

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76327; File No. SR-BATS-2015-93)

November 2, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delete Rule 22.10, Limitations on Dealings

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 21, 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, II and III 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 adopt a principles-based approach to prohibit the misuse of material nonpublic information by Market Makers by deleting Rule 22.10 (Limitations on Dealings).

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

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).

Reference Room.

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

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

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

1. Purpose

The Exchange proposes to adopt a principles-based approach to prohibit the misuse of material non-public information by Market Makers by deleting Rule 22.10 (Limitations on Dealings). In doing so, the Exchange, with regard to BATS Options, would harmonize its rules governing Market Makers and Options Members that are not Market Makers relating to the protection against misuse of material, non-public information. The Exchange believes that Rule 22.10 is no longer necessary because all Options Members, including Market Makers, are subject to the Exchange's generally applicable principles-based requirements governing the protection against the misuse of material, non-public information, pursuant to Rule 5.5 (Prevention of the Misuse of Material, Non-Public Information), which obviates the need for separately prescribed requirements for a subset of Exchange participants. Additionally, there is no separate regulatory purpose served by having separate rules for Market Makers. The Exchange notes that this proposed rule change will not decrease the protections against the misuse of material, non-public information; instead, it is designed to provide more flexibility to Options Members. This is a competitive filing that is based on a proposal recently submitted by

NYSE MKT LLC (“NYSE MKT”) and approved by the Commission.⁵

Background

The Exchange has two classes of BATS Options participants. Specifically, pursuant to Rule 16.1.(a)(38), the term “Options Member” means a firm or organization that is registered with the Exchange pursuant to Chapter XVII of the Rules for the purposes of participating in options trading on BATS Options either as an “Options Order Entry Firm” or as an “Options Market Maker.” Pursuant to Rule 16.1(a)(36), the terms “Options Order Entry Firm” or “Order Entry Firm” or “OEF” mean those Options Members representing as agent Customer Orders on BATS Options and those non-Market Maker Members conducting proprietary trading. Pursuant to Rule 16.1(a)(37), the term “Options Market Maker” or “Market Maker” means an Options Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter XXII of the Rules.

Rule 22.5 (Obligations of Market Makers) describes the obligations of Market Makers. Rule 22.6 (Market Maker Quotations) sets forth quoting obligations of Market Makers.⁶ Rule 22.10 (Limitations on Dealings) requires Market Makers to maintain information barriers that are reasonably designed to prevent the misuse of material, non-public corporate or markets information in the possession of persons on one side of the information barrier by persons on the other side of the information barrier.

⁵ See Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving SR-NYSEMKT-2015-23).

⁶ Rule 22.6 generally requires that Market Makers provide firm, two-sided, continuous quotations, in minimum size, for the options series to which it is registered.

Proposed Rule Change

The Exchange believes that the particularized guidelines for Market Makers in Rule 22.10 are no longer necessary and proposes to delete Rule 22.10. The Exchange believes that Rule 5.5 (Prevention of the Misuse of Material, Nonpublic Information), which governs the misuse of material, non-public information and applies to all Members (including Options Members), provides an appropriate, principles-based approach to prevent the market abuses that Rule 22.10 seeks to address. Specifically, Rule 5.5 requires every Member (including Options Members) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such Member or persons associated with such Member. For purposes of Rule 5.5, the misuse of material, non-public information includes, but is not limited to, the following:

- (1) Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer;
- (2) Trading in a security or related options or other derivative securities, while in possession of material, non-public information concerning imminent transactions in the security or related securities; and
- (3) Disclosing to another person or entity any material nonpublic information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material nonpublic information.

Because Options Members are already subject to the requirements of Rule 5.5, the Exchange does not believe that it is necessary to separately require particularized limitations on

Market Makers. Deleting Rule 22.10, with its particularized limitations would provide Market Makers with the flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model, business activities, or the securities market in a manner similar to how Options Members on the Exchange currently operate in conformity with Rule 5.5.

As noted above, Market Makers are distinguished under Exchange rules from other Options Members only to the extent that Market Makers have heightened quoting obligations. However, such heightened quoting obligations do not afford different or greater access to nonpublic information than any other Options Member of the Exchange.⁷ Therefore, because Market Makers do not have any trading advantages over Order Entry Firms on BATS Options, the Exchange believes that they should be subject to the same rules regarding the protection against the misuse of material non-public information, which in this case, is existing Rule 5.5.

The Exchange notes that its proposed approach to use a principles-based approach to protecting against the misuse of material non-public information for all of its registered Options Members is consistent with recently approved rule changes for NYSE MKT and recently filed changes for the International Securities Exchange LLC (“ISE”) and the Boston Options Exchange LLC (“BOX”).⁸ Each of these exchanges has moved to a principles-based approach to

⁷ The Exchange notes that by deleting Rule 22.10, the Exchange would no longer require specific information barriers for Market Makers; however, as is the case currently with Options Members, information barriers of new participants would be subject to review as part of a new firm application. Moreover, the policies and procedures of Market Makers, including those relating to any information barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

⁸ See Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving Adopting a Principles-Based Approach to Prohibit the Misuse of Material Nonpublic Information by Specialists and e-Specialists by Deleting Rule 927.3NY and Section (f) of Rule 927.5NY). See also Securities Exchange Act Release Nos. 75792 (August 31, 2015), 80 FR 53601 (September 4, 2015) (SR-ISE-2015-26) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting a

protecting against the misuse of material non- public information. In connection with approving those rule changes, the Commission found that, with adequate oversight by the exchanges of their members, eliminating prescriptive information barrier requirements should not reduce the effectiveness of exchange rules requiring its members to establish and maintain systems to supervise the activities of its members, including written procedures reasonably designed to ensure compliance with applicable federal securities law and regulations, and with the rules of the applicable exchange.⁹

The Exchange believes that a principles-based rule applicable to members of options markets would be effective in protecting against the misuse of material non-public information. Indeed, Exchange Rule 5.5 is currently applicable to Options Members and already requires policies and procedures reasonably designed to prevent the misuse of material nonpublic information. The Exchange believes that Rule 5.5 provides appropriate protection against the misuse of material nonpublic information by Options Members and that there is no longer a need for prescriptive information barrier requirements set forth in Rule 22.10.

The Exchange notes that even with this proposed rule change and the elimination of the requirement that the Exchange pre-approve a Member's policies and procedures, pursuant to Rule 5.5, an Options Member would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance

Principles-Based Approach To Prohibit the Misuse of Material, Non-Public Information by Market Makers by Deleting Rule 810); 75916 (September 14, 2015), 80 FR 56503 (September 18, 2015) (SR-BOX-2015-31) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Principles-Based Approach To Prohibit the Misuse of Material Nonpublic Information by Market Makers).

⁹ See supra note 8.

with applicable federal securities law and regulations, including Section 15(g) of the Act,¹⁰ and with applicable Exchange rules, including being reasonably designed to protect against the misuse of material, non-public information. Thus, the Exchange does not believe there will be any material change to Member's information barriers as a result of the Exchange's pre-approval no longer being required. In fact, the Exchange anticipates that the lack of such pre-approval would facilitate Market Maker's ability to more quickly implement changes to their information barrier as necessary to protect against the misuse of material, non-public information.

The Exchange is not proposing to change what is considered to be material, non-public information and, thus, would not expect there to be any changes to the types of information that an affiliated brokerage business of a Market Maker could share with such Market Maker. In addition, the Exchange notes that the proposed rule change would not permit the affiliates of a Market Maker to have access to any non-public order or quote information of the Market Maker, including the non-displayed size of Reserve Orders.¹¹ Affiliates of Market Makers would only be permitted to have access to orders and quotes that are publicly available to all market participants.

While information barriers would not specifically be required under the proposal, Rule 5.5 already requires that an Options Member consider its business model or business activities in structuring its policies and procedures, which may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

¹⁰ 15 U.S.C 78o(g).

¹¹ Reserve Orders are described in Rule 21.1(d) and include both a quantity that is displayed and a reserve portion that is not displayed.

The Exchange believes that the proposed reliance on the principles-based Rule 5.5 would ensure that an Options Member would be required to protect against the misuse of any material non-public information. As noted above, Rule 5.5 already requires that Members refrain from trading while in possession of material non-public information concerning imminent transactions in the security or related product. The Exchange believes that moving to a principles-based approach rather than prescribing particularized information barriers applicable to Market Makers would provide Market Makers with flexibility when managing risk across a firm, including integrating options positions with other positions of the firm or, as applicable, by the respective independent trading unit.

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.¹² In particular, the proposal is consistent with Section 6(b)(5) of the Act¹³ because it is designed to prevent fraudulent and manipulative acts and practices, 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 the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by adopting a principles-based approach to permit an Options Member to maintain and enforce policies and procedures to, among other things, prohibit the misuse of material non-public information and provide flexibility on how a

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

Market Maker structures its operations. The Exchange notes that the proposed rule change is based upon an approved rule of the Exchange to which Options Members are subject – Rule 5.5 – and the proposed change harmonizes the rules governing Options Members. Moreover, Market Makers would continue to be subject to federal and Exchange requirements for protecting material non- public order information.¹⁴ The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the Exchange’s approach to protecting against the misuse of material nonpublic information and no longer subject Market Makers to particularized prescriptive requirements. The Exchange does not believe that the existing prescriptive requirements applicable to Options Market Makers are narrowly tailored to their respective role because Market Makers do not have access to Exchange trading information in a manner different from any other Options Member that is not a Market Maker.

The Exchange further believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to Options Members the type of conduct that is prohibited by the Exchange. While the proposal eliminates certain prescriptive requirements relating to the misuse of material non-public information, Market Makers would remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, nonpublic information. Additionally, the policies and procedures of Market Makers, including those relating to information barriers, would be subject to review by FINRA, on behalf

¹⁴ See 15 U.S.C. 78o(g) and Rule 5.5.

of the Exchange.¹⁵

The Exchange notes that the proposed rule change would still require that Market Makers maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules. Even though there would no longer be particularized Market Maker information barriers, any Market Maker written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of prescribed requirements should not reduce the effectiveness of the Exchange rules to protect against the misuse of material non-public information. Rather, all Options Members will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. Moreover, while particularized information barriers may no longer be required, an Options Member's business model or business activities may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the public interest that is currently applicable to Market Makers, while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect against the misuse of material non-public information.

(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. In this

¹⁵ See supra, note 7.

regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by NYSE MKT that was recently approved by the Commission.¹⁶ The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

The Exchange believes that the proposal will enhance competition by allowing Market Makers to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon Market Makers.

(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 foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f)(6) of Rule 19b-4 thereunder,¹⁸ the Exchange has

¹⁶ See *supra*, note 5.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4.

designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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: (1) necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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-2015-93 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2015-93. 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 the filing will also 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-2015-93 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.¹⁹

Jill M. Peterson
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).