

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72020; File No. SR-BATS-2014-015)

April 25, 2014

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Institute an Incentive Program for Market Makers for BATS Exchange, Inc.

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 April 17, 2014, BATS Exchange, Inc. (“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 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 institute an incentive program for market makers registered with the Exchange (“Market Makers”)³ in ETPs⁴ listed on the Exchange (the “LMM Program”). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁵ The Exchange will implement the proposed rule change on a date that will be circulated in a notice from the BATS Trade Desk.⁶ The Exchange also intends to file a proposal to adopt the financial incentives

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See BATS Rule 11.5.

⁴ As defined in proposed Rule 11.8(e)(1)(A), ETP means any security listed pursuant to Exchange Rule 14.11.

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ The Exchange will file a separate proposal prior to implementation of the proposed rule change in which it will add the relevant pricing to its fee schedule.

related to the LMM Program through a separate filing.

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, 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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing and delisting of companies on the Exchange.⁷ Shortly thereafter, the Exchange also received approval to operate a program in which all BATS-listed securities participate that is designed to incentivize certain Market Makers as Competitive Liquidity Providers ("CLPs") to enhance liquidity on the Exchange in such BATS-listed securities (the "CLP Program") by offering daily financial rebates to CLPs based on the size of their quotes at the NBBO⁸ throughout the day.⁹ In order to provide issuers with an additional option for

⁷ See Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

⁸ As defined in Rule 1.5(o), NBBO means the national best bid or offer.

⁹ See Exchange Act Release No. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR-BATS-2011-051).

enhancing liquidity in BATS-listed ETPs and as a competitive response to liquidity enhancement programs at other listing exchanges, the Exchange is proposing to implement an additional program designed to incentivize certain Market Makers that are willing to meet designated performance standards to enhance liquidity on the Exchange in ETPs by providing enhanced rebates to such Market Makers, the LMM Program, for executions in BATS-listed ETPs, as further described below. As proposed, the LMM Program is designed to incentivize select Market Makers to enter more aggressive orders in BATS-listed ETPs by providing enhanced rebates for executions in the BATS-listed ETP in which the Market Maker is registered as a lead market maker (a “LMM”) where the LMM meets certain performance measurements designated by the Exchange. As proposed, a BATS-listed ETP that is participating in the CLP Program would not be eligible for participation in the LMM Program until and unless such ETP is no longer participating in the CLP Program. Further, any ETP that is listed on the Exchange after the implementation of the LMM Program will not be eligible for participation in the CLP Program. Prior to the implementation of the LMM Program, the Exchange intends to file a proposal detailing changes to the current CLP Program along with a new supplemental quoting incentive program in which ETPs participating in the LMM program may also participate.

The Exchange is proposing to adopt rules that are similar to those regarding the SEC approved NYSE Arca, Inc. (“Arca”) program for Lead Market Makers¹⁰ (“Arca LMMs”) and The NASDAQ Stock Market LLC (“Nasdaq”) program for Designated Liquidity Providers (“DLPs”).¹¹ Under both programs, an Arca LMM for a security listed on Arca or a DLP for a

¹⁰ See Arca Rule 7.24 and NYSE Arca Schedule of Fees and Charges for Exchange Services at https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_or_2-1-14.pdf.

¹¹ See Nasdaq Rule 7018(i).

security listed on Nasdaq is required to maintain minimum performance standards with regard to (i) percent of time at NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; (iv) average quoted spread; and (v) in the case of derivative securities listed on Arca, the ability of the Arca LMM to transact in underlying markets. This list, however, is not exhaustive, so Nasdaq (and BATS, as proposed and further discussed below) could apply any additional minimum performance standards, including the ability of a DLP to transact in underlying markets. Additionally, because Arca LMMs and DLPs are required to be registered market makers, they must also meet each respective exchange's requirements for being a market maker. In return, an Arca LMM receives both enhanced rebates for adding liquidity and reduced fees for removing liquidity and a DLP on Nasdaq receives enhanced rebates for adding liquidity in their respective Arca LMM or DLP security or securities.

Under the Exchange's proposed program, a Market Maker in an ETP may become an LMM in an ETP. The Exchange anticipates providing enhanced rebates and/or reduced fees for LMM executions in the LMM Security,¹² subject to a separate fee filing. Under the LMM Program, an LMM is a Market Maker in an ETP that has committed to maintain Minimum Performance Standards.¹³ As is true under the Arca and Nasdaq programs, such Minimum Performance Standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered and the relevant measurement metrics will include, but are not necessarily limited to: (i) percent of time at the NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; and (iv) average quoted

¹² As defined in proposed Rule 11.8(e)(1)(C), LMM Security means an ETP that has an LMM.

¹³ As defined in proposed Rule 11.8(e)(1)(D), Minimum Performance Standards means a set of standards applicable to an LMM that may be determined from time to time by the Exchange.

spread. If an LMM does not meet the Minimum Performance Standards for a given month, fees and credits will revert to standard equities pricing, as provided in the Exchange's fee schedule. If an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion. An LMM must provide 30 days written notice if it wishes to withdraw its registration as an LMM in an LMM Security, unless it is also withdrawing as a market maker in the LMM Security.

As is true under the Arca and Nasdaq programs, after indicating interest in being an LMM for an ETP, a Market Maker will be selected by the Exchange to be an LMM based on factors including, but not limited to, experience with making markets in ETPs, adequacy of capital, willingness to promote the Exchange as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Exchange rules and securities laws. As is true under the Nasdaq program, the Exchange may limit the number of LMMs in a particular security, or modify a previously established limit, upon prior written notice to Members. Specifically, the Exchange may modify a limit either to increase or decrease the number of LMMs for a security upon providing such prior written notice.

2. Statutory Basis

The Exchange believes 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.¹⁴ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ in that it is designed to promote just and equitable principles of trade, to remove impediments to

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. At the outset, the Exchange notes that registration as an Exchange Market Maker is equally available to all Members that satisfy the requirements of Rule 11.8 and that LMMs will be chosen based on the pre-determined factors described in the proposed rule. The Exchange believes that by allocating pricing benefits to Market Makers that make tangible commitments to enhancing market quality for BATS-listed ETPs, the proposal will encourage the development of new financial products, provide a better trading environment for investors in ETPs, and encourage greater competition between listing venues for ETPs. The Exchange also believes that the proposal will promote tighter spreads and deeper liquidity for all market participants by requiring LMMs to meet Minimum Performance Standards for an LMM Security based on percent of time at the NBBO, percent of executions better than the NBBO, average displayed size, and average quoted spread, plus any other metric that the Exchange deems appropriate for measuring performance in a particular LMM Security.

As proposed, the LMM Program is designed to enhance the Exchange's competitiveness as a listing venue and to strengthen its market quality for BATS-listed ETPs. The Exchange believes that the proposed change would increase competition with Arca and Nasdaq by incenting Exchange Market Makers to apply to become LMMs, which will enhance the quality of quoting in BATS-listed ETPs. The Exchange also believes that the LMM Program will further assist the Exchange to develop an alternative to Nasdaq and the Arca for an issuer seeking to list its ETPs. Accordingly, the Exchange believes that the proposal will complement the Exchange's program for listing ETPs on the Exchange, which will, in turn, provide issuers

with another option for listing an ETP on the public markets, thereby promoting the principles discussed in Section 6(b)(5) of the Act.¹⁶

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive offering to the Arca LMM program currently in place at Arca and the DLP program in place at Nasdaq. The Exchange believes that this proposed rule change is necessary to permit fair competition among the listing exchanges. Further, the Exchange believes that the proposed changes as a whole will contribute to tighter spreads and additional liquidity on the Exchange in BATS-listed ETPs, which will, in turn, benefit competition due to the improvements to the overall market quality of the Exchange.

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

Because the foregoing 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

¹⁶

Id.

interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

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.

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-2014-015 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 No. SR-BATS-2014-015. 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

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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 am and 3:00 pm. 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-2014-015 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

Kevin M. O'Neill
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).