

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67516; File No. SR-BATS-2012-029]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 20.6, Entitled "Obvious Error"

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 16, 2012, 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 Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> 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 proposes to amend Rule 20.6, entitled "Obvious Error", to modify the calculation of the Theoretical Price used in connection with Obvious Error<sup>5</sup> rulings and to clarify the Obvious Error transactions for which the Exchange can either adjust the execution price of the transaction or nullify the transaction.

The text of the proposed rule change is available at the Exchange's Web site 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

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 purpose of this filing is to amend Rule 20.6, which is applicable to the Exchange's equity options platform ("BATS Options"), to modify the calculation of the Theoretical Price used in connection with Obvious Error rulings, as described below. Under current Rule 20.6, the Exchange defines the Theoretical Price, if the series is traded on at least one other options exchange, as the mid-point of the National Best Bid and Offer ("NBBO") just prior to the transaction in question. The Exchange proposes to define the Theoretical Price for purposes of Rule 20.6 as the last National Best Bid ("NBB") price with respect to an erroneous sell transaction and the last National Best Offer ("NBO") price with respect to an erroneous buy transaction, just prior to the transaction. The proposed methodology is used by several other options exchanges.<sup>6</sup>

The proposed rule change would also amend Rule 20.6(e) to delete the requirement that each party to a transaction be an Options Member,<sup>7</sup> in order to permit the Exchange to adjust the execution price. It is implicit that all transactions that occur on BATS Options must be executed between Options Members so deleting this explicit requirement will have no impact on the ultimate functionality of the Rule. Furthermore, the proposed rule change would amend Rule 20.6(e) to clarify that if at least one party to the Obvious Error transaction is for the account of or on behalf of a party other than a Market Maker, then the trade will be nullified unless the parties otherwise agree to an adjustment price for the transaction within thirty (30) minutes of being notified by the Exchange of the Obvious Error. Making a distinction between the parties to an Obvious Error transaction when the Exchange takes action to either adjust the execution price or nullify the trade is proper in that if a transaction involves a Market Maker on both sides, these parties are better able to understand the risk of an adjustment to the execution price than if one or both sides of the transaction is

for the account of a non-Market Maker. The Exchange believes that the proposal to amend Rule 20.6(e) is consistent with existing rules of the Exchange's competitors.<sup>8</sup>

##### 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.<sup>9</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> 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. Specifically, the definition of Theoretical Price, as proposed, is consistent with the Act due to the fact that it provides a specific and objective definition for use in determining whether a particular transaction was or was not an Obvious Error. Further, the proposal will define the Theoretical Price for purposes of Obvious Error determinations in a manner that is consistent with the majority of the other options exchanges. The proposal will also make a distinction that transactions on behalf of a party other than a Market Maker will be nullified rather than adjusted, eliminating the risk that the transaction execution price will be adjusted under those circumstances where a party to the transaction may not fully appreciate the risks associated with such action.

The proposal is consistent with Section 6(b)(8) of the Act,<sup>11</sup> in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal also promotes transparency in that it (i) aligns the definition of Theoretical Price with that used by most other options exchanges, reducing the potential for confusion by Exchange members; (ii) puts Market Maker only transactions in a separate category from transactions that are on the behalf of non-Market Makers, thereby protecting non-Market makers from execution price adjustment where nullification of the transaction is more appropriate; and (iii) puts procedural safeguards around

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> As defined in Exchange Rule 20.6(b).

<sup>6</sup> See NYSE Arca Options Rule 6.87(a)(2)(A); see also NYSE Amex Options Rule 975NY(a)(2)(A); CBOE Rule 6.25(a)(1)(i); NASDAQ OMX PHLX Rule 1092(b)(i); ISE Rule 720(a)(3).

<sup>7</sup> As defined in Exchange Rule 16.1(a)(38).

<sup>8</sup> See NYSE Arca Options Rule 6.87(a)(3)(A) and (B); see also NYSE Amex Options Rule 975NY(a)(3)(A) and (B); CBOE Rule 6.25(a)(1); NASDAQ OMX PHLX Rule 1092(e)(ii); ISE Rule 720(b)(2)(ii).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(8).

transactions that are on behalf of non-Market Makers, thereby protecting non-Market makers from execution price adjustment where nullification of the transaction is more appropriate.

The proposed rule change to Rule 20.6(e) is also consistent with Section 11A(a)(1) of the Act<sup>12</sup> in that it seeks to assure fair competition among brokers and dealers and exchange markets by handling obvious error reviews in a manner consistent with the Exchange's competitors.<sup>13</sup> As described above, all aspects of the proposal will serve to align the Exchange's Obvious Error procedures with those of other options exchanges.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*(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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>15</sup>

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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2012-029 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 Number SR-BATS-2012-029. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2012-029, and should be submitted on or before August 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-18822 Filed 8-1-12; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67521; File No. SR-BYX-2012-016]

**Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to Clearly Erroneous Execution Reviews**

July 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 24, 2012, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") 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 is filing with the Commission a proposal to extend a pilot program related to Rule 11.17, entitled "Clearly Erroneous Executions."

The text of the proposed rule change is available at the Exchange's Web site 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 the Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of this filing is to extend the effectiveness of the Exchange's

<sup>12</sup> 15 U.S.C. 78k-1(a)(1).

<sup>13</sup> See *supra* notes 5 and 7.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.