

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71129; File No. SR-BATS-2013-062)

December 18, 2013

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify BATS Options Market Maker Continuous Quoting Obligation Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 5, 2013, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“SEC” or “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 to amend Rule 22.6(d) with respect to the continuous quoting requirement applicable to Market Makers (as defined below) registered with the Exchange.

The text of the proposed rule change is available at the Exchange’s website at <http://www.batstrading.com>, at the principal office of the Exchange, 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, and on the Commission’s website at <http://www.sec.gov>.

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 is proposing to amend Rule 22.6(d), which is applicable to the Exchange’s options platform (“BATS Options”). A “Market Maker” on BATS Options is an Options Member registered as a Market Maker. Options Market Makers have obligations beyond those of other Options Members.⁵ One of these obligations is the requirement to maintain a two-sided market in those options series in which a Market Maker is registered to trade in a manner that enhances the depth, liquidity, and competitiveness of the market.⁶ Pursuant to this obligation and existing Rule 22.6(d), Market Makers must enter “continuous bids and offers for the options series to which it is registered.”

The Exchange proposes to add Rule 22.6(d)(3), which would specify numerically the meaning of “continuous” with respect to Market Makers’ obligation to maintain continuous, two-

⁵ See BATS Rule 22.2, 22.5.

⁶ BATS Rule 22.5(a).

sided quotes. For the purposes of Rule 22.6, the Exchange will consider the continuous quoting requirement fulfilled if a Market Maker provides two-sided quotes for 90% of the time the Market Maker is required to provide quotes in an appointed options series on a given trading day, or such higher percentage as the Exchange may announce in advance.

Proposed Rule 22.6(d)(3) would also provide that the continuous quoting requirement will be applied to all options classes collectively, rather than on a [sic] issue-by-issue basis and that compliance will be determined on a monthly basis. The Exchange believes that applying the quoting requirements for Market Makers collectively across all options classes and reviewing such compliance over a monthly basis is a fair and more efficient way for the Exchange and market participants to evaluate compliance with the continuous quoting requirements. Applying the continuous quoting requirement collectively across all option classes rather than on an issue-by-issue basis, is beneficial to Market Makers by providing some flexibility to choose which series in their appointed classes they will continuously quote—increasing the continuous quoting obligation in the series of one class to allow for a decrease in the continuous quoting obligation in the series of another class. This flexibility, however, does not diminish the Market Maker's obligation to continuously quote a significant part of the trading day in a significant percentage of series. This flexibility is especially important for classes that have relatively few series and may prevent the Market Maker, in particular, from breaching the continuous quoting requirement when failing to quote 90% of the trading day (as proposed) in more than one series in an appointed class. In addition, determining compliance with the continuous quoting requirement on a monthly basis does not relieve the Market Maker of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary

action against a Market Maker for failing to meet the continuous quoting obligation each trading day. Compliance on a monthly basis allows the Exchange to review the Market Maker's daily compliance in the aggregate and determine the appropriate disciplinary action for single or multiple failures to comply with the continuous quoting requirement during the month period. The Exchange believes that the proposal will not diminish, and in fact may increase, market making activity on the Exchange, by establishing quoting compliance standards that are reasonable and are already in place on other options exchanges.⁷

As proposed, pursuant to Rule 22.6(d)(4) if there is a technical failure or limitation of an Exchange system that prevents a Market Maker from maintaining or communicating to the Exchange timely and accurate quotes in an options series, the Exchange will not consider the duration of such failure in determining whether the Market Maker has satisfied the 90% quoting standard with respect to the affected options series.

The Exchange also proposes to add paragraph (d)(6) to Rule 22.6, which would specify that Market Makers would not be required to make two-sided markets pursuant to Rule 22.6 in any Quarterly Option Series, any adjusted option series, and any option series until the time to expiration for such series is less than nine months. Accordingly, the continuous quotation obligations set forth in the Rule will not apply to Market Makers respecting Quarterly Option Series, adjusted option series, and series with an expiration of nine months or greater. For purposes of paragraph (d)(6), an adjusted option series would be defined as an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option

⁷ See NYSE MKT Rule 925.1NY; see also, CBOE Rule 1.1(ccc); ISE Rule 804(e); ISE Gemini Rule 804(e); MIAX Rule 604(e); NASDAQ OMX PHLX Rule 1014(b)(ii)(D)(1); NOM Rules, Chapter VII, Sec. 6(d); NYSE Arca Rule 6.37B(b).

contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.

The Exchange will also reserve the right to consider other exceptions to the continuous quoting obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. As explained below, the proposed changes will provide a specific numerical threshold that Market Makers will need to meet, which is consistent with the rules of several other options exchanges.⁸

In addition to the changes described above, the Exchange proposes to number an existing paragraph currently contained within Rule 22.6(d)(2) as a separate paragraph, paragraph (d)(5).

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 Specifically, the proposal is consistent with Section 6(b)(5) of the Act,¹⁰ which requires exchange rules to 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 the proposed rule change fulfills these requirements because it provides a specific standard to which the Exchange will hold Market Makers regarding their obligation to maintain a two-sided market in specified options series. By numerically specifying

⁸ See id.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

this obligation, the Exchange will enhance the quality of its market and avoid unnecessary investor confusion. Moreover, the Exchange again notes that the proposed rule change is substantially similar to the rules of other options exchanges.¹¹

Furthermore, the Exchange believes this proposed rule change promotes just and equitable principles of trade because it reduces a burden and unnecessary restrictiveness on Market Makers. The Exchange still imposes many obligations on all Market Makers to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. Accordingly, the proposal supports the quality of the Exchange's market by helping to ensure that Market Makers will continue to be obligated to quote in series when necessary. The benefit provided to the Market Maker from the proposed definition of continuous quoting is offset by the required percentage of series in which the Market Maker must provide continuous quotes. Ultimately, the benefit the proposed rule change confers upon Market Makers is offset by the continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

The proposed rule change also protects investors and the public interest by creating more uniformity and consistency among the Exchange's rules related to Market-Maker quoting obligations. The proposed rule change allows the Exchange to require Market Makers to provide continuous quotes in a percentage of series in their appointed classes for a portion of the trading day that is the same as that of market-makers at other exchanges, which the Exchange believes will ultimately make the Exchange more competitive and help remove impediments to and promote a free and open market. For the foregoing reasons, the Exchange believes that the

¹¹ See supra note 7.

balance between the benefits provided to Market-Makers and the obligations imposed upon Market-Makers by the proposed rule change is appropriate.

Further, providing Market Makers with flexibility by providing the continuous quoting obligation collectively across all option classes will not diminish the Market Maker's obligation to continuously quote a significant part of the trading day in a significant percentage of series. Additionally, with respect to compliance standards, the Exchange believes that adopting the proposed standards will enhance compliance efforts by Market Makers and the Exchange, and are consistent with the requirement [sic] currently in place on other exchanges. The proposal ensures that compliance standards for continuous quoting will be the same on the Exchange as on other options exchanges. The Exchange believes that the proposal will not diminish and in fact may increase, market making activity on the Exchange, by establishing a quoting compliance standard that is reasonable and is already in place on other options exchanges.

The Exchange notes that its Market Makers are subject to many obligations, including the obligation to maintain a fair and orderly market in their appointed classes, which the Exchange believes eliminates the risk of a material decrease in liquidity. The Exchange continues to believe the balance of obligations and benefits is appropriate given the following: (i) although the percentage of the trading day Market Makers will be required to quote will be numerically set at 90%, Market Makers will continue to have heightened quoting requirements based on the significant percentage of series Market Makers are required to quote; (ii) the proposed clarification in the rule text of which series the continuous quoting obligations apply to does not diminish the continuous quoting obligation and is consistent with requirements in place at other option exchanges; (iii) the flexibility being provided by the proposal to apply the continuous

quoting obligation collectively across all option classes also does not diminish the Market Maker's obligations; and (iv) the proposed changes are all consistent with requirements in place at other options exchanges. The Exchange believes that its proposal is consistent with the Act in that providing clarification and flexibility does not detract from the overall market making obligations of Market Makers. The requirement that a market maker hold itself out as willing to buy and sell options for its own account on a regular or continuous basis is better supported by these proposed revisions and clarifications. Accordingly, the benefits the proposed rule change confers upon Market Makers are offset by the continued responsibilities to provide significant liquidity to the market to the benefit of all market participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act¹² in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will provide specificity in Exchange rules as they relate to Market Maker's [sic] obligation to maintain continuous, two-sided quotes in specific options series. Moreover, as previously noted, the proposed rule change is substantially similar to the rules of other options exchanges.¹³ As such, the Exchange believes the proposed rule changes will enhance, rather than diminish, competition among the options exchanges.

¹² 15 U.S.C. 78f(b)(8).

¹³ 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 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ 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 prior to 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 Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

At any time within 60 days of the filing of such 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange’s 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. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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-2013-062 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-2013-062. 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 changes 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 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 No. SR-BATS-2013-062 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).