SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69190; File No. SR-BATS-2013-005)

March 20, 2013

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change to Modify the Competitive Liquidity Provider Program to, Among Other Things, Modify the Calculation of Size Event Tests

I. Introduction

On January 18, 2013, BATS Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder, a proposed rule change to modify the Exchange's competitive liquidity provider program, to among other things, modify the calculation of size event tests. The proposed rule change was published in the Federal Register on February 6, 2013.[1] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange operates a competitive liquidity provider program that provides incentives to certain Exchange market makers to provide additional liquidity in Exchange listed securities.[2] The Exchange proposes to modify certain aspects of the competitive liquidity provider program.

A. Calculation of Size Event Tests

Currently, a market maker participating in the competitive liquidity provider program would be eligible for a financial rebate based on the size of the liquidity provided by the market maker. The Exchange calculates the rebate by examining, at least once per second, the quoted

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1 See Securities Exchange Act Release No. 68789 (January 31, 2013), 78 FR 8655.

2 See Exchange Rule 11.8.02.

size at the national best bid and national best offer ("Size Event Test"). The market maker with the greatest aggregative size would be considered the winner of the Size Event Test.

The Exchange proposes to bifurcate the calculation of the Size Event Test by the bid and the offer. Thus, instead of having one winner, the Exchange proposes to have two separate winners—one winner at the bid and one winner at the offer. As proposed, the market maker with the greatest aggregated size at the national best bid (excluding odd lots) would be considered the winner of the bid test and the market maker with the greatest aggregative size at the national best offer (excluding odd lots) would be considered the winner of the offer test.

B. Financial Rebates for the Bid Winner and the Offer Winner

In connection with the proposal to bifurcate the Size Event Test winners into the bid test winner and the offer test winner, the Exchange proposes to provide financial rebates separately. Currently, a market maker must have at least 10% of the winning Size Event Tests in order to meet its daily quoting requirements and qualify for the financial rebate. The Exchange proposes to allocate the rebate to both the bid test winner and the offer test winner.

C. Allocation of Financial Rebates

The competitive liquidity provider program assigns only one market maker for the first six months of a security's initial listing. Thereafter, multiple market makers may qualify to quote and to receive the financial rebates. Currently, for Tier I securities and exchange traded products, 80% of the rewards would go to the market maker with the highest number of winning tests and 20% of the total rewards would go to the market maker with the second highest number of winning tests.[3] The Exchange proposes to allocate the rewards differently. Instead of a fixed

[3] For Tier II securities, there is only one rebate for the winner.

dollar amount, the Exchange would reward the two winning market makers based on a pro rata amount, calculated on the combined sum of their winning tests.

D. Quoting Requirements

Currently, the Exchange requires each market maker to quote at least one round lot. The Exchange proposes to increase the minimum quoting requirement to five round lots in order for market makers to qualify for the winning tests.

The Exchange also proposes to add an additional quoting requirement for market makers to qualify for the winning tests. In order to qualify for the winning bid test, the Exchange is proposing for market makers to quote at least a displayed round lot offer at a price at or within 1.2% of the market maker's bid. Conversely, in order to qualify for the winning offer test, the market makers must quote at least a displayed round lot bid at a price at or within 1.2% of the market maker's offer.

E. Time of Operation

Currently, the competitive liquidity provider program measures participants in assigned securities during Exchange regular trading hours, from 9:30 a.m. to 4:00 p.m. The Exchange proposes to extend the time by 10 total minutes, from 9:25 a.m. to 4:05 p.m.[4]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges.[5] In particular, the Commission finds that the proposed rule change is

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4 See proposed Exchange Rule 11.8.02(g)(1).

5 In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is consistent with the requirements of the Act and should benefit investors by providing additional liquidity in the securities that participate in the competitive liquidity provider program. The Commission believes that bifurcating the Size Event Tests could incentivize market makers to provide two-sided quotes that could enhance the liquidity of the security. Moreover, the Exchange's proposal to provide the rebate to the winner of the bid test and the winner of the offer test could provide a stimulus to market makers to increase quoting size on both sides of the market. The Commission believes that the allocation, on a pro rata basis, of the financial rebate should provide a more equitable distribution of the rebate to the winning market makers. The Commission believes that the proposed quoting requirements should enhance the market size and could lead to tighter spreads. Finally, the Commission believes the extended time period could entice market makers to provide more quotes in the opening auctions and closing auctions.

For the reasons stated above, the Commission believes that the proposal is consistent with the requirements of the Act and is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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6 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR-BATS-2013-005), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill
Deputy Secretary

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7 15 U.S.C. 78s(b)(2).

8 17 CFR 200.30-3(a)(12).