⁷ 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, and, in general protect investors and the public interest. The Exchange believes that exempting Market Makers from the continuous quoting requirements on BATS Options when the underlying security is in a Limit State or Straddle State or a Trading Halt will help to prevent executions that might occur at prices that have not been reliably formed. Further, the proposed changes will allow Market Makers to enter orders only where the Market Maker is confident in the price of the option, rather than on a continuous basis in all series in which the Market Maker is registered, which the Exchange believes will help to minimize uncertainty during a volatile market. The Exchange also believes that these changes will help to incentivize participants registered with BATS as Market Makers to continue to act as Market Makers, rather than potentially causing Market Makers to de-register. The Exchange also believes that this change will help to protect all investors from executions at prices that are not based on a reliable benchmark for the price of an option during times of significant volatility,

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

and thus, believes the proposal to be consistent with the protection of investors and the public interest.

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 not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that other options exchanges are proposing to suspend a market maker's quoting obligations when the underlying security is subject to a Limit State or Straddle State in connection with the Limit Up-Limit Down Plan consistent with the Exchange's handling proposed by this filing.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 No. SR-BATS-2013-016 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-2013-016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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 No. SR-BATS-2013-016 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.⁸

Kevin M. O'Neill
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).